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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 879.

MORRIS KETCHUM, D'ORELLI ZEIGLER, BERNARD DE WATTEVILLE, MASON CHAVANNES, HENRY JUMP, RODOLPH MERIAN, EUGENE RENEVIER, CHARLES CARRARD, AND CEPHISE CHUFFARD, APPELLANTS,

VS.

WILLIAM BUTLER DUNCAN AND ANDREW FOSTER ELLIOTT, ET AL.

FILED OCTOBER 12, 1877.

No. 1057.

WILLIAM H. HAYS, WM. S. PIERSON, T. HASKINS DUPUY, AND ALEXANDER DUNCAN, APPELLANTS,

VS.

MORRIS KETCHUM ET AL.

FILED MARCH 15, 1878.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

SUPREME COURT OF THE UNITED STATES.

No. 879.

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Circuit court of the United States, fifth judicial circuit, southern district of Alabama. In equity. No. 90.

To the honorable the judges of the United States for the 5th judicial circuit and southern district of Alabama.

Your orators, William Butler Duncan, who is a citizen of the State of New York, and A. Foster Elliot, who is a citizen of the State of Louisiana, file this bill of complaint against the Mobile and Ohio Railroad Company, a corporation incorporated by act of the general assembly of the State of Alabama, which is a citizen of the State of Alabama, and which is engaged in business as a corporation so incorporated in the State of Alabama, and against William D. Dunn, who is a citizen of the State of Alabama; George H. Young, who is a citizen of the State of Mississippi; Samuel Williams, who is a citizen of the State of Tennessee; John Reid, j'r, and Robert C. Crawford, who each are citizens of the State of Alabama, and Adrian Iselin, Richard T. Wilson, and Samuel L. M. Barlow, who are each citizens of the State of New York; and thereupon your orators complain and show to your honors that said Mobile and Ohio Railroad Company was made a body politic and corporate by act of general assembly of the State of Alabama, by an act approved 3d February, A. D. 1848; that said corporation was authorized to locate, construct, complete, and operate a railroad from the said city of Mobile to the west line of the State of Alabama, towards the mouth of the Ohio River, and thereon to transport persons and property for hire and reward; that certain other powers were also conferred upon said corporation to enable it to acquire, hold, and use real and personal property for the purposes of said railroad and its business, and to enable it to carry into operation and effect the purposes of said railroad company about the construction of said railroad and its said business, all which will fully appear by reference to said act of incorporation, a copy of which is hereto attached, and prayed to be taken as a part of this bill of complaint.

Your orators further show to your honors that the scheme of said enterprise was the construction, equipment, management, and operation of a line of railroad for the transportation of persons and property for hire and reward from said city of Mobile to a point at or near the mouth of the Ohio River, with lateral branches through a portion of the territories of the States of Alabama, Mississippi, Tennessee, and Kentucky; that said corporation so chartered by the laws of the State of Alabama was also chartered by the State of Mississippi, by act of the legislature of the State of Mississippi approved the 17th day of February, 1848; that said corporation so chartered by the acts aforesaid of the States of Alabama and Mississippi was also incorporated by act of the general assembly of the State of Tennessee approved the 28th day of February, 1848; that by act of the general assembly of the State of Kentucky approved February 26th, 1848, the said Mobile and Ohio Railroad Company, as incorporated by act of the general assembly of Alabama, was permitted to extend its road into the State of Kentucky, and was thereby recognized as a body politic and corporate in that State, and therein entitled to all the privileges, rights, and immunities, and subject to all such restrictions as were granted, made, and prescribed for the benefit, government, and direction of said Mobile and Ohio Railroad Company, within the State of Alabama, by the act of said last-named State, approved as aforesaid, 8th February, 1848, entitled "An act to incorporate the Mobile and Ohio Railroad Company."

Your orators further show to your honors that by acts of the general assemblies of Alabama and Mississippi approved respectively the 5th day of January, 1850, and 4th day of March, 1850, the said corporation was authorized to borrow money, and make contracts for the loan of money, and to give evidences of debt and securities for the payment of the same by pledge, mortgage, or otherwise, as it should deem necessary and proper.

Your orators attach hereto copies of the several acts hereinbefore mentioned, in a printed pamphlet marked "Exhibit A," and pray the same may be held and taken as a part of this their bill of complaint.

Your orators further show that by the laws of Tennessee and Kentucky the said corporation was authorized and empowered to
2 borrow money, contract loans and debts, and secure payment of the same, by pledge and mortgage of the real and personal property and franchises of said company.

Your orators further show unto your honors that in pursuance of the power and authority so given to it by its said charter and said acts of incorporation, the said corporation has built, constructed, equipped, and is now operating a line of railroad, for the purposes aforesaid, from the said city of Mobile in the State of Alabama, through territory of the State of Alabama, the State of Mississippi, the State of Tennessee, and the State of Kentucky, to the town of Columbus, at or near the mouth of the Ohio River, in the last named State; and has also built or has acquired under authority of its said charter, and is now operating certain branch roads connected with its main trunk or stem of railway; that is to say, a branch of twenty-one miles or thereabouts, extending from Narkeeta, in the State of Mississippi, to Gainesville, in the State of Alabama; another branch of about fourteen miles, extending from Artesia to Columbus, all within the State of Mississippi; another branch, altogether within the State of Mississippi, of about eleven miles, extending from Artesia to Starkville. The said corporation also hold, under a perpetual lease and free of rent, another branch road of about nine miles in length, altogether within the State of Mississippi, from Muldon to Aberdeen, making the total number of miles of railroad, so owned or possessed and operated by said Mobile and Ohio Railroad Company, five hundred and twenty-seven miles.

The said corporation also owns and possesses, as appurtenant to its said line of railway, various lands, tenements, easements, and franchises, and also a large amount of other land, in the aggregate at this time of about one million one hundred and ninety-two thousand four hundred and sixty-four acres, not appurtenant to its said line of railroad, together with a large amount of personal property, consisting of rolling-stock, tools, machinery of various kinds, supplies, and materials for use in its said business, and other articles required in the operation of a line of railroad, of the length and class operated by said corporation; all and singular of this property, real, personal, and mixed, is embraced in and conveyed by the mortgage and deed of trust hereinafter more particularly described.

Your orators show to your honors that on the first day of November, 1853, the said Mobile and Ohio Railroad Company, in pursuance of its power for that purpose under the charter and acts by which it was incorporated and transacted its business, made, executed, and delivered to Morris Ketchum and John J. Palmer, then citizens of the State of New York, and to William R. Hallett, then a citizen of the State of Alabama, its certain deed of trust and mortgage of all the property then owned by said corporation, excepting portions of land therein and thereby excepted not then yet fully paid for, and certain rights and liens in the State of Tennessee, hereinafter more fully stated; said conveyance was also declared to be intended to convey the future to be acquired rights, interest, and property, and appurtenances of said corporation, on the line of its railroad from the city of Mobile to the mouth of the Ohio River. A copy of said deed of mortgage and trust is hereto attached and made a part of this bill of complaint, marked "Exhibit B;" said deed was recorded as required by law in the several counties and States wherein the property therein described and thereby conveyed was situated.

Said deed of mortgage and trust was made to secure the payment of a large amount of bonds, then made by said company to the extent of six millions of dollars. Said bonds are each for the sum of two hundred and twenty-five pounds sterling, according to the currency of the Kingdom of Great Britain, and bear date the first day of November, 1853, and are payable on the first day of November, 1883, with interest thereon at the rate of six per centum thereon, payable semi-annually on the first days of May and November during the time said bonds are running to maturity. All of said bonds are of the same tenor and date, and differ only in the number attached thereto. A copy of one of said bonds is attached hereto, for the information of the court, of the form and nature of the obligation, marked "Exhibit C." The interest accruing on said bonds is represented by certificates of interest attached thereto, stating the time of payment thereof, and intended to be cut from said bonds as coupons upon maturity of the interest expressed thereon, and to be surrendered to said corporation on payment of said interest, otherwise to be held as evidence of interest matured and unpaid.

It is expressly declared by the terms of the said deed of trust and mortgage, that said trustees should go into the immediate possession of the lands hereinbefore mentioned, not appurtenant to the said line of railroad, to make sale thereof and invest the proceeds thereof and to create a sinking fund for the redemption of the bonds described in and secured by said deed of mortgage and trust, and in case said corporation should make default in the payment of said bonds, or interest, or any portion thereof, and should so remain in such default of payment of the said bonds or interest, for the space of three months after being due and payable, then said parties of the second part, that is, the trustees appointed under said deed, were thereby vested with full authority to take possession and control of all and singular the entire estate and properties of whatsoever name and kind described in said deed, and hold the same for the benefit of any and all such creditors of the corporation, with such other action and disposition as shall be equitable to all concerned, and might sell and dispose of said road, and other property thereby mortgaged, conveyed, or assigned, or so intended, and all benefit and equity of redemption of the said company therein, with the benefit of the company's franchises; all which fully appears by reference to said deed of mortgage and trust, a true copy of which is hereto attached as a part of this bill.

Your orators show that the bonds described in and secured by the said deed of mortgage and trust, were issued by the said corporation and negotiated to parties who advanced valuable consideration therefor, and now are valid and subsisting debts of the said Mobile and Ohio Railroad Company, though they have not yet matured. The interest coupons attached to said bonds have from time to time matured, and many of them have been paid.

Owing to the disturbances and interruptions of business, produced by the late civil war, which prevailed in the country through which the said road of said corporation was constructed, the interest which matured during certain years prior to 1870 was not paid. The coupons for interest owing upon the bonds during that time have since been placed on deposit, and in lieu of them, but not in discharge or satisfaction thereof, but as a convenient form of security and evidence of said debt, the said company has issued other bonds, certified by its corporate seal, known, some as interest bonds, others as interest arrear bonds, others as funded interest bonds, others as sterling interest bonds, amounting in the aggregate, and still outstanding, with the sterling bonds first above mentioned and described in the said deed of mortgage and trust, to seven million nine hundred and eighty thousand and two hundred and twenty dollars ($7,980,220.00), or thereabouts, the payment of all which is secured by the deed of mortgage and trust, hereinbefore mentioned, and which your orators charge to be the first lien upon the property hereinbefore and in said deed described. The semi-annual interest upon all these various bonds matured on the same day, to wit: on the first days of May and November in each year; the rate of interest upon all of said bonds, the sterling bonds first named excepted, is eight per centum per annum.

Your orators show that said bonds and securities are held by a great many persons, and have become scattered in the hands of holders in the United States and Europe. Your orators do not know and have no means of ascertaining who are the holders of these bonds and securities.

Your orators further show that the rate of interest agreed to be paid by said company on face of said sterling bonds is six per cent. The said corporation by resolution of its board of directors, after the same had been prepared, to facilitate their negotiation, gave to the parties who purchased the same the option of receiving interest thereon in London, the place of payment named in said bonds, at six per centum per annum, or in New York at the rate of eight per centum per annum. Many of said parties elected to receive payment of interest in New York, and said corporation thereupon caused to be attached to such bonds an agreement to that effect; and thereupon and thereafter interest upon such bonds so certified has been held to be due at said rate of eight per cent., and at that rate interest thereon has been paid. Your orators charge that this change of rate of interest upon said bonds was stipulated for and accepted before any other lien or right had accrued upon the property of the company, described in the mortgage hereinbefore set out.

Your orators show that on 1st day of May, 1874, an installment of interest fell due upon the bonds hereinbefore described; that again on the 1st day of Nov., 1874, a like installment of interest upon said bonds fell due; that neither of said installments of interest were paid at maturity; that the coupons cut from said bonds, and representing said interest were presented to the said company, or to its agents, at the places appointed by it for the presentation of said coupons and the payment of said interest, by the holders thereof, and payment demanded, but payment of said interest was refused, and the same is still due
4 and unpaid, and the said Mobile and Ohio R. R. Co. is now in default in the payment of said interest, which matured on the days before stated; and said company has remained in said default from the said 1st days of May and November, 1874; that the aggregate amount of said installments of interest, and which is represented by

interest coupons outstanding and unpaid, in the hands of the holders thereof, is six hundred and thirty-eight thousand four hundred and seventeen 60-100 dollars ($638,417\frac{60}{100}$), or thereabouts, in the currency of the United States.

Your orators show to your honors that at some time not known to your orators, prior to 1st of January, 1863, the said John J. Palmer and William R. Hallett, two of the trustees named in the original deed of trust, died; that Morris Ketchum, the third person named in said trust-deed, has abandoned the trust, and for more than ten years last past has done no act as such trustee; that during that time, and till the 19th day of April, 1875, the said trust has been in the hands of Charles Walsh, of the State of Alabama; George H. Young, of the State of Mississippi, and Alexander Jackson, of the State of Tennessee, who were appointed by judicial proceedings of the court of chancery for the southern chancery division of the State of Alabama, sitting at Mobile, upon the application of said railroad company, in the room and stead of the trustees named in said deed; and they have performed all the duties of trustees under said deed, which it was competent for the trustees to do, without challenge or question; they have been in the possession and management of the lands of the company, not appurtenant to the line of said company's railroad, as provided by the terms of said deed, and have sold portions thereof, and made title therefor.

Said last-named trustees, to wit, Mess'rs Walsh, Young, and Jackson, have resigned their said trusteeship, and your orators are now the trustees under said deed of mortgage and trust, by joint appointment, as directed by said deed of the said Charles Walsh, before he resigned as aforesaid, and the said railroad company. Your orators now hold the legal title to all the property conveyed by said deed, in trust for the uses and purposes and for the parties therein declared, and alone represent the whole of said trust estate.

Your orators further show that at the date of the execution of the deed of trust hereinbefore described, the State of Tennessee, by act of the legislature, had advanced and loaned to the said Mobile and Ohio R. R. Co., or had pledged itself so to do, the bonds of the said State to the extent of one million six hundred and eighty-four thousand eight hundred dollars or thereabouts, and by statute had retained for its security a first lien upon the entire road of said company in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chains, and the whole superstructure and equipments, and all the property owned by said company, as incident to or necessary for its use, lying within the limits of said State, with power in said State to seize and sell, as in the nature of a mortgage lien, the same in default of payment by said company of said principal loan. This right and lien of said State of Tennessee was recognized in the said deed of mortgage hereinbefore described, and said deed was executed, subject to said lien and right, as appears by reference thereto, of which a copy is made part of this bill.

Your orators are informed, and, therefore, on information state that said State of Tennessee did advance and loan to said company its bonds to the amount above stated, under the terms and conditions of the said statute of said State, which authorized the same; and that therefore said State did acquire a lien upon the property of said company within said State, which said statute of Tennessee declared should be a lien prior and superior to that created by said deed of trust, to the amount of the bonds of said State so issued in pursuance of said law.

Your orators further show to your honors, that after the issue of said bonds by the State of Tennessee, the said State, by a general act of its legislature, passed for that purpose, to wit, on the 25th February, in the year 1869, authorized the several railroad companies which had received aid from the State by a loan of its bonds, under said former legislation to obtain a release of the lien of the State upon its property, by the delivery to the State of an equivalent amount of bonds issued by the State. To enable this to be accomplished, the said State agreed to transfer to the holders of such Tennessee bonds, as, with the consent of said railroad companies, might so surrender their bonds, in consideration of mortgage bonds to be executed by such railroad company, its lien upon the property in Tennessee, so that thereafter such bonds of said railroad companies, so issued for that purpose, should be held and taken as standing in the room and stead of the State bonds originally loaned, and should be secured by the lien originally reserved for the protection of said State bonds, being the same continuing liability and debt of such railroad company, but differing only in its form. Your orators show that 5 the said Mobile & Ohio Railroad Company accepted these proposals and issued its bonds for that purpose to the amount of one million six hundred and eighty-five thousand dollars, or thereabouts, bearing date 1st July, 1871, and payable thirty years thereafter, and bearing interest at the rate of seven per cent. per annum, payable semi-annually, in July and January, in gold coin, in New York, each bond being for the sum of one thousand dollars, or two hundred and five pounds sterling; and the said bonds, less thirty-four thousand dollars, which have been paid, are now held by sundry persons, who are unknown to your orators, under the terms of this settlement, in the place and stead of the bonds originally issued by said State of Tennessee, and are secured by a lien upon the property, as hereintofore stated, of the said company in the State of Tennessee, and for whose benefit the said lien was declared to be a continuing lien upon said property.

Your orators show that for the protection of these bonds and the preservation of said lien, Adrian Iselin and Richard T. Wilson, who are both citizens of the State of New York, together with your orator William Butler Duncan, were appointed trustees. These bonds so issued as aforesaid are known as Tennessee substitution bonds.

Your orators attach hereto and make part of this their bill of complaint, marked "Exhibit D," a printed copy of the resolutions of the board of directors of said Mobile & Ohio Railroad Company, on the 25th May, 1871, whereby this arrangement was authorized, and of the deed executed by said company on 1st July, 1871, whereby the same was consummated and said trustees appointed.

Your orators show that said corporation has failed to keep the covenants it therein made; in this, that it is in default in the installments of interest which matured in July, 1874, and January, 1875, and has failed to provide the sinking fund for the redemption of said bonds, which by its said deed of trust it stipulated to provide; there is now due by the said corporation upon said installments of interest which matured upon these bonds in July, 1874, and January, 1875, the sum of one hundred and twenty-eight thousand four hundred and thirty-six dollars or thereabouts, represented by interest coupons, as in the case of the first mortgage or sterling bonds.

Your orators further show to your honors, that on the fifteenth day of February, 1860, the said Mobile and Ohio Railroad Company, by deed of that date, conveyed the property therein described, which is the same as that previously conveyed by the deed of trust first above mentioned to Robert E. Baker, of Alabama, who is since deceased, George

H. Young, who is a citizen of the State of Mississippi, and Samuel Williams, who is a citizen of the State of Tennessee, as trustees to secure the payment of certain bonds described in said deed, and which were authorized to be issued by certain resolutions of the board of directors of said railroad company. Robert A. Baker, who was named in said deed as one of the trustees therein, has, since the execution thereof, died, and his place has been filled by the appointment of William D. Dunn, who is a citizen of the State of Alabama, and who is now the trustee of said property conveyed by said deed, and is clothed with the title, rights and powers granted by the said deed.

Your orators are informed and believe, and, therefore, show to your honors, that the principal debt secured by the said mortgage, and which is known as the second mortgage of the Mobile and Ohio Railroad Company, amounts to the sum of one million four hundred and fifty-three thousand eight hundred and fifty-eight 47-100 dollars or thereabouts, bearing interest at eight per centum per annum, and is represented by several series of bonds issued by the said corporation for different amounts, and which mature at sundry times from 1877 to 1883. Your orators attach to their bill of complaint a printed copy of said second mortgage, marked "Exhibit E," and pray reference thereto as often as may be necessary.

Your orators show to your honors, that said company have failed to meet an installment of interest upon the bonds secured by and described in the said mortgage, which matured on the 1st of March last past, and said corporation still remains in default about the payment of the same—said amount of interest as due and unpaid, on information your orators show to be one hundred and sixteen thousand three hundred and eight 67-100 dollars, or thereabouts.

Your orators show to your honors, that the said second mortgage is of later date to that whereof your orators are trustees, and the rights of your orators to the property therein described and conveyed to the trustees therein, are paramount to the right and title of said trustees and to any rights acquired by any person or party by or under the said second mortgage.

Your orators further show, that on the 1st day of January, 1874, the said railroad company executed a further and other mortgage or deed of trust on all the property described in the said other two mortgages which bear date as aforesaid in 1853 and 1860, to your 6 orator W'm Butler Duncan and to Samuel L. M. Barlow, who is a citizen of the State of New York. The said last named deed of mortgage was made to secure an issue of bonds to the amount of fifteen million of dollars, which was intended to be used to take up and extinguish all the pevious and outstanding obligations of the company, which were secured by liens upon the property of said corporation, and for the purpose of effecting some desirable improvements of the said companies' property.

Your orators show that bonds of the description authorized and described in said deed have in fact been issued by said company to the amount of six hundred and nine thousand dollars, and are now held by sundry persons as security collateral for the payment of debts of the said company not otherwise secured. Said bonds have not yet matured, and are not otherwise liabilities against said corporation than as security as aforesaid.

Your orators attach hereto a part of their bill of complaint, a printed copy of said named mortgage or deed of trust, marked "Exhibit F." They charge that the rights of your orators, and the liens declared by the deed of mortgage and trust executed on the first day of November, 1853, are superior and paramount to the rights of any person or party acquired under the said deed of January, 1874.

Your orators are informed, and on such information state, that all the deeds of mortgage and trust hereinbefore mentioned were duly recorded in the several States and counties therein where the mortgaged property is situated, and as against the said railroad company are all valid and subsisting debts, and liens upon the property herein described.

Your orators further show that in addition to the liens and incumbrances hereinbefore described, the said corporation, on 24th day of March, 1871, executed a deed of mortgage upon the Branch road and property thereto attached, extending from Norkeeta, in Mississippi, to Gainesville, in Alabama, known as the Gainesville Branch, twenty-one miles, which said corporation had then recently acquired, to William D. Dunn, John Reid, j'r, and Robert C. Crawford, all of whom are citizens of the State of Alabama, in trust to secure payment of fifty-three bonds made by said Mobile and Ohio Railroad Company, each for the sum of one thousand dollars, dated the said 24th March, 1871, and payable the 1st November, 1880, with interest thereon at the rate of eight per centum per annum, payable semi-annually on the 1st days of May and November in each year, which said interest began to run from the first day of November, 1870, and is represented by coupons attached to said bonds. This mortgage constitutes the first lien upon said Branch Railroad; by its terms it is provided the whole principal debt shall become due and payable upon continued default by the company for three months in the payment after maturity of any part of the debt represented either by said bonds or said coupons, and thereupon said trustees are authorized to take possession of said property so conveyed to them for the purpose of foreclosure and sale.

Your orators show that said corporation has made default in the payment of the semi-annual interest due upon said bonds on the 1st days of May and November, 1874, being the sum of four thousand two hundred and forty dollars; and that your orators, while they pretend no right to this portion of the company's property superior to that conveyed by this mortgage and deed of trust, are entitled to any surplus which may remain, after payment of the debt secured thereby, to be applied in payment of the debts for which as aforesaid your orators are trustees under the deed of mortgage first above named.

Your orators allege that such surplus should be so applied, because the said branch railroad is after-acquired property of said corporation, and all such is embraced in the terms of the deed for the enforcement of which your orators are trustees as aforesaid. Your orators attach hereto as part of their bill, marked "Exhibit G," a copy of this last-named deed of mortgage.

Your orators show that in addition to the complication of interests attaching by reason of these subsequent mortgages upon said property conveyed by said deed of trust of which your orators are trustees, and which is paramount to all other claim upon said property, the said Mobile and Ohio R. R. Co. has embarrassed itself by the creation of large debts, by bonds, notes, acceptances, and accounts contracted in the course of its business, some of which have matured, and some of which are at this time being pressed by suits against the company into judgments, and under which threats of levy upon the property conveyed to your orators, and of sale of the same, have been made. Among such liabilities, your orators call the attention of the court to an issue by said corporation of bonds to the amount of one million of dollars, of various sums, and bearing interest at the rate of eight per centum per annum, dated December 1st, 1873, and maturing on the first day of December, 1883, which are known as convertible bonds, and are at the pleasure of the holder convertible into stock at the rate of twenty-five dollars per share in place of one hundred dollars per share, which by law is the par value per share of the stock of the said corporation. The interest upon said bonds is payable quarter-yearly in New York. Some of these bonds by their terms are registered bonds, and pass only upon change registry; some have coupons for interest attached, and pass by delivery from hand to hand. Your orators attach hereto as part of their bill of complaint a copy of the resolutions of the board of directors of said company, marked "Exhibit H," which were adopted by said board November 10th, 1873.

Your orators, from information which they believe to be true, show to your honors that bonds of the description last named, amounting to nine hundred and seventy-seven thousand five hundred and fifty dollars, were on the first January, 1875, outstanding against said company, and from further information which they believe to be true, that the amount of floating or unsecured debt, outstanding against said company, over and above said amount just named, was on said last-named day one million one hundred and sixty-six thousand four hundred and ninety-two 19-100 dollars or thereabouts, composed of liabilities in the forms of notes, acceptances, and open accounts.

Your orators show, from information and belief, that large sums of money, arising from the current income of the business of the company, have been applied to extinguish other similar unsecured debts of the company, to the prejudice of the rights of the said mortgage-bond holders, which your orators are in duty bound to protect, and for whose security the same had been pledged, and which they have the right in equity and good conscience, and by the terms of said mortgage to have so applied, in preference to the claim of any such unsecured debts, and in so doing, the rights of the said cestuis qui trust, have been violated by the said corporation and that their protection requires that the property so pledged should be taken from the possession of said corporation, and be managed, used, and applied as specified and provided for by said deed of trust.

Your orators charge that the right of said corporation to the possession and control of said property, which is covered by the terms of the deed of trust first herein described, has been forfeited by the terms of said deed, and of right should be delivered to your orators, as trustees, and for the purposes of the said trust-deed, and the income and profits thereof be applied in payment of the debts held by the said cestuis qui trust, the holders of the bonds and coupons secured by the said deed of mortgage. Your orators charge that said corporation has made default in payment of the interest which fell due upon said bonds in May and November, 1874, and has so remained in default for a longer period than three months, and is still in such default. The coupons, which represented the interest due and maturing upon said bonds at said dates, were presented to the said corporation and its duly-authorized agents and officers, and payment thereof demanded, but the same was refused.

Your orators show to your honors that they have been called upon by the holders of coupons, and of bonds described in said first-mentioned deed of trust, and have been by them required to demand of said corporation the possession of said property of every kind and description, described in and conveyed by said deed, and to take possession and charge thereof, and proceed and execute the trust therein and thereby declared, for the security and protection of the holders of the bonds and obligations, for which said deed of trust and mortgage was made and executed by said railroad company.

Your orators further show that said Mobile and Ohio Railroad Company, by its board of directors, admit the propriety of the claims of said cestuis qui trust, and the right of your orators to the possession and control of said railroad, and the property attached thereto, and all the property conveyed by said deed of trust, in order to the application thereof, as provided by said deed, and by preamble and resolutions adopted, a copy of which is hereto attached, "marked Exhibit J," and made a part of this bill, directed the vice-president of the company on demand of said trustees to put them in the possession and control of said property, of every kind and name, for the purposes of the said trust, and the security of the holders of the bonds secured thereby.

8 Your orators further show to your honors that in pursuance of the duty imposed upon them under said deed by the demand and instruction of said bond and coupon holders, they have demanded of said corporation that they be let into such possession of said railroad, and all of said property; that this, their reasonable demand, has been assented to, and that on the 8th day of May, 1875, with the assent of said corporation, they took full and formal possession of all of said property, and since that time, and now are by their agents, employees, and servants, in possession and occupancy of the same, and are managing, using, and operating said railroad, and the branches thereof, and all the property they have received, as such trustees under the said deed of trust. Complainants have caused to be prepared, and will produce the same at any moment they may be required, a full list and inventory of the property so received by them, and have furnished to the officers of said corporation for the use and security of said company and all interests, a full copy of the said inventory.

Your orators show to your honors that the steps they have taken with regard to this railroad and property, and what they desire to do, as also the fact of the filing of this bill and the orders and decrees they seek thereon, with a copy of this bill of complaint, have been made known and communicated to Adrian Iselin and Richard T. Wilson, co-trustees with your orator Duncan of that portion of said line of railroad and property in the State of Tennessee appropriated to the security of the bonds of said company, known as the Tennessee substitution bonds hereinbefore described.

The same information has been communicated to Samuel L. M. Barlow, co-trustee with your orator Duncan in the deed of mortgage and trust hereinbefore described, executed by said Mobile and Ohio Rail Road Company, on the first day of January, 1874; said parties being so advised, have approved and do approve of the acts and doings of these complainants in the premises, as appears by their written assent; copies whereof are hereto attached, and made part of this bill of complaint, marked "Exhibit K L."

Your orators show that they have named said parties in the beginning of this their bill of complaint, because of the large and important interest which they have or represent in the premises, and in order that they may be informed of the proceedings therein which your orators may take, or which may be ordered by your honors that they may take such action in the premises as they may be advised.

Your orators do not pray process against said parties, Iselin, Wilson, and Barlow, because of their citizenship, which excludes them from the jurisdiction of the court in this cause.

Your orators show to your honors, that the necessary result of the execution of these several mortgages by said railroad company, is greatly to complicate its affairs and create confusion in the administration of its income, and the application of the net profits of its business to the holders of the mortgage debts, according to their priority and rights of payment. This complication is further increased by the existence of the large, unsecured debt which the said corporation has created in the form of bonds, notes, acceptances, and other evidences of debt, amounting in the aggregate to over two millions of dollars, and by the further fact that upon sundry of these claims suits are now pending against said corporation, which have been reduced to judgment, or soon will be reduced to judgment against said company and whereon executions will issue against said company and its property, whereunder portions may be seized to the embarrassment and injury both of said company, and of its creditors who hold liens against its property.

Said complications and embarrassments are further heightened by the general depression of business pervading the country, and largely affecting that portion of it wherein the line of this road is located and operated, whereby the closest economy and most careful management is required on the part of those in charge of said road and property, to realize therefrom any surplus, and prevent the value of the property and franchises from degenerating and depreciating, to the ruin of the security of said bondholders.

Your orators show that to preserve said property and franchises, the said road and branches must be continued in operation, otherwise they will be liable to seizure by the several State governments through whose territory said road is located, and this entails the purchase of supplies and materials, and the employment of labor and skill for the continuance of said business, and requires the payment of large sums of money, all which is still more embarrassed by the fact that portions of said road and property are in distinct jurisdictions, and subject to the laws and authorities of independent States, and by the further fact, that of
9 necessity in the management of such property, of a length in the
aggregate of more than five hundred miles, passing through four different States, connected with the business of distinct communities, its business itself composed of the transportation of millions of property in each direction, and for longer or shorter distances, and of the transportation of thousands of passengers, arising from innumerable contracts with individuals, and with other corporations, owning other lines of transportation connecting with the line of the Mobile and Ohio Railroad at its termini, and at intermediate points upon the line of its route, many questions will arise and many claims for breach of contract and for damages to person and property may occur.

Your orators state to your honors that they are in the possession of this railroad and property, with these embarrassments and difficulties connected with their position and the discharge of their duties as trustees, charged with the execution of difficult and delicate trusts; that they need the protection, advice, and instruction of this honorable court. They show that the home of said corporation is the city of Mobile, in the State of Alabama, and the southern district of Alabama; that there is its principal office, and the headquarters of its business; there its accounts and books are kept, and where its directors hold their official meetings, and where the offices of its principal officers are kept, within the jurisdiction of the honorable circuit court of the United States for the southern district of Alabama; that the jurisdiction of the courts of the United States for the States of Mississippi, Tennessee, and

Kentucky are over portions only of the property of said corporation, but not over said corporation in its home, and your orators are advised the same will be exercised in a manner subsidiary to that of the honorable circuit court for the State of Alabama; that this is required by consideration of the best interests of all parties concerned, in order that there may be a unity of management over the whole property, so that the same may be devoted effectively to the trusts for which it has been conveyed.

Your orators are advised that this necessary protection of themselves and of said property, and this necessary instruction of themselves from your honorable court can be obtained only upon a bill filed by them, presenting their case with proper parties, in relation to the property so conveyed to them as aforesaid. They make claim to no priority of right over the property and interests which have been conveyed in Tennessee, and are now represented by Mess'rs Iselin and Wilson, as trustees, in connection with your orator, Duncan, and which is applicable to the security of the bonds hereinbefore described and known as the Tennessee substitution bonds. The lien of your orators, trustees as aforesaid upon said property, extends to any surplus which may remain after satisfaction or other discharge of said Tennessee substitution bonds. Admitting that it has a priority under the mortgages, no conflict of purpose exists between the two sets of trustees. Your orators are informed that said trustees of the said property in Tennessee will file their bill of complaint in the honorable the circuit court of the United States for that State and district wherein said property lies, for the assertion of their lien, and the proper administration of that property, and the several proceedings for that purpose, as well as those for the execution of the duties of your orators, can proceed concurrently and for the common purpose of settling the equities of all parties in interest, and disposing of the whole subject as speedily and as harmoniously and inexpensively for the benefit of all persons concerned, as the nature of the case will admit.

To the end, therefore, that said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer, that is to say:

1. Whether said Mobile and Ohio Railroad Company did not, at the times and under the dates hereinbefore named, execute the several deeds of mortgage and trust for the purposes hereinbefore named.

2. Whether said corporration is not in default in the payment of interest coupons due upon the bonds issued by said corporation under the terms of the deed of trust and mortgage bearing date on 1st November, 1853.

3. Whether said default has not continued since 1st May, 1874, upon the portion which then matured, and since 1st November, 1874, upon the portion which then matured, and that said defendants may discover the amount of interest so due, in arrear, and unpaid. 10

4. Whether said corporation is not in default, and when it occurred, and for how much, in the interest due upon the bonds known as the Tennessee substitution bonds.

5. And also in default in payment of interest due upon its obligations

secured by what is known as the second mortgage, and when it occurred, for how much and how long continued.

6. And also in default in payment of interest upon the bonds secured by the mortgage and deed of trust upon the line of road known as the Gainesville Branch.

7. Whether said corporation is not largely indebted to other persons and parties, who are holders of bonds, bills, notes, and other evidences of debt not secured by specific liens upon property of said company—the amount of said indebtedness—whether it has been promptly paid as it matured, or whether extended in any part, and whether any part thereof remains unadjusted, or is in suit; whether any and what judgments at law or in equity have been obtained, or about to be obtained, against said corporation.

8. Whether said line of railroad and branches, their length and location, in the several States, and the return of the business transacted by said corporation, is not as hereinbefore stated.

9. Whether orators are not in possession of the said line of railroad and branches, and the property described in said deed of trust and mortgage executed 1st November, 1853, as trustees under and by virtue of said deed.

10. Whether said possession of said property was not delivered, and is now held, with the approval and consent of the said railroad company by resolution of its board of directors, as hereinbefore stated.

11. Whether said company is in such position, that from its own resources, income, and profits it can promptly at maturity thereof, pay off and discharge the debts due by it according to the terms of the contracts, whereby said debts are assumed to be paid, or whether in fact it can promptly at maturity pay the same.

12. What is the amount of the bonded and mortgaged debt of said corporation, and how represented and secured?

13. What the amount of the unsecured debt, and how represented?

14. What is the amount gross and net income of said corporation per month since the first day of January, 1875.

Your orators pray your honors that, as trustees aforesaid, they may be confirmed in the possession of the property, assets, and franchises conveyed to the trustees of said Mobile and Ohio Railroad Company under and by virtue of the said deed of mortgage and trust executed by said corporation on the said 1st day of November, 1853, and may be, by your honors, confirmed in the control and administration of said property, assets, and franchises described in the said deed, for the purposes of the trusts therein and thereby declared, for the purpose of securing to the creditors of said corporation under said deed of trust, their rights and interest under the same, and also the rights and interests of the persons and parties secured by the other deeds of mortgage and trust executed by the said corporation, and hereinbefore described, according to their priority and their legal and equitable claims, and also for the benefit of the holders of the shares of capital stock of said corporation, according to their respective interests in any surplus which may remain.

Your orators further pray, that their said possession of said property, railroad, and franchises may be protected from all interference by any party or parties whatsoever, except by and with the approval of this honorable court, upon application for good cause to be shown by such applicants—and as the interests of the several creditors under the said several deeds of mortgage hereinbefore stated, and of the stockholders in said corporation, are differently represented; and the property con-

fided to your orators is of great value, in excess probably of the sum of
fifteen millions of dollars, and the same is in constant and active use
and employment upon an extensive line of railway, extending from the
Gulf of Mexico to the Ohio River, through independent jurisdictions,
and which is rendered necessary for the performance of the public
functions and duties for which said corporation was organized, and for
which it must be used to prevent forfeiture of said franchises,
11 and the same consists of great variety, in its nature and value,
and the uses to which it has to be applied, your orators pray that
they may have the powers of administration and employment about the
business of said railroad and property as receivers thereof in a court of
chancery; and that your orators in their possession, use, employment,
and administration of said property and franchises, may, during the
pending of these proceedings, be held and taken as receivers appointed
by this honorable court.

Your orators hereby submit to present their accounts to this honorable court as receivers of said property, once every four months, with a statement of their accounts and doings as trustees in possession, and are ready from time to time to account for all property and money which may at any time come to their possession and control, as such trustees; and to give such bonds as the court may require, and pray of this honorable court that they may be allowed to administer the trusts in their hands under the order of the court, and to receive its protection. They pray that they may be allowed from time to time, by petition or motion, to pray the court for instructions and orders, and obtain its protection against interference by any person or party in said property and the management thereof.

Your orators further pray that the several and all the debts described in the several deeds of trust and mortgages in this their bill set out, and all their liens on the estate and properties of the said railroad company, may be ascertained and the several priorities thereof adjusted; that all estate and property belonging to the said Mobile and Ohio Railroad Company covered by said mortgages and deed may be sold, or leased, or otherwise so disposed of under the orders and decrees of this honorable court that the same may be most beneficially used for the good of all parties who have any interest therein, according to their respective rights and equities.

Your orators also pray that they may have leave to apply the moneys received by them during the pending of these proceedings to the payment of necessary supplies, materials, and labor, about the business of the trust, in the operation of said line of railroad, and for the relief of the several creditors of the corporation, according to equity, but always under leave of the court; that they may be permitted from time to time to apply for instructions to aid them in the execution of their trust; and that all requisite and necessary orders be from time to time made and allowed, as will permit to your orators, under the control of the court, the full execution of the deeds of trust aforesaid, and the beneficial dispositions of the property comprised in the same and conveyed and covered thereby, as may accord with the equitable rights of all parties concerned. Your orators pray that the equity of redemption of the said Mobile and Ohio Railroad Company, and of all parties claiming by, through, or under it, in and to the property, estates, and rights conveyed in and by said deed of mortgage herein first described, may be forever barred and foreclosed, as against your orators and the cestuis qui trust for whom they are acting in the premises, and that your honors will grant such other or further relief in the premises as the nature of the case shall require and to your honors shall seem meet.

May it please your honors to grant unto your orators the writ of subpœna of the United States of America, to be directed to the said Mobile and Ohio Railroad Company, and to the said William D. Dunn, George H. Young, Samuel Williams, who are trustees of the mortgage executed by said Mobile and Ohio Railroad Company, on the 15th day of February, 1860, and to the said William D. Dunn, John Reid, j'r, and Rob't C. Crawford, who are trustees of the mortgage executed by the said Mobile and Ohio Railroad Company, upon the branch railroad known as the Gainesville Branch, and the property along the line of said branch railroad and appurtenant thereto; and to such other persons as may be necessary or proper persons, when they may be known and become amenable to the jurisdiction of this honorable court, thereby commanding them and any of them, at a certain day, and under a certain penalty to be therein named, to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, abide, and perform such order and decree therein as shall seem to your honors agreeable to equity and good conscience. And your orators will ever pray.

JOHN A. CAMPBELL,
P. & T. A. HAMILTON,
Solicitors for Complainants.

P. & T. A. HAMILTON,
Sol'rs.

NOTE.—The Mobile and Ohio Railroad Company will answer all of the interrogatories, from 1 to 14 inclusive; the respective defendants only such as relate to the particular mortgage which they represent, but answers under oath are waived.

JNO. A. CAMPBELL,
P. & T. A. HAMILTON,
Sol'rs for Compl't.

12 DISTRICT OF LOUISIANA,
Parish of Orleans, City of New Orleans, ss:

Before me, an United States commissioner in and for the district of Louisiana aforesaid, duly commissioned and qualified, personally came Andrew Foster Elliott, a plaintiff in the bill of complaint to which this affidavit is appended, and who is known to me, who maketh oath before me that the matter of fact stated and charged in the said bill as of the knowledge of the plaintiff are true, and the matters of fact as stated from information or belief are true, according to the information and belief of the said deponent.

AND. FOSTER ELLIOTT.

Sworn to and subscribed before me this 10th day of May, A. D. 1875, as witness my hand and official seal.

J. G. EUSTIS,
United States Commissioner, District of Louisiana.

I acknowledge myself security for the costs in this case.
Mobile, May 11, 1875.

ADOLPH PROSKAUER.

13 **EXHIBIT A.**

Charter of Alabama.

An act to incorporate the Mobile and Ohio Railroad Company.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama, in general assembly convened, That Jonathan Emanuel, George N. Stewart, Moses Waring, Sidney Smith, John Bloodgood, Miguel D. Eslava, Samuel G. Fisher, Charles Le Baron, John A. Campbell, Archibald W. Gordon, Charles Gascoigne, Philip Philips, John C. Whitsett, and M. J. D. Baldwyn, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate by the name of the Mobile and Ohio Railroad Company; and by that name to sue and be sued, plead and be impleaded, in any court of this State; to make and have a common seal, and the same to break, alter, and renew at pleasure; and the company is hereby vested with all powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act, hereinafter set forth; and said company is hereby authorized and empowered to locate, construct, and finally complete a single, double, or treble railroad or way from some suitable point in the city of Mobile, in a western or northwesterly direction, to the west line of this State towards the mouth of the Ohio River, in such route as shall be deemed most expedient; and to transport, take, and carry property and persons upon said railroad or way by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them, which said company may choose to apply; and for the purpose of constructing said railroad or way the said company is hereby authorized to lay out their road not exceeding one hundred feet wide through the whole
14 length; and for the purposes of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation in relation to the business of said company, and also to make joint stock with any other railroad corporation; provided that all damages that may be occasioned to any person or corporation by the taking of any such land or materials aforesaid, for the purpose aforesaid, shall be paid for by said company in the manner hereinafter provided.

SEC. 2. And be it further enacted, That the capital stock of said company shall not exceed ten millions of dollars, to be divided into shares of one hundred dollars each, which shares shall be deemed personal property, and be transferred in such manner, and at such places, as the by-laws of said company shall direct; provided that said company may commence the construction of said road, with all the powers and privileges contained in this act, whenever the sum subscribed to the capital stock shall exceed two hundred and fifty thousand dollars.

SEC. 3. And be it further enacted, That the persons named in the first section, or a majority of them, shall open books to receive subscriptions to the capital stock of said company at such times and places as they, or a majority of them, may appoint, and shall give such notice of the times and places of opening said books as they may deem reasonable, and shall receive said subscriptions under such regulations as they may adopt for the purpose; and if more than five thousand shares of stock shall be subscribed, they shall have the power to make the shares so

subscribed the capital stock of said company; provided they shall not exceed one hundred thousand shares. And in case the subscription shall exceed one hundred thousand shares, the same shall be reduced and apportioned in such manner as may be deemed most beneficial to the corporation.

SEC. 4. And be it further enacted, That the immediate government and direction of the affairs of said company shall be vested in a board of thirteen directors, who shall be chosen by the stockholders of said company in the manner hereinafter provided, and shall hold their office until others are duly elected and qualified to take their places as directors; and the said directors, seven of whom, the president being one, shall be a quorum for the transaction of business, shall select one of
15 their number to be president of the board, who shall also be
president of said company. They shall also choose a secretary and such other officers as they may deem necessary, and a treasurer, who shall give bond, with security, to said company in such sum as the said directors may require for the faithful discharge of his trust.

SEC. 5. And be it further enacted, That the persons authorized by the third section of this act to open the books for subscription to the capital stock, are hereby authorized, after the books of subscription to the capital stock of said company are closed, or when the sum subscribed shall exceed two hundred and fifty thousand dollars, to call the first meeting of the stockholders of said company, in such way, and at such time and place, as they may appoint, for the choice of directors of said company; and in all meetings of the stockholders of said company, each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy; and the annual meeting of the stockholders of said company, for the choice of directors, shall be holden at such time and place, and upon such notice, as said company in their by-laws may prescribe.

SEC. 6. And be it further enacted, That in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not, for that cause, be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors of said company; and said directors shall have power to fill any vacancy which may occur by death, resignation, or otherwise.

SEC. 7. And be it further enacted, That the directors shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper, touching the disposition and management of the stock, property, estate, and effects of said company, not contrary to this charter, or the laws of this State or of the United States; the transfer of shares, the duties and conduct of their officers and servants; touching the election of and meeting of the directors; and all matters whatsoever which may appertain to the concerns of said company. Said company is also hereby authorized to purchase, receive and hold such estate as may be necessary and convenient in accomplishing the object for which this incorporation is granted, and may by their agents, surveyors, engineers, and servants enter upon all lands and tenements through which they may deem it necessary to make said road, and to survey, lay out, and construct the same, and to agree and
16 contract for the land, or right of way, with the owners, through
which they may intend to make the said road. In case said lands belong to the estate of any deceased person, then, with the executor or administrator of such; or in case of the same belonging to a minor or person non compos mentis, then, with his or her guardian or guardians;

or in case said lands be held by trustees of school sections or other trustees of estates, then with such trustees; and the said executors, administrators, guardians, and trustees are hereby declared competent for such estate, or minor, to contract with said company for the right to use, occupy and possess the lands of such estates, minors, or trustees, so far as may be useful or necessary to the purposes of said railroad; and the act and deed of said executors, administrators, guardians, or trustees, in relation thereto, shall pass the title in said land in the same manner as if the said deed or act was made or done by a legal owner of full age; and such executor, administrator, guardian, or trustee shall account to those interested, upon their respective bonds, for the amount paid him in pursuance of such agreement and composition; and if the said company and parties representing lands prefer, they may refer the question of compensation to arbitrators, mutually chosen, whose award, or that of their umpire in case of disagreement, shall rest title according to its terms.

SEC. 8. And be it further enacted, That if the said company cannot agree with the owner of the land through which they desire said road to pass, or with the executor, administrator, guardian, or trustee, it shall and may be lawful for the clerk of the circuit court of the county in which the said land lies, on application of said company or its agents, and he is required, to issue a writ of ad quod damnum, commanding the sheriff that without delay he cause a jury of six good and lawful men to be upon such land on a day to be by said sheriff fixed and appointed, and whereof it shall be his duty to give notice to the owner, executor, administrator, guardian, or trustee, at least five days before such day if they be within his county, or if not, or if the owner or owners be unknown, then notice shall be given by advertisement to be by said sheriff posted and fixed at the dwelling-house, if such there be, or on a public or conspicuous place, at least five days before such appointed day, and also by advertising the same in some newspaper, published nearest the land, at least three weeks by weekly insertions prior to said day; and then cause said jury, after being duly sworn by said sheriff, or justice of the peace, to make true inquest of the damage
17 that will be sustained by such owner or estate by reason of making said road through such land. If any juror shall fail to appear, or by reason of challenge for cause, or otherwise fail to sit on said inquest, the said sheriff shall fill said jury from the bystanders, and if they fail to render a verdict the said sheriff shall again, on the same or a subsequent day, empannel a new jury or jurors until a verdict be had; such verdict and inquest, regularly certified by such sheriff, shall be returned to the office of the clerk of the circuit court of the county in which said land may be and there remain among the records; and such verdict shall vest in said company the right to occupy and use such land for the purpose of said railroad, on the payment or tender of payment of the damages thereon assessed against such company; and in case of persons absent, or unknown as aforesaid, the placing of the amount of such damages to the credit of the owner, in the hands of the judge of the county court of the county in which such lands may lie, shall be deemed and taken as payment; and such judges shall be liable on their bonds to make due payment of said money on demand.

SEC. 9. And be it further enacted, That it shall be the duty of the sheriff to appoint and hold said inquest within ten days after the receipt of said writ of "ad quod damnum," except in cases of absence aforesaid, in which case thirty days shall be allowed him, and five days in addition are allowed him for every additional jury which he may have under

said writ; and for every default therein, the said sheriff shall be fined by the circuit court, at the instance of either party, not less than twenty nor more than one hundred dollars; and every juror and witness summoned shall be fined not less than ten dollars for non-attendance; of all such fines, as well as costs, the circuit court of the county shall have jurisdiction. There shall be allowed the following fees: to the clerk of the circuit court for every writ of "ad quod damnum," seventy-five cents; for receiving and filing inquest, seventy-five cents; to the sheriff for giving notice, seventy-five cents, besides printer's fees not exceeding two dollars in each case; for holding inquest, five dollars; and for summoning witnesses, twenty-five cents each; to jurors, seventy-five cents per diem, each; which fees are not allowed until a verdict be returned and filed, and shall be taxed in the bill of costs, and paid by the company: Provided, however, That before the application for said writ, the said company may make a tender to the owner or owners of any such land, a sum of money, by them deemed equivalent to the damage to be
18 sustained, and upon refusal to accept the sum tendered, and a verdict for the same amount or a less sum, the costs shall be taxed to, and paid by the owners of, the land upon which inquest is held.

SEC. 10. And be it further enacted, That said company is hereby authorized to construct, erect, build, and use a single, double or treble railway, or road, of suitable width and dimensions, to be determined by the directors of said company, on the line or course by them designated, and also, under the same rules, regulations and restrictions, and with the like privileges and immunities, as are herein granted to the main railroad, to build and construct branch railroads on either side of the said main road, not exceeding thirty miles, and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken, and carried on the same, and shall have power to erect and maintain toll-houses and other buildings for the accommodation of their concerns as they may deem suitable for their interest.

SEC. 11. And be it further enacted, That whenever it shall be necessary for the construction of their single, double, or treble railroad or way, to intersect or cross any stream of water or water-course, or any road or highway, it shall be lawful for said company to construct across or upon the same; but the said company shall restore the said stream or water-course, or road or highway, thus intersected to its former state, or in a sufficient manner not to impair its usefulness, and in all cases where any road or public highway is so located, that said railroad cannot be judiciously laid out and constructed across or upon the same without interfering therewith, in such case or cases said corporation may, by their engineer, cause such road or roads to be changed or altered in such manner that said railroad may be made on the best site of ground for that purpose: Provided, said corporation shall put such road in as good repair as at the time of changing or altering the same.

SEC. 12. And be it further enacted, That it shall be lawful for the company hereby incorporated, from time to time, to fix, regulate, and receive the toll and charges by them to be received, for transportation of persons or property on their railroad or way aforesaid, hereby authorized to be constructed, erected, built or used, or upon any part thereof.

SEC. 13. And be it further enacted, That if any person or persons, will, or shall willfully do or cause to be done any act or acts whatsoever, whereby any building, construction or works of said company,
19 or any engine, machine or structure, or any matter or thing ap-

pertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, the persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to said company double the amount of damages sustained by reason of such offenses or injury, to be recovered in the name of said corporation, with costs of suit by action of debt.

SEC. 14. And be it further enacted, That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company, at such times and in such proportions, and upon such conditions as they may deem fit; and in case any stockholder shall refuse or neglect to make payment pursuant to the requisition of the board of directors, the stock of such stockholder, or so much as shall be necessary, may be sold by the directors of said corporation at public auction, after the lapse of ninety days from the time when the payment became due, and the surplus money, the avails of such sale, after deducting the payments due, and interest thereon, and the necessary expenses of sale, shall be paid over to such delinquent stockholder.

SEC. 15. And be it further enacted, That the property owned by the said company shall at all times be subject to taxation, in the same manner, and to the same extent, as similar property owned by private individuals.

SEC. 16. And be it further enacted, That if the said railroad shall not be commenced in five years from the passage of this act, and shall not be finished within this State in ten years from the time of commencement thereof, then this act shall be null and void.

Approved 3d February, 1848.

Extract from the act of the legislature of Alabama, passed the 5th of January, 1850, entitled "An act to amend and explain an act entitled 'An act to incorporate the Mobile and Ohio Railroad Company.'"

SEC. 2. And be it further enacted, That the said corporation be, and is hereby, authorized to purchase, hold, and to dispose of real and personal estate, to borrow money, to make contracts for the loan of money, to give evidences of debt, and securities for the payment of the same by pledge, mortgage, or otherwise, as it shall deem necessary and proper.

NOTE.—The remainder of this act authorized the city of Mobile to tax the city $300,000, to aid in constructing the road.

20 An act to authorize railroad companies to execute mortgages, deeds of trust, other securities, &c.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That any railroad company chartered by the legislature of this State, be, and is hereby, authorized to execute any mortgage, deed of trust, or other security on its road-bed, franchises, income or other property, for the purpose of securing the payment of any bond or bonds issued by such company to raise money, or buy materials for the completion or running of its road; and any such mortgage, deed of trust, or other security, shall vest in the mortgagee, or trustee, full power to sell and convey the road-bed, franchise, income, or other property conveyed in accordance with the provisions of such mortgage, deed of trust, or other security.

Sec. 2. Be it further enacted, That in case of a sale under any such mortgage, deed of trust, or other security of the road-bed, franchise, income, or other property of such company, the purchaser, or in case of a strict foreclosure, the mortgagee shall have and possess all the rights, privileges, franchises, and powers conferred upon such railroad company by its charter.

Sec. 3. Be it further enacted, That all such mortgages and deeds of trust heretofore made, be hereby legalized, and sales made under them, or to be made, shall be held valid.

Approved February 21, 1860.

Note.—This statute was re-enacted by the Revised Code of Alabama in 1867, and again in 1868. See sections 1796, 1797, 1798, of said code.

Sec. 1794. Any railroad company in the State may sell, negotiate, mortgage, or pledge its bonds or notes, as well as any bonds, notes, scrip, or certificates, for the payment of money or property, which it may have received as donations, or in payment of subscriptions to its capital stock, or for other dues, at such time and such places, either within or without the State, and at such rates and prices as it may deem conducive to its interests; and if such notes or bonds are sold at a discount, they and the securities for their payment shall be as valid as if the sale had been at par.

Sec. 1795. Any railroad company in this State may open transfer books in any of the States of the United States for the purpose 21 of transferring stock which may be held or purchased by persons out of this State, and may employ suitable agents to keep such transfer books, whose acts, done under authority of this section, shall be binding on such company.

The above are extracts from the Revised Code of Alabama of 1867, re-adopted in 1868, and now in force.

An act to constitute the purchasers of any railroad heretofore sold under authority of any law of this State, a body corporate and politic.

Section 1. Be it enacted, by the general assembly of Alabama, That in each and every case in which any railroad may hereafter be sold by the State of Alabama, or by any commission, office or agent of said State, or under any proceeding, judicial or otherwise, authorized by law, the purchasers at any such sale may constitute themselves into a body politic and corporate, and shall have and possess all the powers and franchises which belonged to the company or corporation originally owning the railroad so purchased, including the power to purchase and hold real estate, and the franchise to be and exist as a corporation under such name as the purchasers may select and adopt, and the board of directors of such new corporation shall have power to issue bonds and also certificates of preferred and common stock to such an amount and with such powers as to voting in the management of the affairs of the company as said board may determine, and to lease, sell or mortgage all or any part of the franchises or property of such corporation, including the franchise to be or exist as a corporation, and to prescribe the form of such bonds and certificates, and the rates of interest not exceeding the legal rate and dividends of the same.

Approved December 17, 1873.

CHARTER OF THE COMPANY.

An act to incorporate the Mobile and Ohio Railroad Company.

Whereas the State of Alabama, by an act, approved 3d February, 1848, enacted as follows:

The act of incorporation of Alabama is here recited in full, the same as printed for Alabama.

And whereas the State of Mississippi is desirous to aid in accomplishing the object of the said act; therefore,

SECTION 1. Be it enacted, by the legislature of the State of Mississippi, That the railroad described in the above recited act, be extended in the State of Mississippi, from the Alabama line to the State of Tennessee, in such direction, and on such a route as shall be deemed most expedient; and that as to said extension, there is granted to the said Mobile and Ohio Railroad Company, when organized, the same rights, powers and privileges as are granted to it within the State of Alabama, by the said act, subject, however, to the same and similar conditions, restrictions, modifications and provisions as are in said act above recited, contained and set forth, excepting the provision contained in section 15 of said act; and the said act is hereby concurred in and adopted, within the State of Mississippi, in reference to the said railroad, as extended, and in reference to the said Mobile and Ohio Railroad Company, with the exception of that portion contained in section 15, as before stated: Provided, That in case of persons absent or unknown, whose lands may be condemned pursuant to sections 7, 8 and 9 of said recited act, the placing of the amount of the damages 23 assessed to the credit of the owner, in the hands of the State treasurer, shall be taken as payment, and on such owner appearing or tendering satisfactory evidence of his claim thereto, such damages shall be paid him by the treasurer, on the warrant of the auditor of public accounts.

SEC. 2. Be it further enacted, That the Mobile and Ohio Railroad Company shall have full power and authority to cross with their railway tracks any railroad in the State of Mississippi, which may have been chartered prior to the passage of this act.

SEC 3. Be it further enacted, That whenever any portion of said railroad shall be completed through this State, and is paying an interest of eight per cent. per annum on its cost, and not before, such portion may be taxed the same percentage, and no more, upon the capital expended in the construction thereof, as lands in this State shall be taxed.

SEC 4. Be it further enacted, That so much of the 8th section of the above recited act, of the legislature of the State of Alabama, which requires certain damages therein mentioned to be placed to the credit of the owner in the hands of the judge of the county court of the county in which such lands may lie, and such deposit in the hands of such county treasurer, shall be deemed and taken as payment, and such county treasurer shall be liable on the official bonds to make due payment of said money on demand.

Approved February 17, 1848.

Extract from an act passed by the legislature of Mississippi on the 4th of March, 1850, entitled "An act to amend an act entitled 'An act to incorporate the Mobile and Ohio Railroad,'" approved February 17th, 1848.

SECTION 2. And be it further enacted, That said corporation be, and it is hereby authorized to purchase, hold, and dispose of real and personal estate, to borrow money, to make contracts for the loan of money, and to give evidences of debt and securities for the payment of the same, by pledge, mortgage, or otherwise, as it shall deem necessary and proper. Provided, That nothing contained in this section shall be construed into a grant of power for the exercise of banking privileges.

24 *Laws of Tennessee.*

CHARTER OF THE COMPANY.

An act to incorporate the Mobile and Ohio Railroad Company, and the Tennessee Central Railroad Company.

Whereas it appears to this general assembly, from the memorial of Jonathan Emanuel, president, and George N. Stewart, Sidney Smith, Moses Waring, Cha's Le Baron, and S. Griffitts Fisher, directors of the Mobile and Ohio Railroad Association, that a company has been organized at Mobile in the State of Alabama, for the purpose of constructing a railroad from Mobile to the Tennessee River, and from thence to a suitable point near the mouth of the Ohio River; for which purpose said board of president and directors have applied to this general assembly for the passage of such a law as may be necessary to authorize the construction of said road through the State of Tennessee. And whereas it is deemed a matter of vital importance to this State that a direct communication by railroad to the Gulf of Mexico be established; therefore,

SECTION 1. Be it enacted by the general assembly of the State of Tennessee, That the said Jonathan Emanuel, president, and the said Geo. N. Stewart, Sidney Smith, Moses Waring, Charles Le Baron, and S. Griffitts Fisher, directors, and their associates, who shall be the stockholders of said company, and their successors, under the name and style of "The Mobile and Ohio Railroad Company," are hereby declared to be a body corporate and politic under the laws of Tennessee, with succession for five hundred years, and a common seal, with capacity to
25 have, receive, and enjoy, to them and their successors, property
and estate of whatsoever nature and quality, and the same to alien, transfer, and dispose of, so far as may be necessary to carry into effect the main object of this charter, which is hereby declared to be the construction, use and maintenance of a railroad from Mobile in the State of Alabama, to some point on the Mississippi or Ohio River, near the mouth of the Ohio, passing through the State of Tennessee.

SEC. 2. Be it enacted, That said company is hereby declared capable of making all contracts, to sue and be sued, to make by-laws, to appoint officers, servants, and agents, and finally to do all things which may be necessary to carry on the business and object for which said corporation is created. The said company is invested with all the powers necessary for the construction, repair, use, and maintenance of the said railroad, with as many tracks, depots, turnouts, side tracks, landings, warehouses, workshops, and appurtenances as they may find necessary, and is authorized to make all works whatever, which may be necessary or expedient for the proper completion, use, and utility of said road, and

to use the same for profit, and make dividends among thes tockholders; to procure, by purchase, gift, or release, or otherwise, such lands and other property as may be necessary for the site of said railroad, or its construction and convenient use, or for the erection and use of depots, warehouses, landings, bridges, or other works connected therewith, and to construct as many lateral roads, with appurtenances connected with said main stem as they may deem proper, not extending more than fifty miles from the main road.

SEC. 3. Be it enacted, That said company shall be authorized and required to open books for the subscription of shares in the capital stock of said corporation in the State of Tennessee, so as to afford to the citizens of this State an opportunity to take stock to the amount of one-fourth of the capital of said company: Provided, That if said fourth be not subscribed in Tennessee within six months after the books are opened, then it may be taken elsewhere.

SEC. 4. Be it enacted, That the right of way is hereby granted to said corporation to pass through the State of Tennessee with said road, and to use all lands, rock, timber, earth, sand, gravel, water, or other materials which may be found on the route selected, and which may belong to the State of Tennessee, and be necessary for the use of the road, and also to appropriate and use all such lands and materials, being private property, as may be necessary, making just compensation
26 for all private property used, by contract with the parties, or by arbitration with them; and when the parties cannot agree upon the compensation to be made by the company for the use of the road, depots, &c., then the value shall be ascertained by legal proceedings as hereinafter prescribed.

SEC. 5. Be it enacted, That where any lands or right of way may be required by said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause the same cannot be purchased from the owner or owners, the same may be taken at a valuation, to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated; and the said commissioners, before they act, shall severally take an oath, before some justice of the peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation, the commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken, or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and the excess of loss or damage, over and above the benefit and advantage, shall form the measure of valuation of said land or right of way. The proceedings of said commissioners, accompanied with a full description of said land or right of way, shall be returned, under the hands and seals of a majority of the commissioners, to the court from which the commission issued, there to remain of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way so valued by the commissioners or jury shall vest in said compay in fee simple so soon as the valuation is paid or tendered and refused. Where

there may be an appeal, as aforesaid, from the valuation of commissioners, by either of the parties, the same shall not prevent the works intended to be constructed from proceeding; but where the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition of giving the opposite party
27 a bond, with good security, to be approved by the clerk of the
court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest, in case the same be sustained, and in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court: Provided, that when the land cannot be had by gift or purchase, the construction of the work shall not be hindered or delayed during the pendency of any proceeding to assess its value as aforesaid; nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

Sec. 6. Be it enacted, That in the absence of any contract with the said company in relation to lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which said road may be constructed, together with the space of one hundred feet on each side of the centre of said road, has been granted to the company by the owner thereof, and said company shall have good right and title thereto, and shall have, hold and enjoy the same as long as the same be used only for the purpose of the road, and no longer, unless the person or persons owning said land at the time that part of the road, which may be on said land, was finished, or those claiming under him, her, or them, shall apply for an assessment of the value of the said lands, as hereinbefore directed, within five years next after that part of said road was finished; and in case the said owner or owners, or those claiming under him, her or them, shall not apply for such assessment within five years next after the said part was finished, he, she or they shall be forever barred from recovering of the said land, or having any assessment or compensation therefor; Provided, Nothing herein contained shall affect the right of femes covert or infants, until two years after the removal of their respective disabilities.

Sec. 7. Be it enacted, That if any person shall wilfully or maliciously destroy, or in any manner hurt, damage or obstruct the said railroad, or any bridge, or any vehicle, used for or in the transportation thereon, such person or persons so offending, shall be liable to be indicted therefor, and on conviction, shall be imprisoned not more than six nor less than one month, and pay a fine not less than twenty dollars, and shall be further liable to pay all the expenses of repairing the same. And it shall not be competent for any person so offending against the
28 provisions of this section to defend himself by pleading that he
was the owner, or agent, or servant of the owner of the land where such destruction, hurt, damage, injury or obstruction was done, or caused, at the time the same was caused or done.

Sec. 8. Be it enacted, That every obstruction to the safe and free passage of vehicles on the said road, shall be deemed a public nuisance, and may be abated as such by any officer, agent or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

Sec. 9. Be it enacted, That the said company is hereby expressly prohibited from carrying on any banking operations; but may effect insurance on lives and property transported on said road.

rogated in all the rights, privileges, and lien or liens of the State, to the extent of and in proportion to the amount of such indebtedness, with the same rights and privileges the State now has, to the extent of such payment or payments: Provided, The passage of this act shall not decrease the lien of the State upon any railroad of the State, until the entire claim of the State is fully liquidated, or affect the interest of the present bondholders of the State: Provided, That railroad companies
which have issued second-mortgage bonds, availing themselves of
32 the provisions of this act, shall file with the comptroller bonds of
the same series as those loaned to such company, for which the
State holds a first-mortgage lien: Provided, The bonds to be issued by the company under the provisions of this act, shall not have a longer time to run than the bonds of the State thus released and cancelled. (Ib., sec. 8.)

1135. C.—1. That an act entitled "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, be, and the same is hereby, amended so as to allow any railroad company which may be indebted to the State by reason of the bonds of the State loaned to said railroad company, to pay into the State, in liquidation of the principal of said indebtedness, any of the legally-issued six per cent. bonds of the State of Tennessee outstanding, without regard to series or number; and such payment shall, to the extent made, be a full and perfect discharge of the lien which the State holds upon the property of such railroad company, held by virtue of the bonds of the State issued to such railroad company, whether they be the same bonds or the same series of bonds issued to said company under the act passed February 11, 1852, and acts amendatory thereof, or not. (Act 1869-'70, ch. 47, sec. 1.)

2. That railroad companies issuing their own mortgage bonds under the provisions of the act which this is intended to amend, be allowed to fix the rate of interest which the said bonds of the railroad company are to bear; and all laws in conflict are hereby repealed: Provided, That when said railroad companies owe interest already due, coupons past due shall be taken up by the comptroller or treasurer in discharge of such indebtedness for interest. (Ib., sec. 2.)

NOTE.—Under the foregoing laws, the State of Tennessee has now no lien on any of the lands of the company.

33 *Laws of Kentucky.*

CHARTER OF THE COMPANY.

An act to authorize the Mobile and Ohio Railroad Company to extend their railroad from the south boundary line of the State of Kentucky to the Mississippi or Ohio Rivers.

SECTION 1. Be it enacted, by the general assembly of the Commonwealth of Kentucky, That the Mobile and Ohio Railroad Company, when formed under the act of the general assembly of the State of Alabama, approved February 3, 1848, entitled "An act to incorporate the Mobile and Ohio Railroad Company," shall be allowed the privilege of making any necessary reconnoissance and survey for the purpose of ascertaining the most eligible route for extending the Mobile and Ohio Railroad, to any point upon the Mississippi or Ohio Rivers in this State.

SEC. 2. Be it further enacted, That as soon as said route and point shall be ascertained, the said Mobile and Ohio Railroad Company shall

be allowed the right of way, for the extension and construction of their said railroad, from the Tennessee line to the Mississippi or Ohio Rivers, and that they shall be entitled to all the privileges, rights, and immunities, and subject to all such restrictions, as are granted, made, and prescribed, for the benefit, government, and direction of said Mobile and Ohio Railroad Company, within the State of Alabama, by the act above described.

Approved February 26, 1848.

34 Exhibit B.

Copy of deed of trust.

Deed of trust.

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and fifty-three, between the Mobile and Ohio Railroad Company, of the first part, and Morris Ketchum and John J. Palmer, of the city of New York and State of New York, and William R. Hallett, of the city of Mobile and State of Alabama, of the second part,

Witnesseth, whereas the legislature of the State of Alabama passed an act of incorporation, approved the third day of February, 1848, creating certain associates therein named, and their survivors, a body politic and corporate, by the name of the Mobile and Ohio Railroad Company, and by that name to sue and be sued, plead and be impleaded, to make and have a common seal, and the same break, alter, and renew at pleasure—vested with all powers, privileges, and immunities which are or may be necessary to carry into effect its purposes and
35 objects—authorized and empowered to locate, construct, and finally complete a single, double, or treble railroad or way from some suitable point in the city of Mobile, in a western or northwesterly direction, to the mouth of the Ohio River, in such route as shall be deemed most expedient, and to transport, take, and carry property and persons upon said railroad or way, by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them, which said company may choose to apply; and, for the purpose of constructing said railroad or way, the said company is authorized to lay out the road, not exceeding one hundred feet wide, through the whole length; and for the purposes of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation, in relation to the business of said company, and also to make joint stock with any other railroad corporation.

Further, the State of Mississippi incorporated the said Mobile and Ohio Railroad Company, by act of its legislature, approved the seventeenth day of February, 1848; the State of Tennessee did also incorporate said Mobile and Ohio Railroad Company by act of the legislature, approved the twentieth day of February, 1848; and also the State of Kentucky invested said Mobile and Ohio Railroad Company with corporate rights by an act of its legislature, approved the twenty-sixth day of February, 1848, constituting the Mobile and Ohio Railroad Company a full and complete corporation through the said State, authorized to purchase, hold and dispose of real and personal estate; to borrow

money; to make contracts for the loan of money; and to give evidence of debt, and securities for the payment of the same by pledge, mortgage, or otherwise, as it shall deem necessary and proper;

And whereas said Mobile and Ohio Railroad Company, in pursuance of the authorities vested by said charters, have surveyed and located the line of said road from the city of Mobile to or near the junction of the Mississippi and Ohio rivers, secured the rights of way, obtained depot gounds and valuable assets, all of which are of record in the records of said company, and of record in the counties intersected;

And whereas the said roadway is under contract for the complete work of the road-bed from its respective termini, and in progress of construction, the said Mobile and Ohio Railroad Company, parties of the
first part, resolved by vote of the board of directors, and in pur-
36 suance of the power and authority in said company vested, to
raise a sum of money not exceeding six millions of dollars, for the purpose of completing said road viz: the purchase of the iron and laying the same, the necessary turnouts, depots, and equipments; and for the purpose to execute, issue, sell and transfer the bonds of said company in sums of two hundred and twenty-five pounds sterling each, of even date with these presents, payable in thirty years from date, each with coupons attached for interest, payable semi-annually; each coupon being for £6 15s. sterling; both the principal and coupons, and interest on said bonds, until paid, payable at the counting house of George Peabody & Co., bankers, in London, England, each of said sterling bonds being the same as one thousand dollars, money of the United States of America, and not exceeding six thousand bonds, each to be numbered respectively from number one to six thousand inclusive, and for security for the payment of said bonds, to transfer to the said parties of the second part, all and singular, all the rights and franchises of said company, together with all its personal property of a fixed character, real estate, including its depots, warehouses, lots in town and country, and especially all lands donated by act of Congress, under date of the twentieth day of September, one thousand eight hundred and fifty, transferred in fee-simple to the said company, party of the first part, by act of the legislature of the State of Alabama, approved December first, one thousand eight hundred and fifty-one; by act of the legislature of the State of Mississippi, approved January twenty-eighth, one thousand eight hundred and fifty-two; said lands having been duly selected, set apart and confirmed to said railroad company, party of the first part, and designated by described tracts, as will appear by the act of the commissioner of the general land office at Washington, certified, affirmed, and ratified by the act of the honorable the Secretary of the Department of the Interior, one of the executive departments of the Government of the United States of America, dated Washington D. C., February the fourth, A. D. one thousand eight hundred and fifty-three.

Now, therefore, this indenture further witnesseth, that the said Mobile and Ohio Railroad Company, the better to secure the payment of said bonds, and every part thereof, with interest according to the tenor thereof, and in consideration of the sum of five dollars unto the said company, well and truly paid by the said Ketchum, Palmer, and Hallett, at or before the ensealing and delivery of these presents, the
receipt whereof is hereby acknowledged, have granted, trans-
37 ferred, set over and conveyed, and by these presents do grant,
transfer, set over and convey unto the said Ketchum, Palmer, and Hallett, the survivors or successors of them, in fee simple, all and singular of the rights and privileges of every name and kind, as herein-

after set forth, being the first and only conveyance of title, grant, or mortgage, hereby guaranteeing and warranting the described items, assets, and real estate free from all liens or incumbrances done, or suffered to be done, by the said party of the first part. The said items, as set forth, are as follows:

All the said Mobile and Ohio Railroad lying between its respective termini, constructed, and to be constructed, together with all and singular, the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned, and which may hereafter be owned, by said company, including the said lands donated by act of Congress hereinbefore referred to, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting, as by the certificate of the Department of the Interior, to 419,528 56-100 acres in the State of Alabama; to 737,130 36-100 acres in the State of Mississippi—total 1,156,658 92-100 acres; saving and excepting therefrom so much as lies in township four south, range one west, of lands subject to entry in the S't Stephens land office, Alabama, being 692 78-100 acres, more or less; saving and excepting also the lots and tracts in the county of Mobile, State of Alabama, outside of the line of the railway, outside of its depots, and outside of the corporate limits of the city of Mobile, being lots and lands derived by private purchase, not yet fully paid for, and not included in the list of lands in Mobile County derived under and by the act of Congress; and saving and reserving the rights and liens that may attach to the roadway and construction thereon, in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that said State, in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz: one hundred and eighteen miles, which aid is provided for by law of that State, and, if used by said Mobile and Ohio Railroad, the said prior lien in favor of said State will be to the extent of said State aid, not exceeding ten thousand dollars per mile. To have and to hold the said premises, hereinbefore set forth, to the said Ketchum, Palmer, and Hallett, their survivors or successors, for the benefit, security, and advantage of the
person or persons, or corporations, or any other party who shall
38 or may be holders of the before-described bonds, or any of them,
conditioned as follows:

The said Ketchum, Palmer, and Hallett shall at once have possession and control of the lands donated by act of Congress, and set forth in the before-mentioned certificate of the Secretary of the Interior, of February fourth, one thousand eight hundred and fifty-three, for 1,156,658 92-100 acres, and any other lands that may be obtained for the said company by the present or by future acts of Congress, with authority to devise and determine rules of management of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds; said Ketchum, Palmer, and Hallett rendering an exhibit and account of their doings on or before the first days of January of each and every year during the period of the trust herein made, to the said parties of the first part. The said Ketchum, Palmer, and Hallett shall have full authority to appoint an agent or agents to attend to said land business, who shall account for his or their doings to them, paying over to them all the proceeds of sales or rents or profits derived from said lands. It is provided, however, that unless the said railroad company should be in default on any obligations connected with said bonds no sale of said lands shall be made except by and with the advice and consent of said company. The said party of the second part, themselves, or regularly constituted attorney, are hereby vested with authority to issue proper and sufficient deeds of muniments of title. As to other items of assets of real estate, tolls, or income of said company, they are to remain in the possession or under the control of the said company, except the said company become in default for the payment of said bonds or interest, or any portion thereof; in such case the said party of the second part is hereby vested with full authority to take possession and control of all and singular the entire estate and properties of whatsoever name or kind; and hold the same for the benefit of any and all creditors, with such other action and disposition as shall be equitable to all concerned, provided the said party of the second part shall not claim to take such possession and control, unless said company remains in default of payment of the said bonds or interest for the space of three months after being due and payable.

The Mobile and Ohio Railroad Company further covenant and agree to make to said party of the second part, their survivors or successors, any further assurance or instrument as may be necessary, at any future time, to carry out the equitable intentions of this deed; and the
39 said company, for themselves, their successors and assigns, do
hereby covenant and agree with the said Ketchum, Palmer, and Hallett, or their successors, in behalf of the bondholders, that the money received on the said bonds shall be applied in good faith, on the construction and completion of said road, and putting the same into operation.

And on the failure of said company to do and perform any and all the covenants herein agreed the said Ketchum, Palmer, and Hallett, or survivors or successors, upon the request in writing of any one or more of the bondholders, may and shall take actual possession of all said railroad and the other property and effects of said company hereby conveyed, transferred, and assigned, or so intended to be, and through the agency of such person or persons as they may from time to time appoint, may receive and collect the tolls, incomes, and profits of the same, for the purpose of the security hereinbefore declared, and may sell and dispose of the said road and other property hereby mortgaged, conveyed, or assigned, or so intended to be, and all benefit and equity of redemption of the said company therein, always with the benefit of franchise, and subject to the conditions thereof, at public auction, giving reasonable public notice of the time and place of sale, and as the attorney or attorneys of the said company for that purpose by these presents duly constituted to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance for the reals estate in fee simple or otherwise according to the title of said company therein, and good and proper transfer and assignments of the personal property, and out of the money arising either from the income or profits of the said road, and other mortgaged, conveyed, or assigned property, or effects of the sale thereof, after deducting the expenses incurred in carrying on the business of the road, and in keeping the same in repair, together with the costs, charges, and counsel fees incurred in their proceedings, and a reasonable compensation to themselves for their services, in case of such sale, to apply so much of the residue as may be necessary to pay the principal and interest which may be due on said bonds issued as aforesaid, rendering the balance of such moneys, if any shall remain, to said company. And the sale so made shall be a perpetual bar against the said parties of the first part, and the persons claiming by, from, or under them. Provided, however, and it is hereby expressly

understood and agreed, that neither of them, the said Ketchum, Palmer, and Hallett, or their successors or assigns, shall in no manner be liable or responsible for any act of the other, to which he does not ex-
40 pressly assent; and that they shall be accountable only for the exercise of reasonable care and dilligence in their management in the premises.

And it is further covenanted and agreed between the said parties that if either of them, the said Ketchum, Palmer, or Hallett, shall at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company and the said Ketchum, Palmer, and Hallett, or either of them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver all and singular such other and further instruments or assurances as may be necessary to enable such person or persons so selected to act in the execution of these presents. But until such selection of some person or persons to fill such vacancy or vacancies, and the execution of the papers requisite to enable him or them to act, the act or acts of the other shall, notwithstanding such vacancy, be in all respects legal and valid. And it is expressly understood that the conveyance made by this indenture is only on and for the present rights, interest, and property, and in the future to be acquired rights, interest, and property, and appurtenances of the parties of the first part as do or may exist on the line of said railroad from the city of Mobile to the mouth of the Ohio River. And it is hereby further provided, and these presents are upon the express condition, that upon the payment or satisfaction of the principal and interest of the aforesaid bonds, the estate hereby granted and conveyed to Ketchum, Palmer, and Hallett, their survivors or successors, and the property and effects mortgaged, conveyed, or transferred to them, shall cease and become void; and the said company shall thereupon be fully and immediately reinvested with the same, both in law and equity, and in fact without any entry or other act whatever.

In witness whereof the parties of the first part have caused these presents to be acknowledged by their president, and attested to in their behalf by their president and secretary, and their common seal there-
41 unto affixed; and the said parties of the second part hereunto set their hands and seals the day and year first above written.

[SEAL.] (Signed) SIDNEY SMITH,
President Mobile and Ohio Railroad Company.

A. F. IRWIN, *Secretary M. & O. R. R. Co.*

We accept the above trust.

MORRIS KETCHUM,
JOHN J. PALMER,
W. R. HALLETT,
Trustees.

42
EXHIBIT C.

A.

(Copy of bond.)

No .] UNITED STATES OF AMERICA. No .]

First mortgage-bond of the Mobile and Ohio Railroad Company.

£225 st'g.] Six per cent. bond of £225 sterling for superstructure and equipment of their railroad from Mobile to the Ohio River. [£225 st'g.

This certifies that the Mobile and Ohio Railroad Company is indebted to , or bearer, in the sum of two hundred and twenty-five pounds sterling for value received. In consideration whereof the said Mobile and Ohio Railroad Company do hereby promise and agree to pay to , or bearer, the said sum of two hundred and twenty-five pounds sterling on the presentation of this bond at the counting-house of Geo. Peabody & Co., London, on the 1st of November, A. D. 1883. And the said Mobile and Ohio Railroad Company do hereby promise and agree to pay interest thereon at the rate of six per centum per annum, semi-annually, on the first days of May and November, in each and every year ensuing the date hereof, until said principal sum shall be paid, upon the presentation and delivery of the coupons hereto annexed, at the counting-house aforesaid, as they severally become due and payable.

This bond is one of six thousand, of like tenor and date, issued by the authority of the board of directors of the said Mobile and Ohio
43 Railroad Company, and in accordance with its charter, for a loan of thirteen hundred and fifty thousand pounds sterling, for the superstructure and equipment only of said road. And the holder is entitled to the security to be derived from a deed of trust, bearing even date herewith, on the said railroad, its rights and franchises of every description, on the real estate of said company, and on the lands donated by act of Congress, of date 20th of September, 1850, to the States of Illinois, Mississippi, and Alabama, to aid in the construction of a railroad from Chicago, State of Illinois, to Mobile, State of Alabama. Said lands have been selected and located to the extent of 1,156,658 acres as described in the certificate of the General Land Office, approved and certified by the honorable Secretary of the Department of the Interior at Washington, 4th February, 1853. The fee of said lands has been transferred by the legislatures of Alabama and Mississippi to this company with full power and authority to dispose of them, as shall secure the construction of said railroad, as will more fully appear in said deed of trust, executed and delivered to John J. Palmer and Morris Ketchum, of New York, and William R. Hallett, of Mobile.

The said Mobile and Ohio Railroad Company further agree that this bond, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery.

In witness whereof the said railroad company have caused this bond to be signed by their president and treasurer, and the corporate seal to be affixed, at their office in the city of Mobile, this first day of November, A. D. 1853.

[SEAL.] (Signed) SIDNEY SMITH, *President.*
(Signed) A. F. IRWIN, *Treasurer.*

44 (Copy of endorsement on the bond.)

£225 sterling.

UNITED STATES OF AMERICA.

Mobile and Ohio Railroad Company bonds for superstructure and equipment.

Six per cent. interest, payable semi-annually. Coupons each £6 15s., payable at the counting-house of George Peabody & Co., London, £6 15s. on 1st of May, and £6 15s. on 1st of November.

The principal secured by a first and only mortgage of railroad, equipments, and chartered rights, and by a deed of trust upon, viz:

100,000 acres town sites and 1st quality land, worth 42 shillings per acre	£210,000
1,056,658 acres of other lands, various qualities, and heavily timbered, worth 10 shillings per acre	528,329
Subscriptions partly paid, and all payable by 1st January, 1855, in cash and completed contracts..............	924,264
Total value of lands and cost of railroad, exclusive of Tennessee loan of £196,000, is	2,990,000
Total issue of bonds is..	1,350,000

Countersigned:
MORRIS KETCHUM,
J. J. PALMER,
W. R. HALLETT,
Trustees.

Each bond may be used in the purchase of any of the company's land designated for sale, and at the selling price. The proceeds of all lands sold, except for bonds, to be invested by the trustees as a sinking fund for the redemption of the bonds.

INTEREST SECURED

By a pledge of the surplus income from the earnings of the completed portions of the road, and the other property of the company.

Trust deeds recorded in the office of records of Mobile County, State of Alabama, an authenticated copy of the same in the hands of George Peabody & Co., London.

45

EXHIBIT D.

Resolutions of Mobile and Ohio Railroad Company.

At a called meeting of the board of directors of the Mobile and Ohio Railroad Company, held 25th May, 1871, the following preamble and resolutions were unanimously adopted:

Whereas at sundry times heretofore, to enable this corporation to iron, equip, and complete its line of railway through the State of Tennessee, said State of Tennessee, under and by virtue of its general internal improvement laws, and of the acts amendatory and supplementary thereto, theretofore passed, and then in full force, loaned to this company, or has advanced for its benefits, bonds of the said State of Tennessee, to the aggregate sum of one million six hundred and eighty-four thousand eight hundred dollars ($1,684,800);

Whereof payment, both of principal and accruing interest, was to be made by this company, as the same matured, and for the security of which payments, of principal and interest, a lien was reserved to said State upon the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company, as incident to or necessary for its business; and all depots and depot stations, and all the property and assets attached thereto, or belonging to said company, lying within the limits of said State, with power to seize, and in default of payment of the principal, to sell in the nature of a mortgage-lien, as appears by reference to the said statutes of the State of Tennessee;

And whereas by act of the said State of Tennessee, chapter xxxviii,
46 passed at the second session of the thirty-fifth general assembly of the State, entitled "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, it is among other things enacted that any person or corporation may, with the consent of the board of director of any railroad company, so having received aid under said general internal improvement law, passed 11th February, 1852, and the amends ments thereto, pay off the indebtedness of such railroad company, to the said State, in the mode and manner therein provided, and with the consent of such railroad company upon such payment to be subrogated to all the lien or liens which the State of Tennessee had, or has, upon said railroad, or its property, and have the same right to enforce the same which the State of Tennessee had;

And whereas this corporation is desirous to avail itself of the provisions of said law, and return to said State of Tennessee the like amount of bonds of said State as have heretofore been loaned to it, or advanced for its benefits by an issue of its own bonds, to be exchanged for said State bonds with the holders thereof, and at the same time to secure to the holders of said substituted bonds in good faith all the protection and security which the said State of Tennessee held for its protection and indemnity against loss and damage, by reason of its said loan to the said Mobile and Ohio Railroad Company, by virtue of the laws of the said State, were no change made in the form of security originally held by said State, according to the true intent and meaning of the act passed 25th February, 1869:

Therefore, be it resolved by the board of directors of Mobile and Ohio Railroad Company as follows:

1st. The president of this company is hereby authorized and empowered to cause to be prepared and issued, under the seal of this company, to the amount of one million six hundred and eighty five thousand dollars ($1,685,000), the same to be signed by the president, or in his absence by one of the vice-presidents, and countersigned by the secretary and treasurer, said bonds to be made payable in gold coin of the United States in the city of New York or in the city of London, at the option of the holder; to be each for the sum of one thousand dollars or two hundred and five pounds sterling, and payable on the 1st day of July, A. D. 1901. Said bonds to bear interest at seven per centum per annum, payable semi-annually, or 1st January and July in each year, at New York or London at the option of the holder, and for which interest, coupons or interest-warrants are to be attached to said bonds.

47 2d. That W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, are hereby declared the agents of this company to effect the substitution of its said bonds as above authorized, in place of the said bonds of the State of Tennessee, for the purposes and objects declared in the preamble to these resolutions; and upon and from and after such substitution and as rapidly as the same is effected, the said W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, and their successors, are hereby declared to be trustees for the mutual benefit of this company and of the holders of said bonds, and are hereby authorized to defend and protect the rights conferred on the holders of said bonds by the said acts and laws of the said State of Tennessee and hereby acknowledged and recognized. In case of the death or resignation of any of said trustees the vacancy shall be filled by the joint appointment of

the remaining trustees or trustee, and the president of the Mobile and Ohio Railroad Company with the approval of its board of directors; and if all become incapable of acting, new trustees are to be appointed by this company.

3d. This company does hereby declare that it does and will at all times acknowledge and recognize the bonds herein authorized to be issued, when so substituted in the room and place of the said bonds of the State of Tennessee in manner herein and by said act provided, as entitled to, and in fact being a lien, in the nature of a first mortgage upon all the property of this company in the said State, the same precisely as is now declared to exist in favor of the said State of Tennessee, under and by virtue of the statutes thereof, in pursuance of which the said loan and advance of State bonds was made to the company.

And this company does hereby covenant to and with the said trustees, their survivors and survivor and successors, that it will in good faith do and perform all things, acts, and deeds necessary and proper, and which it may be reasonably requested to do, for the protection of the rights of the holders of said substituted bonds, and of said trustees for their benefit, according to the true intent and meaning of the said acts and laws of the State of Tennessee hereinbefore referred to and of these resolutions; and further, that this company shall and will annually hereafter, from and after the first day of April, 1873, within three months thereafter, and during each year while said bonds herein authorized are running to maturity, provide and set apart from
48 the earnings of the company a fund of at least one per centum of the amount of said bonds, and will annually faithfully apply said sums of money so set apart, as a sinking-fund to the purchase and gradual retirement of said bonds; and on or by the 1st day of April, 1874, and every year thereafter, till said bonds are fully retired will furnish to said trustees evidence of the performance of this stipulation, as may be agreed on.

Resolved, that the president of this company be, and he is hereby directed, under its corporate seal, to execute and deliver to said W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson, as trustees aforesaid, its deed for the uses and purposes herein declared and for the effectual protection and security of the holders of the bonds hereby authorized to be issued, according to the true intent and meaning of these resolutions.

I certify the foregoing to be a true copy from the minutes of the board of directors of the Mobile and Ohio Railroad Company.

{ SEAL OF THE COMP'Y. } (Signed) A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

Deed of trust of Mobile and Ohio Railroad Company.

This indenture, made this first day of July, A. D. 1871, between the Mobile and Ohio Railroad Company, of the first part, W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson, of the city and State of New York, their survivors and survivor, and successors, of the second part, and the holders of the bonds issued by said party of the first part, and herein described, of the third part, witnesseth:

That whereas, under the general internal improvement laws of
49 the State of Tennessee, passed 11th February, 1852, and the acts amendatory thereto, the party to the first part has become liable to the State of Tennessee in the sum of one million six hundred and eighty-four thousand eight hundred dollars, being the amount of bonds of

said State loaned to said party of the first part, and moreover is under obligation to pay to the State of Tennessee semi-annually an amount equal to the amount of the same annual interest upon the said bonds so loaned, as well as an amount of money equal to the principal of said bonds, so loaned to the party of the first part, when and as the same become due and payable; and, whereas, by act of the said State of Tennessee, entitled "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, the railroad companies, so receiving aid from the State, of which the party of the first part was one, are authorized to issue their own bonds to an amount equal to the bonds so received from said State, and are authorized so to use said bonds as to retire and return to said State bonds of said State of Tennessee to an amount equal to that loaned to said company, or advanced for its benefit; for the security of which new issue of bonds the holders thereof, it is by said act delared, shall, with the consent of such railroad company, be entitled to all the lien rights and privileges reserved to the said State for its own security and protection;

And whereas the party of the first part has accepted the terms and provisions of said act, and has for the purpose aforesaid caused to be issued its bonds, dated 1st July, 1871, to the extent of one million six hundred and eighty-five thousand dollars, and numbered from one to sixteen hundred and eighty-five (1685), inclusive, each for one thousand dollars, payable in gold coin of the United States, at New York, or two hundred and five pounds sterling, payable in London, at the option of the holder, with interest at seven per centum per annum, payable semi-annually, in gold coin, at New York, or in sterling, at London as aforesaid, at the option of the holder, for which interest coupons or warrants, payable as aforesaid, are attached to said bonds; and has delivered said bonds with the said coupons attached to W'm Butler Duncan and Adrian Iselin and Richard T. Wilson, as agents of the party of the first part, to be substituted in place of the claim and demand and liability now held against the party of the first part by the said State of Tennessee, for which purpose of substitution the said W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson are hereby made and appointed the agents of 50 the said party of the first part, and which substitution under said agency said parties of the second part are proceeding to make and perfect;

And whereas, under the laws of the said State of Tennessee, the said State has a lien upon the following named property of this company, to wit: The entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business, and all depot stations, and all the property and assets attached thereto, or belonging to said company, within the State of Tennessee, which, under the said act of 1869, upon the return of said State bonds to the said State of Tennessee by any person or corporation, with the consent of such indebted railroad corporation, shall enure to the benefit and for the security of the person or corporation so paying off the said indebtedness or liability of such corporation to the State, or returning to it its said bonds:

Now, then, know all men by these presents, that in consideration of the premises, and of the sum of five dollars to said party of the first part paid by the said parties of the second part, and to make good and secure the rights of the holders of the said bonds herein described, and now issued by the party of the first part, and who are in fact the payers of the said indebtedness of the said party of the first part to the State of Tennessee, within the meaning of said act of February 25th, 1869, and to the extent thereby authorized, the said party of the first part doth hereby consent that the said parties of the second part shall pay and satisfy to the said State of Tennessee the debt and liability due by the said party of the first part to the said State, and doth hereby approve such payment, and doth also hereby consent that upon the payment aforesaid being made, or to the extent that it shall be made, and as it is or may be from time to time made, said parties of the second part shall, in pursuance of the terms and provisions of the act last above herein referred to, be vested with, and shall have and hold all the lien or liens which the State of Tennessee had or has upon the property of the said party of the first part, hereinbefore described, in the State of Tennessee, and shall have the same right to enforce the same which the State of Tennessee had, and that said parties of the second part shall be, and are hereby, placed in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same:

51 To have and to hold the rights, powers, and privileges hereby consented to, and which arise under the said act of the State of Tennessee with the consent and approval of the said Mobile and Ohio Railroad Company to them, the said parties of the second part, their survivors and survivor, and their successors, upon trust, however, for the use, benefit, advantage, and security of the holders of the bonds herein described, issued by the said Mobile and Ohio Railroad Company, parties of the third part to these presents, and their assigns, and it is hereby declared that in case of the death or resignation of the said parties of the second part, the said party of the first part shall appoint new trustees in their place and stead; and in case any one or two of said trustees die or resign such vacancy shall be filled by the joint appointments of the remaining trustee, or trustees, and the president of the Mobile and Ohio Railroad Company, with the approval of the board of directors thereof.

And the said party of the first part doth agree and covenant to and with the said parties of the second part, their survivors and survivor, and their successors, that it, the said party of the first part, will in good faith and at all times hereafter do and perform all things necessary and proper for the protection and security of the said parties of the third part, and of the said parties of the second part, and their assigns, as the same may be reasonably required of it, to make good and effectual this lien and security of said parties, about the payment of their said debts and demands, and to secure the enforcement of their remedies for the payment of said bonds and the interest accruing thereon, in case default be made in the payment of said bonds and coupons, or any part or portion thereof, or default be made in the performance of the covenant herein contained providing for the creation and application of a sinking fund for the gradual retirement of the bonds herein described, according to true intent and meaning of these presents and of the said acts hereinbefore referred to of the general assembly of the State of Tennessee.

And the said party of the first part doth further covenant to and with the said parties of the second part and of the third part hereto, and their assigns, that on the first day of April, 1873, and on the first day of April of each year thereafter, said party of the first part will from the nett earnings of said road set aside an amount equal to one per centum of the amount of bonds issued and outstanding under the provisions hereof, as a sinking fund for the redemption of the bonds

secured by these presents, and that it will invest said sinking fund and the interest accruing thereon in the purchase of the bonds herein
52 secured, at a rate not exceeding ten per centum above par, and accrued interest; the bonds so purchased shall be immediately registered, stamped, and endorsed as irrevocably belonging to said sinking fund, and not farther transferable, and said bonds and coupons so purchased and assigned to the sinking fund by such registration, stamping, and endorsement shall be forever void and cancelled for all other purposes. In case bonds hereby secured cannot be purchased at or under the rate above named, within three months after the setting apart of such money for account of said sinking fund, then such other good securities as may be agreed on by the parties of the first and second part shall be purchased and assigned to said sinking fund, and all such securities shall be placed with such depository and in such manner as said parties of the first and second part may from time to time agree upon; and the interest accruing upon said sinking fund shall be collected by the party of the first part, and invested as herein provided; and all securities assigned to or purchased for said sinking fund shall be, and hereby are, irrevocably pledged for the security and ultimate redemption of the principal and interest of the bonds hereinbefore described and issued by the said party of the first part for the uses and purposes herein declared. And the said parties of the second part are hereby released from executing the bond required of trustees under section 1974 of the Code of Tennessee. And the said parties of the second part do hereby accept the agency and trusts herein and hereby imposed upon them, and do promise and agree faithfully and to the best of their ability to perform the duties hereby provided to be done and performed by them.

It is understood that the acts of any two of the said trustees hereunder shall be valid and effectual in the performance of the duties hereby declared, the same as if all had joined therein; that said trustees may in all cases act by an agent duly appointed over their hand and seal, except in such matters as are by law required to be performed in their proper person; that they shall be fully indemnified and repaid by the said party of the first part, including a reasonable compensation, or out of the trust funds which may come into their hands, for their reasonable cash fees and expenses by them incurred about the performance of the acts and things herein and hereby required of them; and shall not be required to act in the execution of the trust herein declared, except at their own option, unless the party or parties requesting them so to proceed shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing.

53 In testimony whereof, the said party of the first part has hereto set its corporate seal and the hand of its president, by authority of a resolution of its board of directors duly given. And the said parties of the second part have hereunto set their hands and seals.

{ SEAL OF THE COMPANY. } (Signed) ABRAHAM MURDOCK,
President Mobile and Ohio Railroad Co.
W. BUTLER DUNCAN. [L. S.]
ADRIAN ISELIN. [L. S.]
R. T. WILSON. [L. S.]

Attest:
A. L. WILLOUGHBY,
Secretary and Treasurer M. & O. R. R. Co.

STATE OF NEW YORK,
City and County of New York, ss:

On this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-one, in the city of New York and State of New York, personally appeared before me, the undersigned, George W. Colles, a commissioner of deeds for the State of Tennessee, resident in New York City, the within-named Abraham Murdock, president of the Mobile and Ohio Railroad Company, one of the within-named bargainers, with whom I am personally acquainted, and who, being first duly sworn, deposes and says that he is president of the Mobile and Ohio Railroad Company, and is acquainted with its corporate seal; that the seal purporting to be such, above affixed, is such corporate seal, and was duly affixed to the within instrument by him the said president; and, also, he, the said president, set his hand thereto, both by authority of a resolution of the board of directors of said company, duly given. And, also, then and there personally appeared William Butler Duncan, Adrian Iselin, and Richard T. Wilson, others of the within-named bargainers, before me, with each of whom I am personally acquainted, and who each acknowledged that he had executed the within instrument for the purposes therein contained.

Witness my hand and seal, the day and year first above written.

{ COMMISSIONER'S SEAL. } (Signed) GEORGE W. COLLES,
Commissioner for Tennessee, in New York.

54 EXHIBIT E.

Second mortgage.

This indenture, made this fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty, between the Mobile and Ohio Railroad Company, of the first part, and Robert A. Baker, of Alabama; George H. Young, of Mississippi; and Samuel Williams, of Tennessee, of the second part, witnesseth, that whereas, by resolution of the board of directors of the Mobile and Ohio Railroad Company, passed the 8th day of June, 1857, an issue of not exceeding five hundred thousand dollars of eight per cent. income bonds was authorized for the purpose of completing and equipping the road north of the Mississippi line; the bonds to be payable in not less than eight years from the first day of July, 1857, with interest coupons attached, payable semi-annually, from the net income of the road in operation in Tennessee and Kentucky.

And whereas, by another resolution of said board, passed the twentieth day of January, 1859, the executive committee of the board was authorized to ascertain the correct amount of the floating debt of the company, and offer to the creditors the obligations of the company for the amount of such debts; and providing that such obligations of the company shall operate as a lien on the income of the road not otherwise appropriated. Such obligations or bonds to bear interest at eight per cent., payable annually, according to the coupons attached.

And whereas, by another resolution of said board, passed the second day of February, 1860, the amount of said bonds to be issued under the resolution of twentieth of January, 1859, above referred to, was limited to an amount not exceeding one million of dollars, and to be payable at not less than ten years' time. And whereas, it was further directed by said resolution of the second February, 1860, above referred to, that to give more ample and certain security to said bonds, to-wit, to the five

hundred thousand dollars authorized by the resolution of the eighth of June, 1857, and the one million of dollars authorized by the resolution of the twentieth of January, 1859, the president of the company was directed and required to execute a deed or deeds of mortgage
55 upon the property, effects, and income of the road; said deed or deeds not to interfere with prior liens on the same.

Now, therefore, this indenture witnesseth that the said Mobile and Ohio Railroad Company, the better to secure the payment of said bonds authorized to be issued by said several resolutions above referred to, and every part thereof, with interest, according to the tenor thereof, and the coupons thereto attached, and in consideration of the benefit to accrue to the company from issuing and negotiating said bonds, and the sum of five dollars, well and truly paid by the said Robert A. Baker, George H. Young, and Samuel Williams, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, transfer, set over, and convey unto said Robert A. Baker, George H. Young, and Samuel Williams, and to the survivors or successors of them, in fee simple, all and singular the rights and privileges of every name and kind, as hereinafter set forth. The said property and assets herein conveyed are as follows:

All the said Mobile and Ohio Railroad lying between its termini, constructed and to be constructed, including the Columbus, Mississippi, and Columbus, Kentucky, branches, together with all and singular the chartered rights, railways, rails, bridges, fences, warehouses, depot buildings, machine shops, tools, iron, timber, and all materials necessary in repair of road-bed, rolling-stock, or machinery, and all wood and coal, and other materials necessary in running said road, and the receipts and income of said road, and all fixtures, privileges, rights, real estate, and all other property owned, and which may be hereafter owned, by said company, including the said lands donated by act of Congress, under date of the twentieth day of September, 1850, and reconfirmed by subsequent acts, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting, as by certificate of the Department of the Interior, to 419,528 56-100 acres in the State of Alabama, to 737,130 36-100 acres in the State of Mississippi—total, 1,156,658 92-100 acres; also, the right, title, and interest of the party of the first part in and to the lands, property, and effects, particularly described in Schedule B, and made part of a mortgage by said party of the first part, to secure a debt due the State of Alabama, dated third of April, 1858, deposited for record the sixth of April, 1858, and recorded in book of mortgages, No. 5, N. S., probate court, Mobile
56 County, pages 415 to 422, inclusive, reserving the prior lien hereafter be ordered in accordance with the trusts of said first mortgage or with the assent of the trustees under the same.

Should said Baker, Young, and Williams die, or resign, or from any cause become unable to act, then the one or more remaining in office, and the company, may fill the vacancy or vacancies; but, until this is done, the acts of the one or more remaining in office shall be good and valid. In the event said trustees should be compelled to take possession of said road and property, by themselves or agents, to carry out this trust, they shall be allowed to pay the expenses out of the funds, and retain a reasonable compensation for their own supervision of the same. And should it become necessary to sell said road, property, and effects hereinbefore specially described, either to satisfy the lien of the State of Tennessee or under the first mortgage, the residue, after satis-

fying the prior liens, according to their respective rights and equities, shall be applied in satisfaction of the bonds and interest thereon secured by this conveyance.

In witness whereof the said parties of the first part have caused these presents to be acknowledged by their president, and attested in their behalf by the president and secretary, and their common seal thereunto affixed; and the said parties of the second part hereunto set their hands and seals, this day and year first above written.

MOBILE AND OHIO RAILROAD COMPANY,
By MILTON BROWN, *President.*

J. C. COLSON,
Secretary Mobile and Ohio Railroad Company.

We accept the above trust.

R. A. BAKER, [L. S.]
S. WILLIAMS, [L. S.]
GEO. H. YOUNG, [L. S.]
Trustees.

STATE OF ALABAMA,
Mobile County:

I, Sidney T. Douglas, a notary public in and for the county of Mobile, State of Alabama, duly commissioned and qualified, hereby certify that the Mobile and Ohio Railroad Company, by Milton Brown, president of said company, whose name is signed to the foregoing deed of
57 mortgage of said Mobile and Ohio Railroad Company to Robert R. Baker, George H. Young, and Samuel Williams, trustees, and who is known to me, acknowledged before me on this day that, being informed as to the contents of said deed of mortgage, he executed the same voluntarily as president aforesaid, and caused the corporate seal of said company to be thereto affixed and attested by their secretary, on the day and year and for the uses and purposes therein mentioned.

Given under my hand and seal notarial, this eighteenth day of February, A. D. 1860.

SIDNEY T. DOUGLAS,
Notary Public.

STATE OF ALABAMA,
City and County of Mobile:

I, Sidney T. Douglas, a commissioner of deeds for the State of Kentucky, duly appointed and commissioned by the governor thereof, for the State of Alabama, and authorized to take the acknowledgment of deeds or other writings, do certify that this deed of mortgage from the Mobile and Ohio Railroad Company to Robert A. Baker, George H. Young, and Samuel Williams, trustees, was this day produced to me, in my office, in the city aforesaid, by Milton Brown, president of said company, with whom I am personally acquainted, who then and there acknowledged before me that he executed the same voluntarily as president aforesaid, and caused the corporate seal of said company to be thereto affixed and attested by their secretary, and that the same is the act and deed of said company, for the uses and purposes therein mentioned.

Given under my hand and seal of office this eighteenth day of February, A. D. 1860.

SIDNEY T. DOUGLAS,
Commissioner for Kentucky in Alabama.

This bond may be registered in the owner's name on the company's books, such registry being noted on the bond by the company's transfer agent, after which no transfer shall be valid unless made on the company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which it shall be transferrable by delivery, but it may be again registered as before.

The registry of the bond as above shall not restrain the negotiability of the coupons by delivery.

(Endorsement:) No. Consolidated first-mortgage seven-per cent. sinking-fund gold bond. Mobile and Ohio Railroad Company. $1,000. Principal due 1st January, 1904. Interest payable 1st January and 1st July.

62 And whereas it is the intention of the party of the first part hereby to secure the punctual payment of the said bonds and coupons proposed to be issued; and also, and until the same shall be discharged by payment, in like manner to further secure all the existing indebtedness of the said company hereinafter set forth, by the execution and delivery of this indenture to the parties of the second part as trustees as aforesaid; which last-mentioned indebtedness, now existing, to discharge which the bonds to be issued under this mortgage are in part to be applied, and as a further security for which this indenture is made, is as follows:

A series of first-mortgage bonds, amounting in the aggregate to the sum of	$5,720,000 00
(Secured by deed of mortgage dated November 1, 1853.)	
A series of bonds, called interest-bonds, amounting in the aggregate to	844,000 00
A series of bonds, called interest arrear bonds, amounting in the aggregate to	35,000 00
A series of bonds, called funded interest bonds, amounting in the aggregate to	652,500 00
A series of sterling interest bonds, amounting in the aggregate to	769,920 00
(Which last four items are for interest on the said first-mortgage debt.)	
A series of bonds, called Tennessee substitution bonds, amounting in the aggregate to	1,685,000 00
(Upon which a lien exists upon the company's road in that State.)	
A series of matured income-bonds, so called, amounting in the aggregate to	9,900 00
A series of second-mortgage bonds, amounting in the aggregate to	1,455,858 40
(Secured by a mortgage dated February 15, 1860.)	
A series of bonds issued upon the Gainesville branch, amounting in the aggregate to	53,000 70
(And secured by a mortgage upon said Gainesville branch.)	
A series of bonds, called convertible bonds, issued under an authority of the board of directors, under date of November 10, 1873, amounting in the aggregate to the sum of	1,0 0,000 00

It being hereby distinctly covenanted and agreed that all of said bonds above mentioned, amounting in the aggregate to not exceeding twelve million five hundred thousand dollars, issued and to be issued,
are and are hereby declared to be secured as first or prior liens.
63 By this mortgage the new proposed bonds to be issued hereunder
for an equal amount being reserved to retire or pay the same, as hereinafter expressed.

Now, therefore, this indenture witnesseth that the said party of the first part, in consideration of the premises and one dollar to it in hand paid by the parties of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the faithful payment of all of said bonds, as well those already issued, as above mentioned, as those now proposed to be issued, as herein set forth, and the interest due and to become due thereon according to their tenor and effect, has granted, bargained, and sold, aliened, assigned, and conveyed, and by these presents doth grant, bargain, and sell, alien, assign, and convey to the parties hereto of the second part, and to the survivor of them and their successors, trustees as aforesaid, all the right, title, and interest which the said party of the first part now has of may hereafter acquire in and to its franchises, its entire line of railway, constructed or to be constructed, as hereinbefore stated, extending from Mobile, in the State of Alabama, through and across the States of Mississippi and Tennessee, to Columbus, on the Mississippi River, in the State of Kentucky, together with all branches thereof constructed or to be constructed, together with the tolls, incomes, rents, issues, and profits thereof, and all real estate, rights of way, easements, fixtures, rolling stock, machinery, tolls, and equipments, and all other personal property thereunto belonging in all of said States, the true intent of this indenture being to vest all and every the property and right of property, real, personal, and mixed, and all the corporate powers and franchises, of every kind whatsoever, belonging or appertaining to the said party of the first part, or hereafter to be acquired, touching the aforesaid lines of railroad, in the said parties of the second part.

To have and to hold the above-described premises, property, rights, franchises, and appurtenances to the said parties of the second part, and the survivor of them, and their successors, as joint tenants, and not as tenants in common, to the only proper use, benefit, and behoof of them, the said parties of the second part, and the survivors of them, and their successors forever.

And the said party of the first part, for itself, its successors, and assigns, hereby covenants to and with the said parties of the second part, the survivor of them, and their successors, that it both shall and
will, from time to time, whenever and so often as thereunto re-
64 quested by the said trustees, the survivor of them, or successors,
execute, acknowledge, and deliver all and any such further deeds, conveyances, and assurances in the law for the better assuring unto the said trustees upon the trust herein expressed, all and singular the lands and premises as aforesaid, or hereafter to be acquired as aforesaid, as by the said trustees, or the survivor, or successors, or their counsel learned in the law, shall be reasonably devised, advised, or required, in trust, nevertheless, for the equal benefit and security of all persons or corporations who may be or who may become holders of any of the above-mentioned consolidated mortgage bonds, without any preference of any one of the said consolidated bonds over any other or others by reason of priority in time of issue, negotiation thereof, or

otherwise, except so far as regards the bonds drawn at the annual drawing held, or hereafter provided, and for the uses and purposes herein declared and expressed.

It is hereby covenanted, declared and agreed, that the premises, property, rights, franchises and interest hereby mortgaged or conveyed, are to be had and holden by the said trustees and their successors upon and for the trusts, uses, and purposes following, that is to say:

First. Until default shall be made in the payment of the interest or the principal of any of the consolidated mortgage bonds aforesaid, the said party of the first part shall hold, use, and enjoy all its said property, and shall take and receive the income, earnings, and profits thereof, for its own proper use, as fully as if this indenture had not been made. And, further, unless and until default be made as aforesaid, and until all the first mortgage bonds heretofore issued by the said party of the first part as aforesaid, be exchanged for the consolidated mortgage bonds to be issued under these presents, as herein and hereby provided for, or otherwise retired, nothing herein contained shall in any manner interfere with the sale and disposition of the lands donated to the said party of the first part, by the Congress of the United States, in manner and for the uses and purposes described in the said first mortgage or deed of trust executed by the said party of the first part; but the said parties of the second part shall, with the approval of the said party of the first part, appoint a suitable agent to co-operate in and about the sale and disposition of said lands, as provided in said first mortgage, and under such regulations as said parties of the said second part may prescribe, see to the proper application of the moneys realized from such
65 sales, as provided for in said first mortgage and in pursuance thereof; and upon the exchange or retiring as aforesaid of the said first-mortgage bonds, and the using of the trusts therein heretofore created, then the said proceeds of said sales of said lands are applied to the withdrawal and retirement of the bonds issued under and in conformity to these presents; and of all their doings in this respect, by the said parties and their agent or agents, full records shall be made and kept, and always subject to the inspection of the parties to this indenture. If default shall be made in the payment of the interest upon any of said consolidated mortgage bonds on the demand of the bona fide holders of the coupons representing at least one-fifth of the said bonds secured by this indenture, and ninety days after the said demand, the aforesaid trustees, or the survivor of them, or their successors, shall enter upon and take possession of all the above-described property, franchises and liens of said railroad, and by their agents duly appointed, shall direct the management of the same, collecting all incomes and receipts, and after defraying the necessary and proper expenses of operating the said railroad of the said company, shall pay from the proceeds thereof, all the interest then due and in arrears upon said consolidated mortgage bonds; or the said trustees, in their discretion, may proceed, after ninety days' notice, to be given in one or more newspapers published in the city of Mobile, in the State of Alabama, and in the cities of New York and Boston, and London, in England, to sell, at public auction, in the city of Mobile, Alabama, such part of the said railroad company's property as shall be sufficient to discharge all said past due and unpaid interest, selling in the first instance the property of said company other than its lands, roadway, station-buildings, shops and franchises; but if said property shall be insufficient to pay all said past due interest, then, at and under the same notice, to proceed to sell the remainder of the property, roadway, lands, stations and franchises, in such order as said

trustees, or the survivor of them, his or their successors or successor, may determine, until the full amount of such over-due and unpaid coupons shall have been realized, with all legal costs and expenses; and after any default shall have been made in the payment of the principal of any or either of the said consolidated mortgage bonds, as aforesaid, for ninety days from the time of demand for the payment of the same by the holders, and upon the demand of one-fifth in amount of said bonds remaining due at the time; then, and in that event, and if so required by the bona fide holders of said amount of bonds, the
66 aforesaid trustees, the survivor of them, or their successors, shall
enter upon the premises and take possession of the entire property, lines of railroad, and franchises of the said Mobile and Ohio Railroad Company, and shall proceed, by their duly appointed agents, to conduct the business of the same, and to control its affairs, receipts, and disbursements, until the amount of any past due and unpaid principal and interest on said consolidated mortgage bonds shall have been fully discharged, or in their discretion, the aforesaid trustees, the survivor of them, or their successors, after ninety days' notice, published in the newspapers aforementioned, may proceed to sell, at public auction, all such property, franchises, or such parts thereof, as they may deem sufficent to satisfy and discharge all such claims, and in such order as they, or the survivor of them, or their successors, may determine to be proper.

And in case of any sale, as in either event herein authorized, said parties of the second part shall have power, and the same is hereby expressly conferred, to execute good and sufficient conveyance to the purchaser or purchasers of the same, passing thereunto all right, title, and interest of the said Mobile and Ohio Railroad Company in the property and franchises so sold.

And it is hereby expressly agreed that any and every sale so made, as aforesaid, shall be a perpetual bar both at law and in equity, against the party of the first part hereto, its successors and assigns, and against all and every person claiming, or to claim, the premises then sold, or any part thereof, by, through, or under it, its successors or assigns. The proceeds of such sale, after deducting the costs and expenses thereof, and the expenses of this trust, shall be, by the aforesaid trustees, applied in the first instance to the discharge of the past due and unpaid interest, and next to the payment of the principal of said bonds hereunder issued, pro rata; and the residue thereof (if any) shall be by them paid over to the said Mobile and Ohio Railroad Company.

Second. The said party of the first part further covenants and agrees that out of its net earnings, that is to say, out of the earnings left after the discharge of all expenses incident to the conduct of its business, maintenance of its property, and the discharge of its obligations on account of interest, to redeem annually one per centum of the entire amount of said consolidated mortgage bonds issued and then outstanding as hereinbefore provided, and in order to determine which of said bonds shall be so annually redeemed, the said party of the first
67 part shall give notice in one or more newspapers published in the
State of Alabama, and in at least one newspaper published in the city of New York, and in London, the same to be published for thirty days, of the amount of bonds to be redeemed as required by this deed, of the time and place at which by lot the specific bonds to be redeemed shall be determined; such election of the bonds so to be redeemed by lot, as aforesaid, to be made under the supervision of the aforesaid trustees, the survivor of them, or their successors, and in manner and form as they shall prescribe. Notice for at least thirty days in the news-

papers aforesaid shall be given by the party of the first part, certified by the trustees aforesaid of the specific bonds so selected by lot, and then redeemable according to the provisions of this deed; thirty days after which such bonds shall cease to bear interest. The bonds so redeemed to be cancelled under the supervision of the aforesaid trustees, who shall keep a registry thereof by their numbers; and in default of a sufficiency of net earnings for any year to provide such fund for redemption, the deficit thereof shall be made good and employed in the redemption of bonds out of the net earnings of the year or years next succeeding, in which there are such net earnings; and the expenses attending such drawings of bonds, and the publication and notification as herein required, may be defrayed by said trustees out of said sinking fund. Provided, That such redemption of the bonds issued under this mortgage shall begin for and with the fiscal year ending January 1st, 1880.

Third. The said party of the first part further covenants and agrees to deposit with the banking house of Duncan, Sherman & Co., New York, twelve million five hundred thousand dollars of the bonds herein authorized to be issued, not to be pledged or used in any manner by the party of the first part, except in the manner and for the purpose hereinafter specified, but the same or their proceeds shall be drawn out from time to time, only upon the order of the president of the aforesaid company, countersigned by the aforesaid trustees, the survivor of them or their successors; the coupons upon such bonds as remain so deposited to be regularly cancelled by the said party of the first part in the presence of the said trustees, as the same mature. The existing liens upon the mortgaged premises, exclusive of the bonds hereby secured, amounting to a sum not exceeding the said sum of twelve million five hundred thousand dollars, to provide for the payment of which this deposit is to be made.

The said bonds, when and as the same are so drawn out, shall
68 be applied or used under the supervision of the said trustees solely
in the acquisition, by exchange or otherwise, as the president and board of directors of the said Mobile and Ohio Railroad Company may arrange, and from time to time may determine, of the aforesaid existing outstanding liabilities of said company, and no greater amount of said bonds shall be drawn out or used than shall equal the amount of such existing liabilities, purchased or acquired as aforesaid, until all of said liabilities, as above set forth, are fully purchased or acquired, the aggregate amount of such liabilities not exceeding as aforesaid the said sum of twelve million five hundred thousand dollars.

And the said party of the first part hereby covenants and agrees with said parties of the second part that the said mortgaged premises hereby conveyed are free and clear of all incumbrances save and except only the aforesaid liabilities, amounting in the aggregate to a sum not exceeding twelve million five hundred thusand dollars. The evidences of such existing indebtedness and liens, as the same are so purchased or acquired, as herein contemplated, to be deposited with the aforesaid banking-house for the further security of the bonds issued under this mortgage, and to be accordingly so endorsed across their face by the said trustees for the time being, until all such outstanding obligations shall have been replaced, substituted, or discharged by the issues under this deed; then the same to be delivered over to the said party of the first part after the same are duly cancelled by said trustees; or the said trustees having, by some proper endorsement thereof, put at end their assignability or negotiability, may deliver the same to the party of the first part, to be held by it as a protection to its title, in such form as may be found proper, so as in no case to interfere with the priority of the lien of this instrument over said indebtedness so purchased and surrendered; and except to the extent of the incumbrances hereinbefore specified, this conveyance is made with general warranty of title by the said party of the first part.

Fourth. The party of the first part shall and will at all times keep, at its general office in the State of Alabama, an appropriate book, to be designated as the "Registry of First Mortgage Bondholders," and any and every holder of the bonds secured hereby shall be entitled to have his name and address, and the numbers of the bonds so held or owned by him, duly inscribed therein, upon the production at said office of such of said bonds as he may, by an endorsement to be made
69 thereon, inscribe in his name as holder or owner; and after such
registration such bonds shall not pass by delivery unless the same shall again be registered as payable to bearer, but such registration shall not compel the party of the first part to pay any overdue coupons on any such bonds to the registered owner, but the same may be paid to the bearer thereof.

Fifth. It is further mutually covenanted and agreed that said trustees shall not, nor shall either of them or their successors, be in any manner responsible for the default or misconduct of each other in said trust, nor for the neglect, default, or misconduct of any agent or attorney appointed pursuant to these presents, or for anything in respect to said premises, or the trust hereby created, except personal misconduct or gross negligence in the execution of said trusts.

Sixth. It is further provided and declared, that the said trustees or either of them, or any succeeding trustee or trustee, may at any time hereafter, by an instrument in writing, duly signed and forwarded to the said party of the first part, resign his or their office, and withdraw from the further execution of this trust; and thereupon, or in case at any time hereafter either of said trustees, or any trustee hereafter appointed, shall die, or be removed by a court of competent jurisdiction, or become mentally or otherwise incapacitated to execute the trusts, the president of the company, with the written approval and assent of the holders of bonds (the said consolidated mortgage), secured hereby to the aggregate extent of not less than one-third of the said bonds outstanding and unpaid, may appoint a trustee or trustees to fill such vacancy, and in such case the new trustee or trustees appointed, either while he or they shall continue to be such, shall have and possess, and be subject to the like rights, powers, estates, and duties, as if he or they had been originally trustees hereunder, and, during any vacancy in the trusteeship, the remaining or surviving trustee shall have power to execute the trusts until the vacancy is filled. In default of appointment as aforesaid, it shall be the duty of the parties of the second part, or in case of neglect for a reasonable time, then for the party of the first part, to apply to a court in Alabama, having jurisdiction in the premises, for the appointment of a trustee or trustees to fill such vacancy or vacancies, and so from time to time.

And it is further provided and declared, that the due appointment of a trustee or trustees shall be effectual to vest in him or them the appropriate estate, rights, powers, and duties as herein provided in that behalf without any new deed or conveyance; but, nevertheless, the party of the first part hereby covenants, in any and every such
70 case, to make and execute, upon request, any such deeds and con-
veyances or assurances as may be appropriate for more fully and certainly vesting in and confirming to such new trustee or trustees, such

estate, rights, powers, and duties; and in every case of resignation of a trustee, the resigning trustee shall, if requested, make and execute such conveyances or assurances to his successors.

And the said party of the first part further covenants that the party of the first part shall and will well and truly pay, or cause to be paid, unto the holder or holders of said bonds, the principal and interest thereof, as such principal and interest becomes payable according to the tenor of said bonds respectively, and of the coupons thereto attached.

Seventh. It is further provided and declared, that if the said party of the first part shall well and truly keep and perform the foregoing covenants and agreements on its part to be performed, and shall well and truly pay the said bonds hereby secured, with interest thereon, according to the tenor thereof, then these presents shall be void, otherwise to remain in full force.

In testimony whereof the said The Mobile and Ohio Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by its president and secretary, the day and year first above written. In duplicate.

[SEAL OF THE COM'Y.] AB'M MURDOCK,
President.

A. L. WILLOUGHBY, *Secretary.*

Witnesses:
JOHN A. PUNCH.
B. W. FOSTER.
A. T. SHEPHERD.

And in testimony of their acceptance of the trusts herein conferred and imposed, the said trustees have hereunto severally set their hands and seals.

W. BUTLER DUNCAN, [SEAL.]
SAMUEL L. M. BARLOW. [SEAL.]

All the foregoing deeds of mortgage are duly probated and recorded in the several States respectively and counties through which said railroad passes, and where the lands are situated.

71 EXHIBIT G.

THE STATE OF ALABAMA,
Mobile County, ss:

This indenture, made and entered into this the twenty-fourth day of March, in the year our Lord eighteen hundred and seventy-one, by and between The Mobile and Ohio Railroad Company, of the first part, William D. Dunn, John Reid, j'r, and Robert C. Crawford, of the city of Mobile, as trustees, of the second part, and James Crawford, of the said city, of the third part, witnesseth:

That whereas, under and in pursuance of the provisions of "An act to authorize the Mobile and Ohio Railroad Company to purchase the railroad constructed by the Mississippi, Gainesville and Tuscaloosa Railroad Company," approved March 3, 1871, the said Mobile & Ohio Railroad Company has purchased from the said James Crawford, by deed bearing even date herewith, has conveyed to the said Mobile and Ohio Railroad Company the property hereinafter mentioned and described, for the sum of fifty-three thousand six hundred and one

& Co. and of this company, and be transferable in said book at
72 $\frac{97}{100}$ dollars, whereof the sum of fifty-three thousand dollars is
payable on the first day of November, A. D. 1880, with interest thereon at the rate of eight per cent. per annum from the first day of November, A. D. 1870, payable semi-annually, on the first days of May and November of each year from the first day of November, A. D. 1870, and the said Mobile & Ohio Railroad Company has agreed and is willing and desirous to secure the payment of the said sum of fifty-three thousand dollars, and the interest thereon as aforesaid, by a lien on the property purchased as aforesaid.

Now, therefore, this indenture further witnesseth, that the said Mobile and Ohio Railroad Company, for and in consideration of the premises, and for the further consideration of five dollars to it paid by the said W'm D. Dunn, John Reid, j'r, and Robert C. Crawford, at and before the sealing and delivery of this indenture, the receipt whereof is hereby acknowledged, hath conveyed, assigned, remised, released, and forever quitclaimed, and doth hereby convey, assign, remise, release, and forever quitclaim unto the said William D. Dunn, John Reid, j'r, and Robert C. Crawford, and to the survivors or survivor of
73 them, and the heirs of such survivor forever, all the right, title,
interest, and estate conveyed to it by the said James Crawford, as aforesaid, or which it now has in or to the railroad extending from a point on the Mobile and Ohio Railroad, in the State of Mississippi, commonly called the Gainsville Junction, to the town of Gainsville, in the State of Alabama, and also in or to all the property along the track of the said railroad hereby conveyed, lately belonging to the Mississippi, Gainsville and Tuscaloosa Railroad Company, and also in or to the franchises of the said last-mentioned railroad company, together with all the rights and appurtenances thereto belonging, to have and to hold the said premises and appurtenances to the use of them, the said W'm D. Dunn, John Reid, j'r, and Robert C. Crawford, and the survivors or survivor of them, and the heirs of such survivor forever, upon condition and trust, nevertheless, that whereas the said Mobile and Ohio Railroad Company, for the payment of the said sum of fifty-three thousand dollars, and the interest thereon, as aforesaid, has made and delivered to the said James Crawford its fifty-three several
74 bonds, numbered respectively and successively from one to fifty-
three (both inclusive), each of said bonds bearing even date herewith, and each being for the sum of one thousand dollars, payable to the said James Crawford, or bearer, on the first day of November, A. D. 1880, at the office of the said company in the city of Mobile, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first days of May and November of each year, from the first day of November, 1876, at the office of said company in the city of Mobile, for the payment of which interest coupons are attached to each of said bonds, payable as aforesaid.

Now, if the said Mobile and Ohio Railroad Company shall well and truly pay to the said James Crawford, or to such person or persons as shall be the holder or holders of said several bonds and coupons, or of any or either of them, the said several sums of money specified in said several bonds and coupons respectively, when the same shall be respectively due and payable, upon the presentation and demand of payment thereof at the office of said company in the city of Mobile, or
75 within three months after such presentation and demand of pay-
ment, then this indenture shall be void and of no effect, and useless, and until the said railroad company shall make default of payment as

estate, rights, powers, and duties; and in every case of resignation of a trustee, the resigning trustee shall, if requested, make and execute such conveyances or assurances to his successors.

And the said party of the first part further covenants that the party of the first part shall and will well and truly pay, or cause to be paid, unto the holder or holders of said bonds, the principal and interest thereof, as such principal and interest becomes payable according to the tenor of said bonds respectively, and of the coupons thereto attached.

Seventh. It is further provided and declared, that if the said party of the first part shall well and truly keep and perform the foregoing covenants and agreements on its part to be performed, and shall well and truly pay the said bonds hereby secured, with interest thereon, according to the tenor thereof, then these presents shall be void, otherwise to remain in full force.

In testimony whereof the said The Mobile and Ohio Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by its president and secretary, the day and year first above written. In duplicate.

[SEAL OF THE COM'Y.] **AB'M MURDOCK,**
President.

A. L. WILLOUGHBY, *Secretary.*

Witnesses:
JOHN A. PUNCH.
B. W. FOSTER.
A. T. SHEPHERD.

And in testimony of their acceptance of the trusts herein conferred and imposed, the said trustees have hereunto severally set their hands and seals.

W. BUTLER DUNCAN, [SEAL.]
SAMUEL L. M. BARLOW. [SEAL.[

All the foregoing deeds of mortgage are duly probated and recorded in the several States respectively and counties through which said railroad passes, and where the lands are situated.

71 EXHIBIT G.

THE STATE OF ALABAMA,
Mobile County, ss:

This indenture, made and entered into this the twenty-fourth day of March, in the year our Lord eighteen hundred and seventy-one, by and between The Mobile and Ohio Railroad Company, of the first part, William D. Dunn, John Reid, j'r, and Robert C. Crawford, of the city of Mobile, as trustees, of the second part, and James Crawford, of the said city, of the third part, witnesseth:

That whereas, under and in pursuance of the provisions of "An act to authorize the Mobile and Ohio Railroad Company to purchase the railroad constructed by the Mississippi, Gainesville and Tuscaloosa Railroad Company," approved March 3, 1871, the said Mobile & Ohio Railroad Company has purchased from the said James Crawford, by deed bearing even date herewith, has conveyed to the said Mobile and Ohio Railroad Company the property hereinafter mentioned and described, for the sum of fifty-three thousand six hundred and or

& Co. and of this company, and be transferable in said book at 72 $\frac{97}{100}$ dollars, whereof the sum of fifty-three thousand dollars is payable on the first day of November, A. D. 1880, with interest thereon at the rate of eight per cent. per annum from the first day of November, A. D. 1870, payable semi-annually, on the first days of May and November of each year from the first day of November, A. D. 1870, and the said Mobile & Ohio Railroad Company has agreed and is willing and desirous to secure the payment of the said sum of fifty-three thousand dollars, and the interest thereon as aforesaid, by a lien on the property purchased as aforesaid.

Now, therefore, this indenture further witnesseth, that the said Mobile and Ohio Railroad Company, for and in consideration of the premises, and for the further consideration of five dollars to it paid by the said W'm D. Dunn, John Reid, j'r, and Robert C. Crawford, at and before the sealing and delivery of this indenture, the receipt whereof is hereby acknowledged, hath conveyed, assigned, remised, released, and forever quitclaimed, and doth hereby convey, assign, remise, release, and forever quitclaim unto the said William D. Dunn, John Reid, j'r, and Robert C. Crawford, and to the survivors or survivor of 73 them, and the heirs of such survivor forever, all the right, title, interest, and estate conveyed to it by the said James Crawford, as aforesaid, or which it now has in or to the railroad extending from a point on the Mobile and Ohio Railroad, in the State of Mississippi, commonly called the Gainsville Junction, to the town of Gainsville, in the State of Alabama, and also in or to all the property along the track of the said railroad hereby conveyed, lately belonging to the Mississippi, Gainsville and Tuscaloosa Railroad Company, and also in or to the franchises of the said last-mentioned railroad company, together with all the rights and appurtenances thereto belonging, to have and to hold the said premises and appurtenances to the use of them, the said W'm D. Dunn, John Reid, j'r, and Robert C. Crawford, and the survivors or survivor of them, and the heirs of such survivor forever, upon condition and trust, nevertheless, that whereas the said Mobile and Ohio Railroad Company, for the payment of the said sum of fifty-three thousand dollars, and the interest thereon, as aforesaid, has made and delivered to the said James Crawford its fifty-three several 74 bonds, numbered respectively and successively from one to fifty-three (both inclusive), each of said bonds bearing even date herewith, and each being for the sum of one thousand dollars, payable to the said James Crawford, or bearer, on the first day of November, A. D. 1880, at the office of the said company in the city of Mobile, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first days of May and November of each year, from the first day of November, 1876, at the office of said company in the city of Mobile, for the payment of which interest coupons are attached to each of said bonds, payable as aforesaid.

Now, if the said Mobile and Ohio Railroad Company shall well and truly pay to the said James Crawford, or to such person or persons as shall be the holder or holders of said several bonds and coupons, or of any or either of them, the said several sums of money specified in said several bonds and coupons respectively, when the same shall be respectively due and payable, upon the presentation and demand of payment thereof at the office of said company in the city of Mobile, or 75 within three months after such presentation and demand of payment, then this indenture shall be void and of no effect, and useless, and until the said railroad company shall make default of payment as aforesaid it shall be entitled to have possession, use, and control of all the said property.

But if the said Mobile and Ohio Railroad Company shall fail to pay the said several sums of money, or any or either of them in said several bonds and coupons respectively specified, to the said James Crawford, or such person or persons as may be the holder or holders thereof, or of any of them, when the same shall be due according to the tenor and effect thereof, upon presentation and demand of payment thereof at the office of said company in the city of Mobile, and shall continue such default of payment for three months after such presentment and demand of payment, then upon and by such default and such continuance in default, the principal sum of money in each of said bonds respectively
specified shall become and be then presently due and payable,
76 and such default and continuance in default as aforesaid, the said
William D. Dunn, John Reid, j'r, and Robert C. Crawford, or any or either one of them, upon the written request of said James Crawford or of any other person or persons holding said bonds or coupons, or either of them, shall and may sell the said property hereby conveyed to them, or any part thereof, at public auction in the city of Mobile, to the highest bidder for cash, after first giving at least three months' previous notice of the time, place, and terms of any such sale, by advertisement in some newspaper published in the city of Mobile and also in some newspaper published in the city of Jackson, Mississippi, and full power and authority are hereby given to the said William D. Dunn, John Reid, j'r, & Robert C. Crawford, and to either one or more of them, to make any such sale, and to execute a proper deed or deeds to the purchaser or purchasers at such sale, on the payment by such purchaser or purchasers of the purchase money for such property, and the said William D. Dunn, John Reid, j'r, and Robert C. Crawford, or such of
them as shall act under the power hereby conferred, shall use and
77 apply the monies arising from any such sale, after first paying
therefrom the reasonable expenses of such sale and of the execution of this trust to and for the payment of the money due on said bonds and coupons, with interest thereon, rateably and equally to such person or persons as may then be the holders of such bonds and coupons or any of them, and the surplus of such monies (if any there be) shall be paid to the said Mobile & Ohio Railroad Company or its assigns.

In testimony of all of which the said party has caused this indenture to be signed by its president, and its corporate seal to be set hereto, and the parties of the second and third parts have hereto set their hands and seals this the day and year herein first written. Memorandum: that the word "due" interlined on the 4th page of this indenture before signing and sealing the same.

AB'M MURDOCK, *Pres't.* [SEAL.]
W'M D. DUNN. [SEAL.]
JNO. REID, J'R. [SEAL.]
ROB'T C. CRAWFORD. [SEAL.]
JA'S CRAWFORD. [SEAL.]

Signed, sealed, and delivered in presence of—

Attest:
A. L. WILLOUGHBY,
Secretary M. & O. R. R.

78 STATE OF ALABAMA,
Mobile County:

Before me, O. S. Beers, a notary public in and for the State and county aforesaid, personally came James Crawford, and also Abraham Murdock, president of the Mobile & Ohio Railroad Company, who severally acknowledged that they signed, sealed, and delivered the within deed of trust as the act of the said James Crawford and of the Mobile & Ohio Railroad Company by Abraham Murdock, president, on the day and year the same bears date, and for the purposes therein contained.

Witness my hand and seal this the 25th of March, A. D. 1871.

[SEAL.] (Signed) OLIVER S. BEERS,
Notary Public.

O. S. BEERS, *Notary Public.*

STATE OF ALABAMA,
Mobile County:

Personally appeared before me, O. S. Beers, a commissioner for the State of Mississippi, residing in the city and county of Mobile and State of Alabama, and duly authorized by the laws of the State of Mississippi to take and certify the acknowledgement of deeds and instruments to be used and recorded in the State of Mississippi, Abraham Murdock, president of the Mobile and Ohio Railroad Company, and also James Crawford, both named in the foregoing deed of trust, who severally acknowledged that they signed, sealed, and delivered the foregoing deed of trust on the day and year therein mentioned as their act and deed and for the purposes therein named. 79

Given under my hand & seal as commissioner aforesaid, this 25th day of March, A. D. 1871.

[COMMISSIONER'S SEAL.] (Signed) OLIVER S. BEERS,
Commissioner.

THE STATE OF MISSISSIPPI,
Kemper County:

I, F. M. Poole, clerk of the chancery court of said county, do hereby certify that the foregoing deed was filed March 30th, 1874, and recorded March 31st, 1874, in deed-book P, pages 225, '6, '7, '8, & '9.

Given under my hand and seal of office at Dekalb, this the day and date last above written.

[SEAL.] (Sig'd) F. M. POOLE, *Clerk.*

(Indorsement:)

The Mobile & Ohio Railroad Company to William D. Dunn, John Reid, j'r, & Robert C. Crawford, trustees, &c. Deed of trust.

Received in office & recorded March 24, 1874, in record of deeds book W, pages 287, 288, 289, & 290.

Attest:

JAMES A. ABRAHAMS,
Judge Probate, Sumter Co., Ala.

Received for record March 30, 1874.

(Sig.) F. M. POOLE, *Clerk.*

Attest:

EXHIBIT H.

Extract from the minutes.

OFFICE MOBILE & OHIO R. R. CO.,
Mobile, Nov. 10th, 1873.

Whereas this board by resolutions passed on the 18th day of April, 1873, in pursuance of instructions by the stockholders of this company proposed at their annual meeting on the 15th of April, 1873, and adopted by their vote on 17th April, 1873, for the purpose of apportioning among said shareholders property of the company acquired since its organization, but not represented by the stock-certificates theretofore issued, and of equalizing all proprietary interests therein, directed the issue to such stockholders of certificates for additional stock to an amount equal to that then held by them, on condition, however, of a money payment to the company by them respectively of twenty-five dollars for each share of such new stock, to be paid in installments of $5 on 1st of July, 1873; $10 on 1st Nov., '73; $5 on 1st Jan'y, '74; $5 on 1st April, 1874; with interest on such portions as should not be promptly paid at the said dates.

81 And whereas said money payment, while it was necessary to
equalize such new issue of stock with that formerly issued, is also of essential importance to the company in order to raise means to meet the obligations of the company for whose payment such unrepresented property of the company is liable.

And whereas a portion of such new stock remains unapplied for, and has been forfeited to the company, while a large portion of said stock has been claimed and payment therefor in whole or in part duly made on the terms heretofore declared, and the interest of the company will be advanced by the realizing by the company at an early day of the full amount of said twenty-five dollars per share not yet fully paid up:

Now, then, to secure this end, and to place all persons who, on or before the first of January, 1874, shall under these resolutions have advanced to this company the said assessment of twenty-five dollars per share of new stock on an equal footing—

1st. Be it resolved that the president of this company cause to
82 be prepared and executed under the seal of the company, in
such sums and denominations as may be most convenient, with proper letters and numbers for purpose of record, bonds of this company to an amount in the aggregate not exceeding one-fourth of the par value of the whole issue of new stock which may be issued under these and the former resolutions.

Said bonds shall be dated December the first, 1873, and made payable ten years thereafter, at the city of New York, and bear interest at the rate of eight per cent. per annum, payable quarter-yearly at the office of Mess'rs Duncan, Sherman & Co., in the city of New York, and may be registered bonds or with coupons for interest attached, at the option of the party to whom said bonds under these resolutions may be delivered.

And the said company, by its president or either of its vice-presidents, may contract for the disposal of said bonds as provided by these resolutions before the same are ready for delivery.

2nd. Be it further resolved that the bonds issued hereunder as registered bonds shall be duly registered in a proper book, and of which
83 duplicate shall be kept at the office of Mess'rs Duncan, Sherman

the office of Duncan, Sherman & Co., and bear interest as provided in the foregoing resolution, all under such rules and regulations as the president of this company may prescribe, which said registered bonds may at any time be converted into coupon bonds at the option of the holder thereof upon presentation of the same to Mess'rs Duncan, Sherman & Co., at their office in the city of New York.

3rd. Be it further resolved that each and every stockholder who under these resolutions may be entitled to an issue of new stock, and who already has or have paid or on or before the 1st of January, 1874, shall have paid the said twenty-five dollars per share to the company under these or the former resolutions of this board, or his assignee or assignees, shall be entitled to receive therefor the bond of this company provided for in the foregoing resolutions, to an amount equal to the aggregate of the sum so paid by him or them. But said bonds shall
84 only be delivered to said parties upon their surrender to the company or to the trustees hereinafter named for cancellation, all certificates of new stock or of partial payments of new stock heretofore issued to them under the former resolution of this board providing for the issue of such new stock.

4th. Be it further resolved that the holders of bonds issued and received under the foregoing resolutions shall, at any time before the maturity of said bonds, upon the delivery of said bonds to the agents and trustees of this company hereinafter named, and who are duly authorized to act in the premises, be entitled to receive therefor shares of the capital stock of this company at the rate of one share for every twenty-five dollars of the principal of the bond or bonds so delivered up and returned.

5th. Be it further resolved that the president of this company cause forthwith to be prepared certificates for new stock corresponding to the amounts of new stock which each shareholder will be entitled to under these resolutions, which said certificates, when so prepared, the
85 said president shall place in the hands of Mess'rs Duncan, Sherman & Co. in trust, and as trustees for the use and benefit of the holders of the bonds authorized by these resolutions under the terms of the last foregoing resolution. And said Mess'rs Duncan, Sherman & Co. are hereby authorized and empowered, upon the delivery to them of any of the bonds issued hereunder before the maturity thereof, to deliver to said bondholders so surrendering his bonds a certificate of stock at the said rate of one share of stock for every twenty-five dollars of the principal of the bonds so returned, and shall immediately notify the company of every such exchange of bonds for stock. And thereafter the holder of such stock so issued shall be entitled in full to all the rights and privileges of a stockholder in this company to the extent of the stock so issued to him.

All certificates for stock running in the hands of Mess'rs Duncan, Sherman & Co., uncalled for at the maturity of said bonds, shall thereupon be by them returned to the company to be cancelled. The certificates of stock authorized by this resolution may be issued with
86 the name of the holder in blank, or to Mess'rs Duncan, Sherman & Co., trustees hereunder, as may be found most expedient.

6th. Be it further resolved that each bond issued hereunder shall contain such reference to the stock in whose right it is issued that the said stock can be ascertained and identified.

7th. Be it further resolved that the foregoing resolutions shall in no way interfere with the rights of stockholders to receive their new stock on compliance with the terms of the resolutions of this board heretofore adopted on the 18th day of April, 1873.

MOBILE, *May 5th*, 1875.

I hereby certify the above to be a true copy from the minutes.

A. L. WILLOUGHBY,
Secretary M. & O. R. Co.

87

EXHIBIT J.

Extract.—Minutes board of directors of the Mobile and Ohio Railroad Company at meeting held in Mobile, April 23, '75.

Whereas, by reason of depression in business from causes beyond the control of this company, the resources of the company have, during the past two years, been greatly lessened, so that the company has been unable to meet and discharge the semi-annual interest-coupons due upon its first-mortgage bonds in May and November, 1874, and the interest coupons upon its Tennessee substituted mortgage in July, 1874, and January, 1875, and the interest-coupons upon its second mortgage due in March, 1875, which said coupons remain unpaid, and may at any time be enforced against the company by the holders thereof; and

Whereas the company will be unable to pay the next accruing interest upon its first-mortgage debt; and

Whereas, in the course of its business, the company has contracted certain unsecured liabilities known as floating debt which it has
88 been unable promptly to discharge at maturity, upon which suits are pending; and

Whereas the business and property of the company extend through four States of the Union, and are subject to the jurisdiction of courts acting under distinct governments at the suit of the creditors of the company, some of whom have already commenced proceedings for the recovery of judgments, and to obtain execution upon their claims, whereby the property pledged in the mortgages will be exposed to seizure and sale, and other complications may arise and sacrifice of property may be made, which property, if cared for, will suffice for the payment of all the just debts of the company without detriment to the just rights of the mortgage creditors of the company;

And whereas, by its deed of mortgage and trust first made, and which was executed the 1st day of November, 1853, the faith of this company is pledged to put the trustees of the holders of the bonds issued under authority of said deed in possession of the property conveyed thereby on demand in default of payment of interest on said bonds as therein covenanted for security against loss upon their said debts and demands; and

89 Whereas the contingency of defaults in payments of interest provided for therein has occurred:

Resolved by the board of directors of the Mobile and Ohio R. R. Co., That the existing trustees of the first mortgage and deed of trust of this company, executed the 1st day of November, 1853, to wit, William Butler Duncan and Andrew Foster Elliot, be placed in possession of the property conveyed by said deed in trust for the security of the holders of the bonds and coupons described in said mortgage or deed of trust. And it shall be the duty of the vice-president of said company to place, and he is hereby instructed to place, the said trustees in full and actual possession and control of all the property of every name and kind, and each and every parcel thereof, and of each and every article thereof described in or embraced in or covered or covered by the said deed of trust and mortgage executed as aforesaid, to be by said trustees held,

used, managed, and applied as trustees aforesaid, to and for the objects, purposes, and trusts disclosed or described in said deed of trust
90 and mortgage upon their demand.

And the vice-president upon so placing said trustees in possession as herein directed, will take from them and their agents and servants full inventory of all the property of every kind so received by them under this resolution.

And from and after the delivery to said trustees as aforesaid, it shall be the duty of each and every officer, agent, employee, and servant of the company to account to, and in all respects to obey the instructions, orders, and directions of said trustees or their officers, agents, employees, and servants for the purposes of maintaining the possession so delivered to said trustees.

And in order to protect and to secure the possession of the said trustees, and to obtain the aid and assistance of the judicial tribunals of the United States, or of the States through which the railroads of the company have been constructed, and on which the property of the company is situated, it is further

Resolved, That the said trustees be empowered and requested to
91 bring suitable suits for the settlement of the affairs of the company, and be authorized to apply for such additional powers as receivers and as trustees administering trust property and funds as may be entirely adequate to attain the objects of these resolutions, and to pursue the rights of the mortgagees, creditors, and stockholders respectively.

And it is further resolved, That in case possession be taken, and that the administration of the property be so conducted, the vice-president of the company shall be authorized and empowered to accept service of all process against the company in any such suits, and that service of process upon him shall be valid and sufficient service, and also that he perform all acts as president of this board, whenever it may be necessary for the company and the board of directors to act adversely to or concurrently with the trustees.

I certify the foregoing to be a true copy from the minutes of the board of directors of the Mobile & Ohio Railroad Co.

[SEAL.] A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

92 EXHIBIT K.

Assent of R. T. Wilson, A. Iselin, W. B. Duncan, of Tenn. sub. mort. trustees.

Circuit court of the United States, southern district of Alabama.

In the matter of the application of W'm Butler Duncan and A. Foster Elliot to be receivers of the Mobile & Ohio Railroad Company.

We, the undersigned trustees in the deed of trust of the Mobile & Ohio Railroad Company, bearing date the first day of July, 1871, to secure bonds issued by the said company, called the Tennessee substitution bonds, amounting to $1,685,000, do hereby express our willingness, as such trustees, that the said William Butler Duncan & A. Foster Elliot be appointed receivers of the entire line of the Mobile & Ohio Railroad, with its appurtenances & equipments, including the line in Tennessee, which is subject to the said substitutional mortgage, pro-

vided it be made a part of the order appointing said receivers; that the entire nett income derived under such receivership from the portion of the said line situated in the State of Tennessee, or on its appurtenances & equipments, after payment of its proper proportion of the expenses & charges of such receivership, shall be applied in the
93 first instance to pay the interest in arrear & current accruing interest upon the said $1,685,000 of bonds secured by said substitutional mortgage.

R. T. WILSON, *Trustee.*
ADRIEN ISELIN, *Trustee,*
By A. ISELIN, J'R.,
W. BUTLER DUNCAN, *Trustee.*

Executed before me, in the city of New York, this 30th of April, 1875.

[SEAL.] THEO. E. LEEDS,
Notary Public, N. Y. C.

EXHIBIT L.

Assent of W. Butler Duncan & S. L. M. Barlow, trustees of cons'd M.

Circuit court of the United States, southern district of Alabama.

In the matter of the application of W'm Butler Duncan and A. Foster Elliot to be receivers of the Mobile and Ohio Railroad Company.

We, the undersigned trustees in the deed of trust of the Mobile & Ohio Railroad Company, bearing date the 1st day of January, 1874, to secure bonds issued by the said company, known as the consolidated bonds of the 1st January, 1874, amounting to $15,000,000, have taken cognizance of the resolution of the board of directors of the twenty-third day of April, 1875, providing for the surrender of the property of said corporation to the trustees appointed under the deed of trust of the 1st November, 1853, to wit, W'm Butler Duncan and A. Foster Elliot, and providing otherwise for the administration of the said property and for suits to settle its affairs, do consent to the said resolutions and approve of the provisions of the same, and, after, to the appointment of the said persons as receivers, upon the assurance we have that the rights, claims, and interests of the bondholders we represent will be preserved
94 and maintained, according to the order of lien to which they are entitled.

W. BUTLER DUNCAN, *Trustee, &c.*
SAMUEL L. M. BARLOW.

CITY & COUNTY OF NEW YORK, *ss:*

On this thirtieth day of April, eighteen hundred & seventy-five, before me personally came W. Butler Duncan and S. L. M. Barlow, trustees, to me known to be the individuals described in and who executed the within instrument, and acknowledged that they executed the same for the purpose therein mentioned.

HENRY C. EMMET,
Notary Public.

Bill filed May 11th, 1875.

N. W. TRIMBLE,
Clerk.

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and the southern district of Alabama, at Mobile.

WILLIAM BUTLER DUNCAN AND ANDREW FOSTER Elliott, complainants, *vs.* THE MOBILE AND OHIO RAILROAD COMPANY, William D. Dunn et al., defendants.	In equity.

The President of the United States of America to the Mobile and Ohio Railroad Company, William D. Dunn, John Reid, j'r, and Rob't C. Crawford, who are citizens of the district aforesaid, and of the State of Alabama, and George H. Young, who is a citizen of the State of Mississippi, and Samuel Williams, who is a citizen of the State of Tennessee, greeting:

You and each of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any
97 other excuse, you, and each of you, personally, be and appear before the judge of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, at Mobile, at the clerk's office of the said court in the city of Mobile, at rules to be had on the first Monday of June (being the 7th day of said month) next, to plead to, answer, or demur to a bill of complaint exhibited against you in the said court by William Butler Duncan, who is a citizen of the State of New York, and Andrew Foster Elliott, who is a citizen of the State of Louisiana, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit; and have there then this writ.

To the marshal of the United States for said district to execute.

Witness honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court at Mobile this the 4th Monday of December, in the year of our Lord one
98 thousand eight hundred and seventy-four, and the Independence of the United States of America the ninety-ninth year.

Issued May 12th, 1875.

Attest:

N. W. TRIMBLE, *Clerk.*

NOTE.—The defendant is required and hereby notified to enter appearance in the above-entitled cause in the clerk's office of said court in the custom-house building in the city of Mobile on or before the rule-day next ensuing, to wit, the first Monday of June, anno Domini 1875, or the bill may be taken pro confesso against them.

N. W. TRIMBLE,
Clerk, &c.

JNO. A. CAMPBELL & HAMILTON,
Complainants' Solicitors.

Received in office this 12th day of May, A. D. 1875, and executed by serving copy of the within subpœna on William D. Dunn, John Reid,

j'r, Robert C. Crawford, and executed on the Mobile and Ohio
99 Railroad Company by serving copy of the within subpœna on T. Haskins Du Puy, vice-president of the Mobile and Ohio Railroad Company. All the above-named persons have accepted service before me this 12th day of May, A. D. 1875.

George H. Young and Samuel Williams could not be found in my district.

R. W. HEALY,
U. S. Marshal.
By GEO. COTTIN,
Deputy.

100 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and the southern district of Alabama, at Mobile.

WILLIAM BUTLER DUNCAN & ANDREW Foster Elliott, complainants, *vs.* THE MOBILE AND OHIO RAILROAD COMPANY, William D. Dunn, John Reid, j'r, et al., defendants.	In equity.

The President of the United States of America to William Dickson, who is a citizen of the district aforesaid and of the State of Alabama, greeting:

You and each of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you and each of you personally be and appear before the judge of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, at Mobile, at the clerk's office of
101 the said court in the city of Mobile, at rules to be had on the first Monday of July (being the 5th day of said month) next, to plead to, answer, or demur to a bill of complaint exhibited against you in the said court by William Butler Duncan, who is a citizen of the State of New York, and Andrew Foster Elliott, who is a citizen of the State of Louisiana, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit, and have you there then this writ.

To the marshal of the United States for said district to execute.

Witness honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Mobile, this the 4th Monday of December, in the year of our Lord one thousand eight hundred and seventy-four, and the Independence of the United States of America the ninety-ninth year.

Issued May 19th, 1875.

Attest:

102 NATHANIEL W. TRIMBLE, *Clerk.*

NOTE.—The defendant is required and hereby notified to enter appearance in the above-entitled cause in the clerk's office of said court, in the custom-house building, in the city of Mobile, on or before the rule-day next ensuing, to wit, the first Monday of July, anno Domini 1875, or the bill may be taken pro confesso against them.

NATHANIEL W. TRIMBLE, *Clerk, &c.*

JNO. A. CAMPBELL &
P. &. T. A. HAMILTONS,
Complainants' Solicitors.

Received in office this 25th day of May, A. D. 1875, and executed by serving copy of the within subpœna on William Dickson this 4 day of June, A. D. 1875.

R. P. BAKER,
U. S. Marshal,
By GEO. W. CREAMER,
Deputy.

103 *Amendment to bill.*

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN & A. FOSTER ELLIOT *vs.* MOBILE AND OHIO RAILROAD COMPANY, William D. Dunn, George H. Young, et als. } In equity.

Come the complainants this 19th day of May, 1875, and amend their bill filed in this cause as follows, before copy of said bill is taken out:

In the 12th line of 1st page strike out "Samuel Williams," and insert "William Dickson."

In same line strike out "Tennessee" and insert "Alabama."

Amend 31st, 32, 33, 34, 35, 36, & 37th lines of the 5th page, so as to read after the comma, in place of as now appears, thus, "who was a citizen of the State of Tennessee, since deceased, as trustees to secure of certain bonds described in said deed, and which were authorized to be issued by certain resolutions of the board of directors of said railroad company. Robert A. Baker and Samuel Williams, who were named in said deed as two of the trustees therein, have since the execution thereof died, and their place has been filled by the appointment of William D. Dunn and William Dickson, who are each citizens of the State of Alabama, and who are now the trustees of said property conveyed by said deed, and clothed with the title, rights, and powers granted by said deed." 104

Amend the prayer for process in the 40th line of the eleventh page of the bill, by inserting "William Dickson" in place of "Samuel Williams," who was dead before the filing of said bill.

(Signed) JNO. A. CAMPBELL,
P. & T. A. HAMILTON,
Sol'r Compl'ts.

(Endorsed:) Filed in office May 19th, A. D. 1875. Nathaniel W. Trimble, clerk.

105 *Affidavit of non-residence of Geo. H. Young and W'm Dickson.*

Circuit court of the United States, the southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT, trustees,
vs.
MOBILE AND OHIO RAILROAD COMPANY, W'M D. Dunn, William Dickson, George H. Young, et als.
} In equity.

Comes P. Hamilton, who, being duly sworn, on oath saith he is of counsel for complainants in the above-entitled cause; that George H. Young is not inhabitant of the southern district of Alabama, but of the State of Mississippi, and his post-office, as affiant is informed and verily believes, is Waverly, in said State; that William Dickson is not inhabitant of this district, but of the northern district of Alabama, and his post-office, as affiant is informed and verily believes, is Dickson, in Colbert County.

(Signed) P. HAMILTON.

Sworn to and subscribed before me this 8th June, A. D. 1875.

N. W. TRIMBLE, *Clerk.*

Filed June 8th, 1875.

N. W. TRIMBLE, *Clerk.*

106 *Order of notice to non-resident def'ts.*

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT, trustees,
vs.
MOBILE AND OHIO RAILROAD COMPANY, W'M D. Dunn, George H. Young, William Dickson, et als.
} In equity.

It appearing to the court that this suit is brought to enforce an equitable lien both on real and personal property within the southern district of Alabama, and that the defendants William Dickson and George H. Young are not inhabitants of said district, nor found within said district, and have not voluntarily appeared to said suit, and further, that said William Dickson is an inhabitant of the northern district of Alabama, and his post-office is Dickson, in Colbert County, that said George H. Young is an inhabitant of the State of Mississippi, and his post-office is Waverly in said State: It is therefore ordered
107 that said defendants be required to appear, plead, answer, or demur to the bill of complaint filed in this cause, on or before the first Monday of August, 1875, and that a copy of this order be served on each of said defendants personally, or by letter by mail directed to their respective addresses at least twenty days before the said first Monday of August, 1875.

(Signed) J. P. BRADLEY, *J.*

Filed June 8th, 1875.

N. W. TRIMBLE, *Clerk.*

108 *Affidavit by clerk of service of notice on Geo. H. Young & W'm Dickson.*

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'm Butler Duncan, A. Foster Elliott, trustees,
vs.
Mobile & Ohio Railroad Company, W'm D. Dunn, George H. Young, et als.
} In equity.

Personally comes Henry S. Skaats, who is the deputy clerk of the circuit court of the United States for the district and circuit aforesaid, who, being duly sworn, on his oath saith that in obedience to the order of his honor J. P. Bradley, the circuit justice of said circuit, made in the above-entitled cause on the 8th day of June, 1875, he prepared copies of the said order, and mailed one copy thereof to George H. Young, and to him directed at Waverly, in the State of Mississippi, and another copy thereof to William Dickson, directed to Dickson, Colbert County, Alabama, to the said William Dickson, and deposited the same, 109 so marked and directed, in the post-office at Mobile, for carriage and delivery by mail to the said George H. Young and William Dickson, and that he so prepared, directed, and mailed said copies of said order at Mobile to said George H. Young and William Dickson, and each of them, more than twenty days before the first Monday of August, 1875, which was the second day of said month.

(S'g'd) HENRY S. SKAATS.

Subscribed and sworn to before me this 6th day of Dec'r, 1875.

(S'g'd) JOHN H. WALLACE,
U. S. Commissioner, Sou. Dist. of Ala.

Filed December 6th, 1875.

N. W. TRIMBLE, *Clerk.*

110 *Decree pro confesso.*

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

W'm Butler Duncan, A. Foster Elliott, trustees,
vs.
The Mobile and Ohio Railroad Company, W'm D. Dunn, John Reid, j'r, et als.
}

At Rules, *December* 6, 1875.

Come the complainants, by their solicitors, and move that the bill of complaint in the above-entitled cause, pending in this court, be taken as confessed against the said defendants W'm D. Dunn, George H. Young, and William Dickson, who are trustees of the mortgage described in the bill, and which was executed by the said Mobile and Ohio Railroad Company, bearing date the 15th day of February, 1860, and against the said Dunn and John Reid, j'r, and Robert C. Crawford, who are trustees of the mortgage executed by the said Mobile and

111 Ohio Railroad Company, upon the branch railroad known as the Gainsville Branch, and dated 24th day of March, 1871.

And it appearing from the return of the marshal upon the subpœnas issued in said cause that said William D. Dunn, John Reid, j'r, and Robert C. Crawford were duly served with subpœna in the cause, and accepted service thereof on the 12th day of May, 1874, and it also appearing from the affidavit on file of Henry S. Skaats, deputy clerk of this court, that said William Dickson and George H. Young, who are non-residents of this district, were notified of the filing of said bill, and were summoned to appear and plead, answer, or demur thereto, on or before the first Monday of August, 1875, by mailing to them respectively, at their respective post-offices, copies of the order of the court of the 8th day of June, 1875, more than twenty days before the first Monday of August, 1875, whereby they were directed to make appearance on or before the said 1st Monday of August, 1875, and the said parties having
112 failed to appear, plead, demur, or answer said bill of complaint, as thereto required, it is ordered that the allegations of said bill of complaint be taken as confessed by the said defendants William D. Dunn, George H. Young, William Dickson, John Reid, j'r, and Robert C. Crawford.

(Signed) N. W. TRIMBLE,
Clerk & Master.

113 *Order setting aside decrees pro confesso.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

SATURDAY MORNING, *January 8th*, 1876.

Court met pursuant to adjournment. Present, the honorable W'm B. Woods, judge, presiding.

W'M BUTLER DUNCAN, ANDREW FOSTER ELLIOTT,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET ALS.
} No. 90. In equity.

In this cause, by consent and on motion of counsel for the same, the decrees pro confesso against Geo. H. Young, William Dickson, and W'm D. Dunn, trustees of the second mortgage, are set aside and said trustees are allowed thirty days within which to file their answers to the bill of complaint.

114 *Answer of M. & O. R. R. Co. with report of the auditor of said road referred to in answer.*

In the circuit court of the United States, southern district of Alabama, fifth judicial circuit, at Mobile.

To the honorable the judges in said court presiding:

The separate answer of the Mobile and Ohio Railroad Company, defendant, to the bill filed by W'm Butler Duncan and Andrew Foster Elliott, trustees, in this honorable court against said corporation, William D. Dunn and others, respectfully shews:

The said Mobile and Ohio Railroad Company, defendant, being a cor poration chartered by the States of Alabama, Mississippi, Tennessee, and Kentucky, for answer to the said bill and to so much thereof as it is required to answer, reserving all legal exceptions, answering, says—

1st. That it is true as inquired of in the first interrogatory of the complainants' bill, that it did execute and deliver the several deeds of trust and mortgage at the times and dates in said bill mentioned, for the purposes therein mentioned.

115 2nd. And in response to the second interrogatory in said bill propounded, it answers and says, that the interest due by coupons attached to bonds issued by this corporation under the terms of the deed of trust and mortgage, bearing date on the first day of November, eighteen hundred and fifty-three, has not all been paid, but that as to a portion of said coupons past due there has been a default for want of payment when due.

3rd. For answer to the third interrogatory, it answers and says, that default has continued since May, eighteen hundred and seventy-four, on the coupons then matured, and on the portion due on the first of November, eighteen hundred and seventy-four, since said last mentioned day. The amounts so in arrear and unpaid are stated fully and particularly as called for by said third interrogatory, and referred to in the second interrogatory, and are shown and explained in the schedule 116 of the auditor of this company herewith filed and explained under the heads of answers to interrogatories second and third therein, as taken from the books and records of the company.

4th. To the fourth interrogatory of the bill, it says, that a default has also occurred in respect to the payment of the interest due upon the bonds known as the Tennessee substitution bonds. The amount so in default, and the times when it occurred, are specially stated in said auditor's report, under the proper number of the interrogatory therein mentioned.

To the fifth interrogatory, for answer thereto, this defendant refers to the fifth answer and statement in the said auditor's report, in which the matter of this interrogatory is shewn and set forth.

To the sixth interrogatory this defendant says that the matter inquired of is fully set forth and answered by the said auditor's report as answer six.

117 To the seventh interrogatory, this defendant for answer thereto refers to answer seven in the auditor's report, in which the matter inquired of is shewn.

To the eighth, ninth, and tenth interrogatories of said complainant's bill, this defendant answers in the affirmative.

The statements in the bill referred to in said three interrogatories being true as stated therein.

To the eleventh interrogatory of said bill, this defendant answers, that its business appeared to be promising and prosperous, but that owing to the devastations caused by the late war, the destruction of its road and property constantly repeated, and derangement of its business has been so great, that the enormous expense incurred in reinstating the road and its business since the war to make it promptly serviceable to the public, has so far exhausted its resources, that this, to which 118 has been added the unparallel*led* shrinkage of values, and the depression of business recently, that the company has been unable to meet its engagements and pay its obligations as they matured, and it is now unable to do so, in common with all other like institutions in the country, States, cities, counties, and corporations.

To the twelfth interrogatory, this defendant refers to the twelfth answer in the report of the auditor of the company, herewith filed as aforesaid, in which the information is afforded which is called for by this interrogatory.

To the thirteenth interrogatory, this defendant says, that the amount of unsecured debt, and how represented, appears in the statement of the auditor, numbered for answer to this interrogatory.

To the fourteenth interrogatory, this defendant answers that the amounts set forth in the exhibit of the auditor are disclosed as
119 called for by this interrogatory under the fourteen in said report.

And this defendant for further answer to said bill says, that it admits that it is justly indebted in the amounts shewn by all those bonds, such as have been properly issued under the several mortgages and deeds of trust in said complainant's bill charged and referred to; that the proper holders of said bonds are creditors of this corporation according to their legal effect, and therefore are entitled to payment thereof according to their proper legal right of priority; wherefore this defendant prays that the true right of priority of said creditors may by proper reference, examination, and ascertainment as this court shall direct be settled and determined by the decree of this court as to each respectively, as well as the validity and priority and amounts due to all the creditors of this company.

120 And this defendant further prays that inasmuch as all residue of property or funds which may remain after the satisfaction of all just demands found to be due from the same, will justly belong to this defendant, it prays that the best mode of satisfying said debts and securing such residue and surplus be adopted by the decree of this court, and in order to arrive at the best mode, that a reference and inquiry be ordered to inquire of, ascertain and report to this court the value of all the property and assets of this defendant, and of the different portions and parcels thereof, and also as to the best mode and manner in which the said property and assets can be disposed of to the best advantage and for the benefit of all concerned; and also whether sale of the same should be made, foreclosure decreed of said mortgage, or other mode, or whether the same can be effected by amicable settlement, and the particular terms on which the subject of contro-
121 versy can *can* properly be closed and decreed, so as to save and
protect the interests of all parties according to their just rights.

And this defendant having fully answered the said bill so far as it is advised material and necessary to answer the same, prays that such decrees and orders be made in the premises as may be deemed right and proper in equity.

All of which is respectfully submitted.

(S'gn'd) GEORGE N. STEWART,
Solicitor for Def'ts.

MOBILE, *May 22nd*, 1875.

The foregoing is the answer of the Mobile and Ohio Railroad Company to the bill of W. B. Duncan and Andrew Foster Elliot in this honorable court, filed against this defendant and others. In testimony whereof said defendant has caused this its answer to be sealed with the seal of said corporation defendant, and signed by its presiding
122 officer, the vice-president of said company, and attested by its

secretary, on this 22nd day of May, in the year eighteen hundred and seventy-five.

[SEAL.] (S'gn'd) THE MOBILE AND OHIO R. R. CO.,
By T. HASKINS DUPUY,
Vice-President.

Attest: (S'gn'd) A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

Filed Jan. 17th, 1876.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

EXHIBIT.

The report of the auditor of the Mobile and Ohio Railroad Company, filed with the answer of said company to the bill of complaint of W'm Butler Duncan and Andrew Foster Elliot, trustees, against said company and others, in the circuit court of the United States for the fifth judicial circuit of the United States, southern district of Alabama, at Mobile, in equity; referred to by the answer of said Mobile and Ohio Railroad Co.

123 Answer to interrogatory 2.

The M. and O. R. R. Co. is in default on payment of interest-coupons due upon the bonds issued by said corporation, under the terms of the deed of trust and mortgage bearing date on 1st Nov., 1853, as follows:

Interest-coupons on 3,132 non-certificate sterling bonds, annual interest 65.00 gold, on each bond. Amount in default May 1st, 1874, $101,790.00 gold.

Interest-coupons on 2,554 certificate sterling bonds, annual interest 80.00 currency, on each bond. Amount in default May 1, 1874, $102,160.00 currency.

Interest-coupons on $35,200 interest-bonds, annual interest 8%, currency. Amount in default May 1, 1874, $1,408.00 currency.

124 Interest-coupons on $842,100, 10-year interest-bonds, annual interest 8% currency. Amount in default May 1, 1874, $33,684.00 currency.

Interest-coupons on $647,000 funded interest-bonds, annual interest 8% currency. Amount in default May 1, 1874, $25,880.00 currency.

Interest-coupons on $769,920 sterling interest-bonds, annual interest 6% gold. Amount in default May 1, 1874, $23,097.60 gold.

Answer to interrogatory 3rd.

Said default has continued since 1st May, 1874, upon the portion which then matured, and since 1st Nov., 1874, upon the portion which then matured, and since 1st May, 1875, upon the portion which then matured; all of which is in arrear and unpaid.

125 Answer to interrogatory 4.

The said corporation is also in default in payment of interest-coupons due upon the bonds known as the Tennessee substitution bonds, as follows:

Interest-coupons on $1,668,000.00 Tennessee substitution bonds, annual interest 7% gold. Amount in default July 1st, 1874, $58,380.00 gold.

And said default has continued since first July, 1874, upon the portion which then matured, and since 1st January, 1875, upon the portion which then matured; all of which is in arrear and unpaid.

Answer to interrogatory 5.

And also in default in payment of interest-coupons due upon its obligation secured by what is known as the 2nd mortgage or deed of
126 trust, bearing date 15th of February, 1860, as follows:

Interest-coupons on 304,158.47, liquidation or 4th issue, "L," annual interest 8%, currency. Amount in default M'ch 1, 1875, $12,166.33 currency.

Interest-coupons on $893,500.00, series R, S, T, and U, annual interest 8% currency. Amount in default M'ch 1, 1875, $35,740.00 currency.

Interest-coupons on $256,200.00, series R r, S s, and U u; annual interest 8% currency. Amount in default M'ch 1, 1875, $10,248.00 currency.

And said default has continued since 1st March, 1875, upon the portion which then matured, and is in arrear and unpaid.

127 Answer to interrogatory 6.

And also in default in payment of interest upon the bonds secured by the mortgage and deed of trust on the line of road known as the Gainesville branch, as follows:

Interest coupons on 53,000 Gainesville branch bonds, annual interest 8% currency. Amount in default 1 May, 1874, $2,120.00 currency.

The said default has continued since 1 May, 1874, upon the portion which then matured, and since 1 Nov., 1874, upon the portion which then matured, and since 1 May, 1875, upon the portion which then matured, all of which is in arrear and unpaid.

Answer to interrogatory 7.

And the said corporation is also indebted to other persons and
128 parties, who are holders of bonds, bills, notes, and other evidence of debt not secured by specific liens upon property of said company, amounting to $1,798,545.66, as follows:

Convertible bonds	$977,550 00
Notes extended	558,805 55
Notes past due	27,651 85
Labor	104,505 67
Supplies, secured by notes	53,702 49
Supplies, unsecured	76,330 10

Answer to interrogatory 12.

The bonded and mortgage debt of said corporation is $12,132,628.47, secured and represented as follows:

A series of 1st mortgage bonds, amounting in the aggregate to the sum of (Secured by deed of mortgage dated 1 Nov., 1853.)	$5,686,000 00
129 A series of bonds called interest bonds, amounting in the aggregate to	842,100 00

A series of bonds called interest arrear bonds, amounting in the aggregate to..	35,200 00
A series of bonds called funded interest bonds, amounting in the aggregate to....	647,000 00
A series of sterling interest bonds, amounting in the aggregate to	769,920 00
(Which last four items are for interest on the said 1st mortgage debt.)	
A series of bonds called Tennessee substitution bonds, amounting in the aggregate to	1,668,000 00
(Upon which a lien exists upon the co's road in that State.)	
A series of 2nd mortgage bonds, amounting in the aggregate to	$1,453,858 47
(Secured by a mortgage, dated Feb'y 15, 1860.)	
130 A series of bonds issued upon the Gainesville branch, amounting in the aggregate to......	53,000 00
(Secured by mortgage upon said Gainesville branch.)	
A series of bonds called convertible bonds, issued *issued* under an authority of the board of directors, under date of 10 Nov., 1873, amounting in the aggregate to the sum of....	977,550 00

Answer to interrogatory 13.

The indebtedness of said corporation, not secured by specific liens or bonds and notes, is as follows:

Labor....	104,505 67
Supplies	76,330 10

Answer to interrogatory 14.

131 The gross and net income of said corporation per month since the first day of January, 1875, is as follows:

January:	
Gross income....	$196,728 99
Net "	44,070 07
February:	
Gross income....	$156,174 55
Net "	35,925 17
March:	
Gross income....	$130,250 62
Net	5,928 93
April:	
Gross income....	$109,711 98
Not " nothing loss....	4,106 29

[L. S.] (S'gn'd) C. A. WELTON, *Aud.*

MOBILE, *May* 22, 1875.

Filed Jan. 17th, 1876.

N. W. TRIMBLE, *Clerk.*

Circuit court of the United States for the southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, complainants,
vs.
THE MOBILE & OHIO RAILROAD COMPANY AND others, defendants.
} In equity.

The answer of William D. Dunn, one of the defendants, to the bill of complaint of William Butler Duncan and A. Foster Elliot against the Mobile and Ohio Railroad Company, this defendant, and others, in the circuit court of the United States for the southern district of Alabama.

This defendant, saving to himself all benefit of any exception which might be taken to the errors and insufficiencies in said bill contained, for answer thereto, or so much and such parts thereof as he is advised it is material for him to answer, answering, saith, that he admits it to be true that his codefendant, the Mobile and Ohio Railroad Company, is a corporation, duly incorporated as in said bill alleged. 133

2. He is informed and believes, and so admits it to be true, that the said railroad company made and executed the several deeds of trust or mortgages in said bill mentioned and described, and he supposes that the exhibits thereof filed with the bill, purporting to be copies of said deeds of trust or mortgages, are true and correct copies thereof, but for greater certainty he begs leave to refer to the original deeds if necessary.

3. He is informed and believes, and so admits, that said railroad company did make and issue a large number of bonds, to secure the payment of which the said several deeds of trust or mortgages were made substantially as stated in said bill. He does not know the exact number and amount of said several classes of bonds so made and issued, and now outstanding.
134 The complainants having possession and control of the books, accounts, and papers of said railroad company, this defendant supposes that the statements made by them in said bill respecting the numbers and amounts of said several classes of bonds are correct, but for greater certainty he insists that proof be made and an account taken as to the numbers and amounts of said bonds.

4. This defendant, further answering, admits and says that he has been appointed and is now one of the trustees under the deed of trust made by said railroad company, dated February 15th, 1860, commonly called and known as the second mortgage of said railroad company, exhibited with said bill, marked "Exhibit E," this defendant having been appointed as one of the trustees under said deed, in accordance with the provisions of said deed, in lieu of Robert A. Baker, deceased, one
135 of the original trustees named in said deed. This defendant is
also the owner and holder of a number of the bonds known as the second-mortgage bonds of said railroad company, secured by said deed; the second-mortgage bonds so held by this defendant amounting in the aggregate to the sum of seven thousand six hundred and seventy-five dollars ($7,675).

5. This defendant, further answering as trustee under the said deed of trust known as the second mortgage, upon information and instructions

from some of the holders of the second mortgage bonds secured by said deed, whose right and claim he represents as one of the trustees, as aforesaid, to wit, the Rogers Locomotive and Machine Works and others, says that he does not admit that the bonds mentioned in the complainants' bill, known and described as interest bonds, or those
136 known and described as interest arrearage bonds, or those known
and described as funded interest bonds, or those known and described as sterling interest bonds, are part of the debt secured by the first mortgage of said railroad company, or that the holders of the several classes of bonds above mentioned have a lien on the property mentioned in said first and second mortgages, prior or superior to the lien of the holders of said second mortgage bonds; and he, in pursuance of such instructions, insists that if the holders of said several classes of bonds have any lien on said property, it is subsequent and subordinate to that of the second mortgage bondholders.

6. Further answering as trustee as aforesaid, and upon like information and instructions, this defendant denies that said railroad company made default in the payment of the interest on its bonds, in May, 1874, or in November, 1874, as alleged in said bill, and says that the
137 interest coupons given for the interest on said bonds, which fell
due at those dates, was paid to the holders of said coupons on presentation and demand; and in pursuance of such instructions he desires that said coupons, or the interest on said bonds, which interest became due in May and November, 1874, are a lien on the property of said company.

7. This defendant, further answering as trustee as aforesaid, saith that the complainants, claiming to be trustees under the first mortgage or deed of trust mentioned in said bill, did demand possession of the property of said railroad company embraced in said deed, and the president and directors of said railroad company, recognizing the validity of said claim, did surrender possession of said property to the complainants as such trustees, and they are now in possession of the same.

This defendant does not know, of his own knowledge, and can-
138 not say, under oath, whether the complainants were or were not
duly and legally appointed trustees under the said first mortgage or deed of trust.

This defendant is informed that some of the owners and holders of the bonds issued by said railroad company, known as its second mortgage bonds, the payment of which is secured by the second mortgage or deed of trust in the bill mentioned, do dispute and deny that the complainants were duly appointed as trustees under said first mortgage or deed of trust, and under such information and under instructions of the said holders of said second mortgage bonds, and in their behalf, this defendant insists that the complainants be required to make due proof that they were duly and legally appointed as trustees under said first mortgage or deed of trust, and prays like benefit of this denial as if the same were specially pleaded.

139 8. This defendant further answering as trustee as aforesaid
and under like information and instructions as aforesaid, admits the execution by the said railroad company of the deed dated 1st July, 1871, exhibited with the complainants' bill marked "Exhibit D," to secure the payment of its bonds therein mentioned, commonly known as the Tennessee substitution bonds, but he does not admit that the said deed or the said Tennessee substitution bonds constitute a lien on the property of said railroad company therein mentioned, situate in the State of Tennessee, prior or superior to the lien on said property created

in favor of said second mortgage bondholders by the said second mortgage or deed of trust, and he insists that the said second mortgage bondholders have a lien on said property prior and superior to that of the Tennessee substitution bondholders.

140 This defendant further answering, as trustee as aforesaid, and under like information and instructions, denies that the said railroad company made default in the payment of the interest which fell due on any of its bonds in the year 1874, or in January, 1875; on the contrary, he says that the coupons given for such interest falling due at those dates was paid to the then holders of said coupons on presentation thereof, and he insists, on behalf of said second mortgage bondholders, that the holders of the interest coupons so paid off have no lien on the property of said railroad company.

10. This respondent further answering admits that he is one of the
trustees under the deed of trust made by said railroad company, dated
March 24th, 1871, commonly known as the Gainesville Branch Mortgage,
a copy of which, marked "Exhibit G," is exhibited with the
141 complainants' bill, and he insists that he, and his co-trustees
therein named, have a prior and superior lien on the property
thereby conveyed to them, superior to any lien of the complainants
therein.

11. This defendant further answering, saith that he is one of the stockholders of the said railroad company, being the owner of three hundred and eighty shares of the stock of said company, and as such stockholder he is interested in the franchises granted to the stockholders of said company, and in the property of said company, and in the management and disposal of said property and franchises.

12. For answer to the interrogatories in said bill this defendant refers to his foregoing answers to the statements of said bill as containing as full an answer as he is able to make to said interrogatories.

This defendant, as trustee, under two deeds of trust as herein-
142 before mentioned, has been made a party defendant to said bill
of complaint without any default on his part, and now having answered said bill, he prays to be allowed out of the trust property, or its proceeds, reasonable counsel fees and all his other proper charges and costs in this case.

(S'g'n'd) W'M D. DUNN.

(S'gn'd) W'M G. JONES,
Sol'r for Def't.

On this 22nd day of February, A. D. 1876, before me personally appeared W'm D. Dunn, who, being duly sworn, says that the matters and things stated in the foregoing answer are true, so far as the same are stated of his own knowledge, and so far as stated on information and belief, he believes them to be true.

Subscribed and sworn to before me this 22nd day of February, 1876.

(S'gn'd) W'M D. DUNN.
(S'gn'd) HENRY S. SKAATS,
U. S. Commissioner.

Filed February 22nd, 1876.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

143 *Decrees pro confesso vs. G. H. Young & W'm Dickson, & cause submitted for order of reference.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN & A. FOSTER ELLIOTT, compl'ts,
vs.
MOBILE & OHIO RAILROAD COMPANY ET AL.
} In equity.

This cause being called, on motion of the solicitors of the complainants the allegations of the bill are taken as confessed by the defendants, George H. Young and William Dickson, they having failed to answer according to the rules and orders of the court, but the complainants consent that answers may be filed by both or an answer by either of these parties within thirty days from this date, and if done, then to be considered as filed of this date; but without predjudice to this order, or any part of the same, and without prejudice to any proceedings which may be taken hereunder, and it is now ordered that the cause be
144 submitted on the pleadings, orders, and decrees for an order of reference to a master of the court to ascertain and report the matters of account, priorities, and mode of sale or settlement as suggested in the bills and answers, or as may be determined by the court.

(S'g'd) JOHN BRUCE, *Judge.*

MOBILE, *Febr'y* 24, 1876.

Filed February 24, 1876.

N. W. TRIMBLE, *Clerk.*

145 *Replication.*

In the circuit court of the United States, southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT
vs.
MOBILE AND OHIO RAILROAD COMPANY.
} No. 90.

The plaintiffs come by solicitors, and say that their bill is true, just, and proper in all of its parts, and that they are ready to support and maintain the same, and that the answers, when in conflict or opposition of the same, are untrue, uncertain, and insufficient, and this they are ready to verify.

Wherefore they pray judgment and decrees as they have heretofore prayed.

P. & T. HAMILTON,
J. A CAMPBELL,
Sol'rs for Pl'ffs.

Filed February 24th, 1876.

N. W. TRIMBLE, *Clerk.*

Circuit court of the United States, southern district of Alabama.

William Butler Duncan and A. Foster Elliott, compl'ts,
vs.
The Mobile and Ohio Railroad Company & others, defendants.

The answer of William Dickson to the bill of complaint of William Butler Duncan and A. Foster Elliott against The Mobile and Ohio Railroad Company and this defendant and others, defendants in the circuit court of the United States for the southern district of Alabama.

1. This defendant, saving to himself all benefit of any exception which might be taken to the errors and insufficiencies in said bill contained, for answer thereto, or so much and such parts thereof as he is advised it is mentioned for him to answer, saith that he admits it to be true that his codefendant, The Mobile and Ohio Railroad Company, is a corporation duly incorporated substantially as alleged in said bill.

147 2. He admits that said railroad company, on the 15th day of February, 1860, made its deed of trust, commonly known as its second mortgage, whereby it conveyed the property therein mentioned to Robert A. Baker, George H. Young, and Samuel Williams as trustees to secure the payment of its bonds therein mentioned, commonly known and described as the second mortgage bonds of said railroad company, and he supposes the exhibit marked E, filed with said bill and purporting to be a copy of said deed, is a correct copy thereof, but for greater certainty he begs leave to refer to the original deed, if deemed necessary.

He admits that he has been appointed, in pursuance of the provisions of said deed, one of the trustees under said deed, in lieu of Samuel Williams, deceased, and he is informed and admits that his co-defendant, William D. Dunn, has in like manner been appointed one of the trustees under said deed, in lieu of Robert A. Baker, deceased.

148 3. This defendant resides at the distance of more than three hundred miles from the city of Mobile, where the principal office and place of business of said railroad company is located. He has no convenient access to its books and papers, and no such knowledge or information as to its affairs and business as would enable him to answer fully the allegations in said bill respecting the business and affairs of said railroad company. He is informed and believes that said railroad company did make several deeds of trust or mortgages to secure the payment of its bonds in said deeds respectively mentioned and provided for, and he supposes that the several exhibits filed with said bill, purporting to be copies of said several deeds, are correct copies thereof, but for greater certainty he begs leave to refer to the said original deeds, and prays that they may be produced and proved for that purpose, if deemed material.

149 4. This defendant does not know and cannot answer whether the complainants have or have not been duly appointed trustees under the deed of trust made by said railroad company, dated November 1st, 1853, commonly known and described as the first mortgage of said company, a copy of which is exhibited with the bill, in lieu of the original trustees therein named; and if it be deemed material to the interests of this defendant or of the second mortgage bondholders, for whom he is trustee, he insists that due proof be made of such appoint-

ment. He is informed and believes, and so admits, that the complainants, claiming to have been duly appointed trustees under said first mortgage, have demanded possession of the property of said railroad company, and their claim being recognized by the president and directors of said company, they have been put into possession of said property as alleged in the bill.

5. This defendant does not admit that said railroad company made default in payment of the interest on its bonds, which became due and payable during the year 1874 and in January, 1875, as alleged in the bill. On the contrary, he is informed, and so alleges, that the interest which became due at those dates was paid to the then holders of the interest-coupons therefor, on presentation of said coupons and demand of payment.

150 6. As to the allegations in said bill, to the effect that the several classes of bonds therein mentioned and described as interest-bonds, and as interest-arrear bonds, and as funded-interest bonds, and as sterling-interest bonds, and as Tennessee-substitution bonds, have respectively a prior lien on the property conveyed to secure the payment of second-mortgage bonds of said company, superior to the lien of this defendant and his co-trustees for the benefit of the second-mortgage bondholders. This defendant is advised that such allegations are allegations of matters of law, and not of matters of fact, and that he is not bound to answer the same. He does not admit any such alleged prior liens, and submits those questions to the determination of this honorable court.

7. As to all other allegations in said bill, and the interrogatories in said bill not hereinbefore answered, this defendant says that he has no such knowledge or information as would enable him to answer the same more fully than hereinbefore answered, and he insists that complainants be required to prove the same.

151 This defendant has been made a party defendant as trustee to this suit without any default on his part, and, having fully answered said bill, he prays to be allowed out of said trust property, or its proceeds, reasonable counsel-fees and all other proper charges and costs in this case.

(S'g'd) W'M DICKSON.

(S'g'd) W'M G. JONES,
Sol'r for Def't.

THE STATE OF ALABAMA,
Colbert County :

Before me, Abner W. Ligon, judge of the probate court, in and for said county and State aforesaid, this day personally appeared the defendant, William Dickson, to me personally known, who, being by me duly sworn, saith that the statements in his foregoing answer so far as made of his own knowledge are true, and so far as made upon information he believes to be true.

(S'gn'd.) W'M DICKSON.

Subscribed and sworn to before me this 24th day of February, A. D. 1876.

Witness my hand and official seal.

[SEAL OF PROBATE COURT, COLBERT CO., ALA.]

(S'g'd) A. W. LIGON, *Judge, &c.*

[One dollar State of Ala., tax on seals.]

Filed March 1st, 1876.

N. W. TRIMBLE, *Clerk.*

In the circuit court of the United States, southern district of Alabama, 5th judicial circuit of the United States.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT
vs.
MOBILE AND OHIO RAILROAD COMPANY, W'M D. DUNN, George H. Young and others.
} No. 90.

AT CHAMBERS, 6th *March*, 1876.

This cause has been submitted to the court on the bill, answers, exhibits, replication, and the orders and proceedings in the suit, and a motion has been made by the plaintiffs for the appointment of a master and a reference to him of the pleadings and proofs to make the necessary inquiries and reports, to prepare the cause for a hearing.

153 And after an examination of the matters submitted, and a consideration of the motion, the court orders, that James Gillette be appointed special master for this cause, and is directed to examine the mortgage or deed of trust attached to the bill as an exhibit, and to ascertain and report the railroads, branch railroads, estates, rights, property, movable and immovable included in the terms and conditions of the same and which have come to the possession and control of the trustees, and are subject to the decree of the court in this suit.

2. The court orders that the said master report the mortgages, deeds of trust, agreements, judgments, or other instruments, which create a charge, lien, or encumbrance on the said mortgaged property with the order and priority of each of them, in imposing a charge upon the
154 said property, and entitled to payment from the same.

3. The court orders the said master to report the bonds which are secured by the respective mortgages or deeds of trust, or encumbrances and the amount thereof, and of the interest due thereon, and which form a (present or future) valid claim upon the said corporation, and if the debt exist in any other form than of bonds then that he report the debt which may be due, or may become due, on the said several securities of the said corporation; also the master will report the names of the holders of the securities of the company, which may be presented and proved to him and the sum due to each holder.

4. In taking proofs of the debt the master may receive the original bonds, coupons, or agreements of the corporation as evidence.
155 He may allow to be filed with him sworn copies of the bonds, coupons, or other forms of debt charging the property to be taken before any commissioner of the courts of the United States or other officer authorized by the laws of the United States to administer oaths and to certify depositions with affidavit of their ownership and authenticity. It shall be lawful for the master to designate in the cities of New York, London, Amsterdam, or elsewhere if needed or be found expedient, commissioners of the circuit courts of the United States, or consuls or vice consuls of the United States, to advertise for the proof of bonds and coupons, and to take proofs of the debts according to the forms of the proofs taken of claims in bankruptcy and to prescribe a mode for the identification of the bonds so presented and proved
156 to the said officers. And the said master may appoint persons in other cities to take such proof if in his judgment it may be necessary or expedient. He may also examine the books of the Mobile & Ohio Railroad Company and its officers so as to ascertain with exact-

ness the debt due by the corporation which is secured by mortgage or which create liens on the property of the corporation embraced in the mortgage of the plaintiffs.

5. The court orders that if the trustees in the deed of trust of said corporation, dated the 1st day of July, 1871, to wit: W'm Butler Duncan, Adrian Iselin and Richard T. Wilson should elect to do so to allow them to file within sixty days after the date of the filing of this order a petition to become plaintiffs in this bill and to set up therein their claims as trustees upon the said mortgaged property or any por-
157 tion of the same upon their consent to abide the order and the
decree of this court; and in the event of their election to do so, the master will take proofs of the debt due on the said mortgage or deed of trust, and shall proceed in reference to the same in the same manner as he is ordered to do in respect to the first mortgage attached to the bill and to the claims under other deeds of trust, mortgage, or other incumbrances before mentioned.

6. The master may advertise in a paper published in Mobile and New York that he is ready to receive the proofs of the debts secured by the mortgages of the company and shall give notice in the said advertisements of the mode of making proofs, and before whom they can be made, and he shall authorize advertisements to be made in London
158 and Amsterdam of a similar description by the officers to be
designated for the purpose by him. And the trustees of the several mortgages which have been produced to the court, and the Mobile and Ohio Railroad Company are required to aid and to assist the master in collecting the proofs needful to making the report of the amount of the debt due on their respective mortgages and deeds of trust, so that he may be able to perform his duty with promptitude and with accuracy in settling a report for the court.

7. The office of the master must be open for the receiving of proofs in the city of Mobile three days of every week and he may receive proofs every judicial day of the week until the 15th day of October next, on which day the time for taking proofs shall be closed unless the time be prolonged by a special order from one of the judges of the court.

159 8. The master may, during this period, make separate reports
to the court of the matters submitted and hereinafter described, which may be filed in the office of the clerk of the court for examination and for exceptions; but no report in reference to the debt so filed shall be confirmed until after the 15th day of October next, and unless it shall have been filed thirty days in the clerk's office.

9. Exceptions to the reports may be filed by the parties to the bill; but should any creditor who shall prove his claim be desirous to contest any other claim proved, and the trustees representing the claim of such creditor shall neglect or refuse to make the exception proposed by the creditor, upon proof that he has made the request of the trustee,
160 and the neglect or refusal by him, the master shall allow of the
exception or contestation, and shall report upon it as if made by the trustee.

10. The master shall make up his entire report or reports under this order, on or before the first Monday of December next, and shall file the same on or before that day, and the usual time for examination and exception shall be given after the date of the filing of the report. He may, before making his report, call the parties before him to consider of the draft of the report, and have argument or counsel thereon, and the proofs shall be open to inspection. His report shall embrace the best

mode of disposing of the property in case *of* a sale shall be deemed necessary or proper, and his opinion of the present and prospective value, and he may report the price at which a foreclosure, without sale, may be best accomplished in the interest of all parties.

161 11. The master is at liberty to consider of a plan for the reorganization of the corporation should the creditors of the same agree thereto. Any plan for that purpose presented by three-fourths of the creditors owning the different classes of debt, and supported by a corresponding portion of the holders of stock, he may report, with his opinion thereon. He shall take care to ascertain whether the plan proposed be assented to by the parties interested, to the extent aforesaid, before he accepts it for any purpose.

12. The master will make a separate report of the allowances to be made to the trustees for their services and as compensation, and the allowances for the charges, expenses, costs, and other forms of claim which are set forth in the deed of trust, or which have arisen in the course of the cause.

March 6th, 1876.

(S'g'd) W. B. WOODS,
Judge.

162 Filed March 7th, 1876.

(S'g'd) N. W. TRIMBLE, *Clerk.*

163 *Order for master to examine accounts.*

In the circuit court of the United States, southern district of Alabama, 5th judicial circuit of the United States.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT,
vs.
MOBILE AND OHIO RAILROAD COMPANY, W'M D. Dunn, George H. Young, and others.
No. 90.

This cause was submitted to the court on the pleadings and proofs, and upon the orders, decrees, and proceedings in the same, and upon a motion to appoint a master to take an account of the mortgage property and of the mortgages, liens, encumbrances which affect it with a charge, and to state the accounts among the parties so as to prepare the case for a hearing, and farther advance the attainment of the said end, the
164 court orders that James Gillette, the master appointed for the purposes aforesaid to make an examination of the accounts of the trustees from the date of their appointment until the 31st day of December last, and to examine the vouchers in support of the receipts and disbursements, and if need be, to examine the books of the trustees and such witnesses as may be necessary.

An examination will be made of the manner in which any power given by this court, in any order, has been executed, and will report on the accounts and acts of administration and management of the trustees since their entry into possession of the railroad and other property described in the bill and the orders of the court.

165 The master upon completing this report will file the same in the clerk's office and give notice of it by an entry on the order-book.

It will remain for one month thereafter subject to exception, and if not excepted to will stand confirmed.

A similar examination and report will be made by the master in April of the accounts since December, and every three months thereafter, which shall be in place of any accounts or returns required by orders heretofore made.

The master will report also whether the depositaries of moneys by the trustees are safe, and whether any other depository for the money on hand from time to time would be more secure or better.

March 6, 1876.

(S'g'd) W. B. WOODS, *Judge*.

166 Filed March 7th, 1876.

(Signed) N. W. TRIMBLE, *Clerk*.

167 *Replication to answers of defendants.*

In the circuit court of the United States, southern district of Alabama.

W'M B. DUNCAN, A. FOSTER ELLIOTT,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET ALS.

The said plaintiffs for replication to the answers of the several defendants filed in the said cause, says—

The said bill of the said plaintiffs is sufficient, just, true, and certain in all of its statements, charges and allegations, and the prayer of the same ought to be granted by this honorable court, and they are ready to maintain the same by proofs to be taken.

And the said answers wherever they contradict or vary from the same or attempt to avoid the allegations or statements or charges or to defeat or to impair the claim for relief, are uncertain, untrue, and wholly unsufficient.

Wherefore the plaintiffs take issue upon the same, and reaffirm
168 their prayer for relief and pray a decree for the costs of the cause against the defendant.

(Signed) G. A. CAMPBELL,
P. & T. HAMILTON,
Sol'rs for Comp'lts.

(Endorsed :) Filed April 7th, 1876. N. W. Trimble, clerk.

169 *Order to show cause on Moran petition.*

United States circuit court, southern district of Alabama.

WILLIAM B. DUNCAN ET AL., AS TRUSTEES, &C.,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL.

Upon the verified petition of Charles Moran, D. Corwyn Moran, and Ameedée D. Moran, and on motion of their solicitor, E. L. Andrews, it is hereby ordered that the petitioners above named have leave to file their said petition in this court.

And it is hereby further ordered that the complainants and defendants in this suit show cause before the circuit court of the United States for the southern district of Alabama, on the 27th day of December, 1876, why the said petitioners should not be admitted as parties com-
170 plainant herein with leave to file such pleadings and adopt such

proceedings herein as they may be advised. And why the said petitioners should not have such other relief as may be just.

And it is ordered that the filing of this order and the said petition on this day shall be sufficient notice of the contents thereof to the parties to this suit.

And it is likewise ordered that the petitioners may file further affidavits in support of this motion on or before the 23rd of December, 1876, which shall be notice thereof to the respective parties herein.

December 4th, 1876.

(Signed) W. B. WOODS,
Judge.

(Endorsed:) Filed December 4th, 1876. (S'g'd) N. W. Trimble, clerk.

171 *Petition of Cha's Moran et als.*

United States circuit court, southern district of Alabama.

William B. Duncan, A. Foster Elliott, as trustees, etc.,
vs.
Mobile and Ohio Railroad Company et als.
} In equity.

To the honorable the judges of the circuit court of the United States in and for the fifth judicial circuit and southern district of Alabama:

Your petitioners, Charles Moran, Daniel C. Moran, Amédée D. Moran, citizens of the State of New York, respectfully show to your honor that they are the owners and holders of three hundred and sixty-eight thousand dollars of the first-mortgage sterling bonds of the Mobile and Ohio Railroad Company, and of thirty thousand dollars of the first-mortgage interest bonds of the said company.

172 And your petitioners further say that a bill of complaint has been filed in this court by William B. Duncan and A. Foster Elliott, claiming to be trustees of the first mortgage of the Mobile and Ohio Railroad Company, and in said suit certain orders and proceedings have been had; and your petitioners beg leave to refer to the record on file in the office of the clerk of this court, in the aforesaid action, as a part of this their petition.

And thereupon your petitioners aver and say that it appears by the said record, and by the actions of the said W. B. Duncan and A. F. Elliott, herein described, that it is necessary and proper for the protection and safety of your petitioners' rights and estate as first-mortgage bondholders of the Mobile and Ohio Railroad, that your petitioners should be admitted as parties entitled to notice in all the proceedings had by said Duncan and Elliott herein; or that some bona fide first-mortgage bondholder, who has no interest adverse to the rights
173 of the first-mortgage bondholders should be entered as a party to this suit for the safety and representation of the first-mortgage bondholders.

In the present condition of the record in this suit the said W. B. Duncan and A. F. Elliott have the entire control and direction as complainants of the legal proceedings herein. Yet, nevertheless, their interests are in many respects adverse to those of the first-mortgage bondholders and their action has been in great part wholly regardless of the rights of the said bondholders they claim to represent, and in some instances has been entirely in the interest of subordinate claimants against the property. All of which appears from the public records and proceedings in this court, and in the circuit court of the United States for the western district of Tennessee, as follows:

In respect to the floating-debt claims, the action of Duncan and Elliott has been in utter disregard of the plainest rights of the
174 first-mortgage bondholders. It appears that about five hundred and fifty thousand dollars of securities are available in the hands of the court, for the satisfaction of the liabilities of the corporation in the just order of priority. Certain holders of floating-debt claims conceived the idea of securing these assets for their own special benefit. Upon the proceedings for this purpose coming before the court for its action, Duncan and Elliott failed to make the slightest opposition to this appropriation of the trust estate. Their sole utterance at the hearing was made through their counsel as follows: "On behalf of the trustees and receivers, Duncan and Elliott, we submit ourselves to such directions as the court may make in the premises." And it appeared in evidence that most of these floating claims had been renewed through W. B. Duncan while representing the stockholders as president of the Mobile and Ohio Railroad Company.

175 The scheme to provide for these floating claims in preference to the first-mortgage interest was subsequently defeated through the efforts of Morris Ketchum, aided by some of the bondholders, as appears by the decision of his honor Judge Woods. These petitioners respectfully submit that the above described conduct of these complainants shows the imperative necessity of some unbiassed representation of the first mortgage on the record so that every movement in the progress of the litigation can be promptly notified to the real parties in interest.

But, furthermore, W. B. Duncan and A. F. Elliott have absolutely consented to the placing of an inferior mortgage, already the first sterling mortgage, and have agreed to the entry of a decree to that effect in the circuit court of the western district of Tennessee. The decree has been entered, and one hundred and eighteen miles of the road ordered to be sold to satisfy a claim of one million six hundred and
176 sixty-eight thousand dollars and interest. Duncan and Elliott have given their consent to a judgment for the above amount against the trust estate without publicly communicating with the first-mortgage bondholders, but, on the contrary, secretly and clandestinely. W. B. Duncan is one of the plaintiffs in said suit, as trustee for the so-called Tennessee substitution bonds, claiming against the first mortgage. And as to any subsequent efforts of W. B. Duncan to ward off his consent to the said decree, your petitioners submit the record therein as proof of the unability of Duncan and Elliott to fairly or effectually represent the first-mortgage bondholders. For a further statement of this transaction your petitioners refer to the bill of Morris Ketchum to review and set aside the said decree so consented to by Duncan and Elliott as made and connived in fraud of the first-mortgage bondholders.

177 And your petitioners further submit to this honorable court that in and by the last annual report of the Mobile and Ohio Railroad Company W. B. Duncan and A. F. Elliott appear therein as directors of the corporation and W. B. Duncan as president thereof, and in both capacities representing the stock interest in the property against which the present foreclosure proceedings are directed. And in the capacity of president Duncan has issued a circular while he was claiming to pursue the stockholders in this court by foreclosure against their property.

Furthermore, while Duncan claims to act as trustee for the first-mortgage bondholders, he is likewise busily engaged entering a judgment against his cestuis que trust in the capacity of trustee for the Tennessee substitution bonds, placing them in an illegal priority over
the first mortgage bonds. In addition, he claims to represent the
178 interest of the consolidated bondholders, an inferior security to
the first mortgage, and against which he should be directing the
process of the law on behalf of the sterling bondholders. Besides these numerous characters, each one of which prevents the faithful discharge of the other, he has acquired certain powers of the court, under which, as receiver, he claims to represent each and all of the diverse and conflicting liens and priorities on this property. In this effort he is assisted by A. Foster Elliott, formerly in his employ, and subject to his directions.

And your petitioners likewise show that both Duncan and Elliott are wholly irresponsible in a pecuniary point of view, and their bondsmen are two attorneys at law, S. L. M. Barlow and W. W. MacFarland, who are likewise on the bonds of W. D. Shipman, the assignee in insolvency of Duncan and Elliott to the amount of six hundred and fifty thousand dollars, and the total amount of said bonds herein your petitioners
verily believe is in excess of their ability to respond over and
179 above their other liabilities.

And, in further proof of the above matters, your petitioners refer to the proceedings of Morris Ketchum, as surviving trustee for the first mortgage bondholders, against Duncan and Elliott, and others in this court, and pray that the same may be taken as a part of this their petition.

And Charles Moran, one of the petitioners herein, likewise says that he has lately conversed with a number of European holders of the first mortgage bonds regarding the affairs of this trust, and your petitioner avers that the said holders are unacquainted with the matters above set forth, and your petitioner, verily believes, from his conversation with them, that the said bondholders would unite in this petition if they were made acquainted with the facts of the case.

And when your petitioners signed a paper in favor of said Duncan and Elliott, your petitioners were entirely ignorant of the
180 foregoing matters, and have only very lately learned the same.

Whereupon, and on account of the foregoing matters, your petioners pray for the appropriate orders directing that they may have notice of all the proceedings had in this cause, and may have leave to adopt such proceedings herein as they may be advised in like manner and with the same force and effect as formal parties to the record herein. And for such other and further relief as may be equitable.

(Signed) CH'S MORAN.
D. CORWYN MORAN.
A. D. MORAN.

(S'g'd) EDWARD L. ANDREWS,
Solicitor, & of Counsel for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss :

And now come Charles Moran, Daniel C. Moran, Amedee
181 D. Moran, who, being duly and severally sworn, deposes and says,
each for himself, that he has read the foregoing petition and

knows the contents thereof; that the said petition is true of his own knowledge, except as to the matters therein stated on information and belief, and as to the said matters he believes the same to be true.

(Signed) CH'S MORAN,
D. CORWYN MORAN.
A. D. MORAN.

Sworn to before me this 22d day of December, 1876.
[SEAL.] (S'g'd) JAMES RICHARDS, J'R,
Notary Public, 78 *N. Y. Co.*,
Acting under the Laws as United States Commissioner.

Received November 27th, 1876.
N. W. TRIMBLE, *Clerk.*

Filed by leave of the court, December 4th, 1876.
N. W. TRIMBLE, *Clerk.*

182 *Order for commission.*

United States circuit court, southern district of Alabama.

WILLIAM B. DUNCAN ET AL., AS TRUSTEES, &C.,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL.

And now it appears from the records of the proceedings in this cause on file with the clerk of this court that many of the coupons of the first mortgage and other bonds of the above company, which became due in 1874 and 1875, were paid in London and other cities of Europe.

The mode and manner of such payment can be properly ascertained only by proof of the parties participating in such payment, many of whom are residents of London and other places abroad.

Therefore, on motion of E. L. Andrews, solicitor for Louis J.
183 Belloni, Charles Moran, and other first mortgage bondholders,
whose claims have been proved before the master in this cause, and all of the above matters appearing of record herein, it is hereby ordered that a commission issue to the United States consul or vice-consul at London, or to any commissioner of the State of New York, or of any other State of the Union, residents in London, to take the testimony of any parties who may be produced before them, or any of them, on behalf of the aforesaid bondholders.

(Signed) W. B. WOODS, *Judge.*

(Endorsed:) Filed December 4th, 1876. (Signed) N. W. Trimble, clerk

184 *Application to enlarge time for masters to report.*

Circuit court of the United States for southern district of Alabama.

WILLIAM BUTLER DUNCAN, A. FOSTER ELLIOT, trustees,
vs. } In equity.
MOBILE AND OHIO RAILROAD COMPANY ET ALS.

To the honorable the judges of said court:

The undersigned, who has heretofore, by order of this court, dated

March 6, 1876, been appointed special master in this cause, to execute the references by said order directed, respectfully makes known to the judges of the court that he has been diligently engaged about the duty assigned him, but he is unable to complete the same by the day named
in said order, to wit, first Monday of December, 1876. He respect-
185 fully applies that the time for filing his said report may be ex-
tended to the first Monday of February next, and the time for taking proofs under said order be likewise extended to the 15th day of December inst.

(Signed) JAMES GILLETTE,
Special Master.

MOBILE, *Dec.* 1, 1876.

(Endorsed:) Filed December 4th, 1876. (S'g'd) N. W. Trimble, clerk

186 *Order enlarging time for action of the special master.*

Circuit court United States, southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT, trustees,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET als.

In this case it appears from a communication of Special Master Gillette that he has been unable, within the times named in the order of reference of 6th March last, to examine into and report upon the matters thereby referred to him, and that an enlargement of the time is necessary for the performance of the duty in said order assigned to him. On consideration whereof, and upon application of said special master,
it is ordered that the time for receiving proofs of claims under
187 said order of reference be extended to the twentieth of Decem-
ber, 1876, and that the time for filing his reports under said order be enlarged from the 1st Monday of December, 1876, to the first Monday of February, 1877.

(Signed) W. B. WOODS, *Judge.*

(Endorsed:) Filed December 4th, 1876. (S'g'd) N. W. Trimble, clerk.

188 *Order enlarging order for commission.*

Circuit court of the United States, southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT, trustees,
vs. } In equity.
MOBILE AND OHIO RAILROAD COMPANY ET **als.**

On motion of the complainants, it is ordered that the order heretofore on 4th December, 1876, made in this cause for the issue of commissions to take testimony, to the consul or vice-consul of the United States in London, or to any commissioner of the State of New York or any other State of the Union, resident in London, be so enlarged that such commissions may be issued for the examination of witnesses to be produced

in behalf of the claimants of said coupons as well as any of said bondholders.

Dec. 14, 1876.
(S'g'd) **W. B. WOODS,** ***Judge.***

Filed December 16th, 1876.
(S'g'd) **N. W. TRIMBLE,** ***Clerk.***

189 *Answer of W. B. Duncan et al. to petition of Moran et als.*

United States circuit court, southern district of Alabama.

W. Butler Duncan and A. Foster Elliott, trustees,
vs. } In equity.
The Mobile and Ohio Railroad Company et al.

The answer of W'm Butler Duncan and A. Foster Elliott to the petition of Charles Moran, Dan'l E. Moran, and Amedee Moran against them filed in the above-entitled cause.

These respondents for answer say they are informed and believe that said petitioners are the holders of the securities in said petition described, but whether in their own right or not these respondents do not know.

These respondents admit the pendency in this court of legal proceedings by them as trustees of the first mortgage of the Mobile and
190 Ohio Railroad, for the execution of the trusts declared in said deed of mortgage.

The files and minutes of the court will show what orders and proceedings have been taken in said cause. These respondents deny that it appears from said record and by their action in and about said trusts or from any of them that there is any necessity or occasion for any purpose of protection and safety of said petitioners or of any of the holders of the first-mortgage bonds of said railroad company, that such petitioners should be admitted as parties entitled to notice of the proceedings of the respondents in said cause.

These respondents deny that there is any reason or occasion for admitting any person whatever, first-mortgage bondholder or otherwise, as a party to the suit in the interest of the first-mortgage bondholders, or for any change in the parties to the suit.

191 These respondents deny that they have done anything or sought to do anything or knowingly permitted anything to be done in the management of this suit or the administration of the trust property to the prejudice of the holders of the first-mortgage bonds of said railroad company; they deny that their action in any instance has been in the interest of subordinate claims, or that the public record and proceedings of this or any court will establish the allegations of the petition in this respect.

These respondents deny utterly all charges of impropriety of conduct contained in the petition in relation to the floating-debt claims. It is true that the holders of certain claims of this character, that is, of debts of said railroad company either not secured at all or secured by liens subordinate to the first-mortgage, conceived that they had an equity
192 upon assets in respondent's hands superior to that of the first-

mortgage bonds and demanded of respondents payment of their said claims. These respondents refused to recognize said demands unless approved by this court. They then availed themselves of the leave allowed by the former order of this court, to apply to the court for instructions as to their duty in the premises, and brought the case to the attention of the court for its directions. Such proceedings were thereon had that a reference of the matter was made to a special master, who reported thereon to the court, and, in consideration of his said report, the court refused to allow the claims so made by the holders thereof and refused to permit their payment from the assets so sought to be applied. These respondents show that all the proceedings in this matter were had before his honor W. B. Woods, the circuit judge of this circuit
193 and district, who then and there presided in the court and was
made judicially cognizant of the case and the conduct of these respondents and their counsel in the premises.

These respondents show that in their proceedings in this behalf they acted in good faith in the performance of their duty as trustees in possession, administering the trust under the direction of this honorable court, and their conduct in this behalf, instead of being made a subject of reproach, is an argument in favor of retaining said suit and property under the present management without the interference of either Morris Ketchum or of the petitioners. As to so much of said petition as refers to proceedings alleged to have occurred in the circuit court of the United States for the western district of Tennessee, these respondents say that the charge that they have agreed to a decree in that court plac-
194 ing an inferior mortgage ahead of the first sterling mortgage is
not true.

It is true a decree has been made in that court directing the sale of the line of railroad in the State of Tennessee for the payment of a lien debt claimed by the holders of bonds known as the Tennessee substitution bonds to the amount of $1,668,000 and interest, or thereabouts. It is not true that these respondents ever gave their consent to that decree or to any judgment for that amount against the trust estate in any manner whatever. These respondents deny that in said cause, or in any manner in relation to said trust estate, have they acted secretly, clandestinely, or in any other manner to the prejudice of the holders of the first mortgage bonds, or with a view to advance against them the claims of subordinate lien holders. On the contrary, this respondent, Duncan, personally conferred with one of the petitioners (Morans),
195 informing him of the fact that said decree had been obtained
without his, the said Duncan's, knowledge or consent, and of the steps he had immediately taken to cause said decree to be vacated. It is true that the respondent, Duncan, is one of the plaintiffs in that suit as trustee of what is known as the Tennessee substitution bonds.

The first mortgage in terms declares that as to the property in Tennessee the lien created by it is subordinate to a lien of $10,000 per mile which was reserved to secure the State of Tennessee for advances then expected to be obtained under the legislation of that State in relation to internal improvements.

Advances were so obtained thereby, and thereupon the first mortgage operated a priority of lien upon the property in Tennessee for the security of said advances which the said railroad company became
196 obligated to pay. Subsequently the said corporation came in
default in payment of the interest upon said advances which it had assumed to pay, and by agreement with said State, under powers reserved to said State, the corporation recognized the assignees of the

State of the original securities and lien, and gave to them by way of the original evidences of debt the bonds of the corporation, and which are known as the Tennessee substitution bonds. To protect this lien, this respondent, Duncan, was appointed one of the trustees.

When said railroad company defaulted on said substituted securities, as well as on its first mortgage bonds, the said bill was filed in Tennessee, and also the bill in this case; said bills were filed in harmony with each other and to obtain a settlement of all priorities by judicial decision and by concurrent action upon bills in the names of parties
197 apparently holding the first lien in the several States (that in Tennessee being declared to be auxiliary to the bill in this cause which was first filed) and by the same counsel, so that upon adjustment of disputed priorities being first had, such decree might be rendered in said causes as might establish the rights of both parties in interest and secure the application of the trust property and its proceeds to the several liens upon the property as they might be declared.

These respondents show that with this purpose in view by the said Duncan and his counsel, steps were in progress in the cause in Tennessee to bring before the court all parties who were entitled to be heard according to the practice established by the law and rules of courts. The time of appearance of said parties had not expired, and said cause
198 was not then at issue, when on the 20th May, 1876, without the knowledge of said Duncan, or the counsel who had filed the bill, and were properly in charge of same, and whose names stood on the record as solicitors and counsel for complainants in said causes, his co-complainants, by counsel, not recognized by this respondent, Duncan, and in the absence of the counsel who had legal charge of said bill, and without conference or consultation with them, and without legal authority, applied for and obtained the decree of sale mentioned in said petition.

These respondents, each of them, and the other defendants, and the counsel who had filed the bill, immediately severally applied to the honorable the judge of that circuit for a stay of said decree, and that it be vacated and set aside; an order of stay was obtained, and said
199 decree has so remained to this date; proceedings to vacate said decree upon the application of said Duncan and of said parties are still pending, and have not been heard by reason of the non-attendance to the date of the filing of this petition of the said circuit judge presiding in said court to hear said application.

A secondary reason favoring the delay thus produced is found in the fact that holders of first mortgage and interest-bonds to the amount of the principal sum of over $3,000,000, with the matured coupons attached thereto, together with holders of said Tennessee substitution bonds to the amount of the principal sum of over $1,400,000, with the matured coupons attached thereto, as well as all the detached coupons on the first mortgages which matured in 1874, amounting to over $700,000, and holders of second-mortgage and other lien securi-
200 ties to the amount of the principal sum of over $700,000, with all the matured coupons attached thereto, have agreed upon a plan of readjustment of the securities of said corporation, and have surrendered for that purpose their evidences of right to a committee nominated by themselves.

This scheme of reorganization, if successful, as it is hoped it will be when fully understood, will remove all matters of litigation between the parties, and these respondents have conceived, under the orders of this court, that it was their duty to give parties in interest full opportunity whether to accept it or not and so save needless expense and delay. These respondents have no excuse to make for the conduct of the said co-trustees of said Duncan, they having constantly disapproved and condemned it utterly unjustifiable and for which they are in nowise responsible. This respondent Duncan has not retired from said 201 suit since said action of his co-trustees for no other reason than that he conceived his said position gave him better means of obtaining the stay and setting aside of said decree for the benefit of all parties in interest than he could use if he retired therefrom and ceased to be a party to said record and proceedings.

These respondents deny that there is any reason to be found in the facts of this case why the prayer of the petition should be granted, and show that proceedings by Morris Ketchum cannot add anything to the merits of the application.

These respondents do not deny that they are directors of said railroad company, and that Duncan has remained in the office of president by failure of stockholders to elect president and directors pending 202 these legal proceedings: that he is a trustee of the lowest security created by said corporation; said respondents are also in possession of the trust property, with the approval of this court, as trustees, and under responsibility as receivers.

These respondents show that in none of these positions have they done anything inconsistent with their duty as trustees of the first mortgage; they have faithfully conformed to all the orders of this court, and in all matters of doubt have applied for its instruction and advice. Their accounts and proceedings are now in process of examination under the order of this court, by a special master appointed for that purpose, and will soon be reported to this honorable court for revision.

Your respondents assert that under the former orders of this court they have given such security as has been required, and the same 203 has been approved as directed. Their sureties are abundantly good, and respondents refer to their accounts and the reports of the master thereon to show the honesty and integrity of their administration of said trust property, which they have conducted through the agency of skilled officers and employee's. These respondents know nothing of the conversations alleged to have been had by one of the petitioners with English bondholders, nor the representation by him (Moran) made to them.

These respondents believe that they have the support of nearly all the holders of said first-mortgage bonds; certainly of all who have examined and understand the facts of the case and have come into communication with these respondents.

204 These respondents have heretofore filed against similar proceedings by the said Ketchum certificates of approval by the sundry holders of bonds to the amount of hundreds of thousands of dollars.

These respondents refer to the proof then tendered to this honorable court, and to the additional proof by them to be now or hereafter produced in proof of the allegations of this their answer and be fully assured they pray said petition may be dismissed, and these respondents be therefrom discharged, with their costs.

(S'g'd) W. BUTLER DUNCAN.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William Butler Duncan, being duly sworn, deposes and says that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true to his own knowledge, 205 except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

(S'g'd) **W. BUTLER DUNCAN.**

Sworn before me this 21st day of December, 1876.

[SEAL.] (S'g'd) **JOSEPH GUTMAN, J'R,**
United States Commissioner, S. D. N. Y.

Filed January 2nd, 1877.

(S'g'd) **N. W. TRIMBLE,** *Clerk.*

206 *Answer of A. F. Elliot to petition of Moran et als.*

Circuit court of the United States, southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOT, trustees,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.
} In equity.

The answer of A. Foster Elliot to the petition of Charles Moran, Daniel E. Moran, and Amedée D. Moran, against this respondent and W'm Butler Duncan, filed in the above-stated cause.

This respondent for answer says, from information he believes petitioners are the holders of the securities in the petition described, but whether in their own right or not, respondent does not know.

He admits the pendency in this court of legal proceedings by himself and said Duncan, as trustees of the first mortgage of the Mobile 207 and Ohio Railroad Company for the execution of the trusts in said deed declared. The files and minutes of this court will show what orders and proceedings have been had and taken in said cause.

Respondent denies that it appears from said record, and by the actions of said trustees in and about said trusts, or from any of them, that there is any necessity or occasion, for any purpose whatever, of interest or protection of the holders of first-mortgage bonds, that said petitioners, or either of them, should be admitted as parties entitled to notice of the proceedings of the trustees in that case. He denies that there is any reason or occasion for admitting any person whatever, first-mortgage bondholder or otherwise, as a party to the suit, in addition to the present complainants, in the interest of the first-mortgage bondholders, or for any change in the parties to the suit. It is already provided by order of the court, that any creditor may appear before 208 the master to contest any other claim, if the trustees fail on demand to make the objection, which may be desired.

This respondent denies that he or his co-trustee have done anything, or sought to do anything, or knowingly have permitted anything to be done, in the management of this suit, or in the administration of the trust property, to the prejudice of the rights of the holders of the first-mortgage bonds of said railroad company; he denies that their action in any instance has been in the interest of subordinate claims, or that the public records and proceedings of this or any other court will establish the allegations of the petition in this respect.

This respondent, for himself and co-trustee, denies all the charges of improper conduct, made in the petition, in relation to the floating-debt claims. It is true, that the holders of certain claims of that character, that is, of debts of said railroad company, either not secured at 209 all, or secured by liens subordinate to the first mortgage, conceived they had an equity, to be paid by said trustees, superior to that of the first mortgage, and demanded payment of their claims. The trustees refused to recognize the claims, unless directed by the court. They availed themselves of the leave allowed by former orders, and applied to this hon. court for instruction in the premises. Such proceedings were had that a reference was made to a special master, who reported thereon.

On consideration of this report, this hon. court refused to authorize payment of said claims. All the proceedings in this matter were had before his honor W'm B. Woods, the circuit judge, who then presided, and was judicially cognizant of the conduct of said trustees and their counsel in the premises. This respondent avers that, in their proceedings in this behalf, said trustees acted in good faith in the performance of their duties as trustees in possession, administering the 210 trust under the direction of this hon. court, and what they did was precisely what their duty called on them to do, and is an argument in favor of retaining said suit and property under the existing management as established by the former orders of his honorable court.

As to so much of said petition as refers to proceedings alleged to have occurred in the circuit court of the United States for the western district of Tennessee, respondent says that the charge that he and his co-trustee have agreed to a decree in that court placing an inferior lien ahead of the first sterling mortgage is not true. It is positively untrue as to him, and he says on information and belief it is not true as to his co-trustee. It is true a decree has been made in that court directing the sale of the road in the State of Tennessee for the payment of a lien-debt claimed in behalf of the holders of the bonds known as the Tennessee substitution-bonds to the amount of $1,668,000 and 211 interest, or thereabouts.

It is not true that this respondent or his co-trustee, so far as this respondent knows and believes, ever gave their consent to said decree or to any judgment for that amount, or any other sum, against the trust estate in any manner whatever; he denies that in said cause, or in any manner in relation to said trust estate, have they, or either of them, acted secretly or clandestinely, or in any other manner to the prejudice of the holders of the first-mortgage bonds, or with a view to advance against them the claim of any subordinate lien holder. It is true that M'r Duncan is one of the plaintiffs in that suit as one of the trustees of what is known as the Tennessee substitution-bonds. The first mortgage in terms declares that as to the property in Tennessee the lien created by it is postponed to a lien of $10,000 per mile, which is reserved 212 to secure the State of Tennessee for advances then expected to be obtained under the legislation of the State in relation to "internal improvement." Advances were so obtained, and thereby and thereupon, as this respondent has been advised, the said first mortgage operated a priority of lien upon said property in Tennessee for the security of said advances, and which the said railroad company became obligated to pay.

Subsequently said corporation became in default in payment of interest on said advances which it had assured to pay, and by agreement with said State, under powers reserved to said State, the corporation recognized the assignees of said securities and lien of the State, and gave to them by way of substitution for the original evidences of debt the bonds of the corporation know as Tennessee substitution bonds.

To protect this lien, said Duncan was appointed one of the trustees.

When said corporation subsequently came in default in pay-
213 ment of interest on said substituted bonds, as it was also as to
interest upon the first-mortgage bonds, the said bill was filed in Tennessee as also the bill in this cause. Said bills were filed in concert and to obtain a settlement of priorities by judicial decision, and by concurrent action upon bills in the names of parties having the apparent first lien in the several States, that in Tennessee being declared to be ancillary to the bill in this cause which was first filed and by the same counsel; so that adjustment of disputed priorities being first had, such decree might be rendered in said causes as would establish the rights of all parties in interest and secure the application of the trust-property and its proceeds to the several liens upon the property as they might be judicially declared.

This respondent shows that with this purpose in view by M'r Duncan and his counsel steps were in progress in the court of Tennessee to bring in all parties who were entitled to be heard, according to law and.
the rules and practice of the court. The time for the appearance
214 of said parties had not expired, and the cause, as this respondent
is advised, was not at issue, when on 20 May last, without the knowledge of said Duncan, without the knowledge of the counsel, who had filed the bill, and who stood of record as the solicitors, and were rightfully entitled to direct the same, the two complainants, Wilson and Iselin, by counsel not recognized by said Duncan, on the last day of the term and in the absence of the counsel who filed the bill, and properly had control thereof, without conference or consultation with them, and without legal authority, applied for and obtained the decree of sale mentioned in the petition.

This respondent, and the said Duncan, and said counsel in charge of the case, were surprised by this proceeding, and immediately upon knowledge thereof applied to and obtained from the hon. the circuit judge, who had granted said decree without knowledge of the facts of the case,
an order for the stay of said decree, and it has been so stayed
215 to this date. Proceedings to vacate and set aside said decree at
the instance of said parties are still pending in that court by petition for rehearing, as well as by bill of review; but no rehearing or review has been obtained because of the non-attendance of the circuit judge to the date of the filing of this petition, and by whom said decree was rendered. This respondent will produce transcripts of said petition for stay and rehearing and the orders thereon in verification of the statements of this his answer, as soon as certified copies thereof can be had.

A secondary reason favoring the delay thus produced is found in the fact, as respondent is informed and so thereon states, that holders of first-mortgage bonds to the amount of more than half, and to wit, $3,000,000, or thereabouts, of principal, with coupons attached, and over $1,400,000 of Tennessee substitution bonds, with coupons attached,
and $600,000 of 2nd mortgage bonds, and $700,000 of other secu-
216 rities, have agreed upon a plan of adjustment of the debts of said
corporation and for its reorganization, and for that purpose have deposited their bonds and securities with a committee of gentlemen appointed by themselves who now control the same and approve the management of these trustees. Your respondent, from the best information

he can obtain, believes that plan will be adopted by a very large proportion of the parties in interest; it has already been accepted largely by more than half the holders of the first, the Tennessee substitution, and the second mortgage bondholders.

This respondent shews that if the scheme be accepted it will remove all matters of litigation between the various bondholders, and he and his co-trustee have conceived that under the former order of the court, it has been their duty to give parties in interest full opportunity to accept the same and so save needless expense and delay.

217 This respondent has no defence to make of the conduct of said Wilson and Iselin in taking the decree as above stated; he has entirely disapproved of it and has condemned it as utterly unjustifiable, but for which he is in no wise reponsible.

This respondent denies that the facts of the case furnish any reason why the prayer of the petition should be granted; he denies that said Ketchum has any standing in the case, or that he can add anything to the merits of the application.

He does not deny that he is a director on said railroad company. He and said Duncan were elected into said board in 1875, and have since so remained by reason of the failure of the stockholders to hold other election pending these legal proceedings. Both said Duncan and himself are in possession of the trust property as trustees of the first mortgage, and this with the approval of this court, and are under responsibility to account as receivers. He shows that in these positions they have 218 done nothing inconsistent with their duties as trustees of the first mortgage; they have in all things conformed to all the orders of the court, and in matters of doubt have applied for its instruction and advice. Their accounts and proceedings have been subjected by order of the court to the examination of a special master appointed for that purpose. Some of them have already been by him reported on and his reports presented to and filed with the court; as directed by the order and under the rules of practice in proceedings and reports by masters in chancery. Other matters are in process of examination by the master, and will be reported on to the court.

This respondent shows that he and his co-trustee have complied with the order of the court, as to bond and security, which have been approved. The sureties upon said bonds are abundantly good. This respondent refers to the accounts and reports of the master to show the honesty and integrity of the administration of this trust-219 fund by himself and his associate, which they have conducted through the agency of educated and skilled officers and employees.

This respondent knows nothing of the alleged conversations between petitioners and English bondholders, nor the representations which were made to them by the petitioners. He shows that certain English holders of sterling bonds, to an amount exceeding a million and a quarter of dollars, did cause examination to be made by an agent of their own into the management by respondent and his co-trustee of this trust property, and have approved the same; and he believes they have the support of nearly all the first mortgage bondholders, and certainly of more than half, who have already accepted the plan of reorganization proposed under the auspices of these trustees, and of all who have examined and understand the facts of the case, and have come into communication with these trustees. These respondents have hereto-220 fore, against similar proceedings undertaken by Morris Ketchum, filed certificates of approval of sundry holders of bonds, to the amount of many hundreds of thousands of dollars.

Respondent refers to the proofs then produced to this hon. court, and to the additional proofs to be by him and his co-trustee hereafter produced in support of the allegations and denials of their answers in this behalf; and, having fully answered, he prays said petition may be dismissed and himself discharged, with his costs.

(Signed) AND. FOSTER ELLIOT.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

221 Before me, John G. Eustis, a commissioner of the United States for the fifth judicial circuit and district of Louisiana, appeared Andrew Foster Elliot, who is to me personally known, who being duly sworn, on his oath saith the statements in the foregoing answer contained, so far as made of his own knowledge, are true; so far as made on information and belief, he believes them to be true.

In witness whereof I have hereto set my hand and official seal this twenty-ninth day of December, 1876, in the city of New Orleans, State of Louisiana.

[SEAL.] (Signed) J. G. EUSTIS,
U. S. Commissioner for the Dist. of La.

(Endorsed:) Filed January 2nd, 1877. (Signed) N. H. Trimble, clerk.

222 TUESDAY MORNING, *January 30th, A. D.* 1877.

Court met pursuant to adjournment. Present, the Hon. William B. Woods, judge of the circuit court of the United States for the southern district of Alabama, and the Hon. John Bruce, judge of the district courts of the United States for the State of Alabama.

Order continuing hearing of petition of Moran Bro's.

WILLIAM B. DUNCAN AND A. F. ELLIOTT
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.
} No. 90. In equity.

In this cause it is ordered that the hearing of the petition of Moran Bro's, heretofore ordered to be heard on the 27th December, 1876, and the motion of Duncan and Elliott to dismiss the same, be continued to the next special or regular term of this court, whichever may be first held.

(Signed) W. B. WOODS, *Judge.*

223 WEDNESDAY MORNING, *February 7th, A. D.* 1877.

Court met pursuant to adjournment. Present, the Hon. John Bruce, judge of the district courts of the United States for the State of Alabama, sitting as circuit judge.

Order extending time for special master to file report.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT
vs.
MOBILE AND OHIO RAILROAD COMPANY ET ALS.
} No. 90. In equity.

In this cause the special master, James Gillette, makes known to the court that he has been unable, within the time allowed him in the order of reference of March last, and the extension thereof granted on the 4th of December, to examine into and report upon the matters referred to him, and that an enlargement of the time be necessary for the performance of the duty in said order assigned to him.

On consideration thereof, and upon application of said master, it is ordered that he have until the 1st day of March next for filing the report or reports required of him, and that the time heretofore granted him be extended to said first day of March from the 1st Monday of February, 1877.

224 *Petition for extension in order of reference.*

United States circuit court, southern district of Alabama.

W. B. DUNCAN ET AL., AS TRUSTEES, &C.,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL.

The petition of Charles Moran, and Louis J. Belloni, and William H. Ross respectfully shows to this honorable court that it appears by the annexed certificate of the special master in this cause, marked Exhibit A, that the time for taking testimony herein has expired, and that the time for the filing of the master's report will expire on the first of March proximo.

That your petitioners had supposed that the time for all acts to be performed by the master had been extended by the order heretofore granted by his honor Judge Bruce, but he was informed to-day by the master that he construed the extension to apply only to the period of filing his report herein.

225 That your petitioners desire to adduce a large amount of testimony before the master, and to be fully heard in argument by counsel before the master, all of which the master states by his annexed certificate cannot be had and performed within the time now remaining.

That your petitioners do not believe it practicable to adduce all the testimony necessary to be presented herein before the first day of May next, and in fact a commission containing a large amount of testimony on behalf of Alexander Duncan reached the master's office after the time which the master states was fixed by previous orders of this court for the taking of testimony.

That your petitioners have not been able to obtain the return of testimony desired by them within the time limited heretofore, although they have used the utmost diligence.

That it will require, as your petitioners believe, from the first day of May to the first day of June next for the hearing of argument before the master on the numerous and difficult questions of fact and law involved in this reference, and for the subsequent preparation of the master's report thereon.

226 Whereupon your petitioners pray that the time granted by the order of reference herein dated the day of , 1876, be extended to the first day of May, 1877, for the taking of testimony, and to the first day of June, 1877, for the filing of the master's report there under, and that the special master herein be required to receive testi-

mony herein until the day first above named and to hear arguments of counsel after that time.

E. H. GRANDIN,
E. L. ANDREWS,
Solicitors for Petitioners.

UNITED STATES OF AMERICA,
Southern District of Alabama, ss:

E. H. Grandin and E. L. Andrews, being duly sworn, depose and say: That they have read the foregoing petition and have signed the same; that they are the agents of the said petitioners for their representation in this matter; that the statements in said petition they 227 believe to be true.

E. H. GRANDIN,
E. L. ANDREWS.

Sworn to before me this 19th day of February, 1877.

JNO. H. WALLACE,
U. S. Commissioner So. Dist. of Alabama.

Filed February 20th, 1877.

N. W. TRIMBLE, *Clerk.*

228 *Order on petition for extension of time.*

W. B. DUNCAN ET AL., AS TRUSTEES, &C.,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
et al.

On the sworn petition of Charles Moran, Louis J. Belloni and William H. Ross, and on the certificate of the special master herein annexed to said petition, and on application of E. H. Grandin, esq're, of counsel for petitioners, it is hereby ordered that the time named in the order heretofore granted in this cause on the 6th day of March, 1876, and in the order amendatory thereof granted on the 4th day of December, 1876, and the order of 7th of February, 1877, be extended for the purpose of adducing and taking testimony before the special master herein until the first day of April, A. D. 1877, and for the filing of the master's report herein until the 10th day of April, and that the special master herein be required to receive testimony and hear argument of counsel within said time, and that the orders of this court heretofore granted herein be, they are hereby, to the extent above specified, fully modified.

(S'g'd) JOHN BRUCE, *Judge.*

February 20th, 1877.

229 *Report of special master.—Filed March 14th, 1877.*

In the circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN AND A. F. ELLIOT,
trustees,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
et als.

To the honorable the circuit court of the United States aforesaid:

The special master, appointed by the decree of the court, dated March

6th, 1876, to whom it was referred in the 1st paragraph of said decree "to examine the mortgage or deed of trust attached to the bill as an exhibit, and to ascertain and report the railroads, branch railroads, estates, rights, property, movable and immovable, included in the terms and conditions of the same, and which have come to the possession and control of the trustees, and are subject to the decree of the court in this suit," respectfully reports:

That he has examined the mortgage or trust deed made on the 1st November, 1853, by the Mobile and Ohio Railroad Company, which is attached to the bill as an exhibit, and he finds included in the terms and conditions thereof, as the property which the trustees therein named, or their successors in office, were to take possession of in the event that the said company became in default for the payment of its bonds secured by the mortgage, or the interest thereon, or any part thereof, "all and singular the entire estate and properties, of whatsoever name and kind," of the said Mobile and Ohio Railroad Company.

And he has also examined the books and record of said company and its officers and the record of this cause, and he finds that on the 8th day of May, 1875, the present trustees, W'm Butler Duncan and A. F. Elliot, under the covenants and agreements of the trust, took possession of all the property of said company, consisting of its railroad and railways within the States of Alabama, Mississippi, Tennessee, and Kentucky, including the rails, bridges, fences, warehouses, fixtures, real estate, rights, privileges, and property, movable and immovable, of every kind and description, and of its assets, income, and tolls.

And on the 29th September, 1875, in obedience to a decree of the court, dated May 19th, 1875, clothing them with the authority and duties of receivers, said trustees filed in court an inventory of the property received.

It appearing that, with the authority of the court, valuable improvements, repairs, and replacements have been made upon the trust estate since May 8, 1875, which should be embraced in estimates or
230 reports made now, the master caused to be filed with him inventories as of the 1st January, 1877, of which a summary is hereto attached as Exhibit A.

The master finds and reports that the trustees now have in their possession or control, under the direction of the court in this suit, the entire Mobile and Ohio Railroad and branches, lying and being in the States of Alabama, Mississippi, Tennessee, and Kentucky, which were constructed or in process of construction at the time of the execution of the trust deed, or have since been constructed, renewed, or added to, together with all its railways, rails, bridges, warehouses, fixtures, rights, real estate, and property of all names and kinds, including the lands donated by act of Congress of 20th September, 1850, recited in the trust deed, except such portions as have been disposed of to create the sinking fund expressly provided for in said deed, and including all real estate acquired not described in said deed, but which is nevertheless subject to the decree of this court.

For the better information of the court, from the inventories and his examinations, the master reports in detail, as follows:

Length of road:

Main line: From Mobile, Ala., to Columbus, Kentucky .... 472 miles.

Branches:

Gainesville: From Narkeeta, Miss., to Gainesville, Ala .... 21 miles.

This branch was purchased by the Mobile and Ohio Railroad Company, under act of the legislature of Alabama, approved March 3, 1871, entitled "An act to authorize the Mobile and Ohio Railroad Company to purchase the railroad constructed by the Mississippi, Gainesville, and Tuscaloosa Railroad Company." A special mortgage on this branch was executed March 24, 1871, to James Crawford for the purchase money, $53,000, and to secure bonds to that amount issued to said Crawford; therefore, to the extent of said lien, said branch is not included in the terms of complainant's deed.

Columbus: From Artesia to Columbus, Miss .... 14 miles.
Starkville: From Artesia to Starkville, Miss .... 11 "
46 miles.

Side tracks .... 48 miles.

Total owned main line and branches .... 566 miles.

231 By the terms of the trust deed of complainants, a reservation is made as to a portion of this property in Tennessee, which reservation is as follows: "Saving and reserving the rights and liens that may attach to the roadway, and construction thereon, in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that said State, in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz, one hundred and eighteen miles, which aid is provided for by law of that State, and if used by said Mobile and Ohio Railroad, the said prior lien in favor of said State will be to the extent of said State aid, not exceeding ten thousand dollars per mile."

Leased:

Aberdeen Branch:—From Aberdeen, Miss., to Muldon, equipped and operated by Mobile and Ohio, rent free .... 9 miles.

Total operated lines .... 575 miles.

The present value of these constructed lines depend upon conditions which render an estimate impracticable. The master finds from examinations and observations that said railroads have been enhanced in value by judicious repairs, replacements, and additions, under the present management. The estimated increase since 8th May, 1875, being 15 per cent.

RIGHTS.

The rights attaching to the property under control of the trustees are the franchises and privileges secured to the Mobile and Ohio Railroad Company by the legislation of the several States through which the road passes. They are part of the public law of the States of Alabama, Mississippi, Tennessee, and Kentucky, and of the United States. The titles of the more important acts of legislation are as follows:

Alabama.—"An act to incorporate the Mobile and Ohio Railroad Company," approved February 3, 1848, and amendatory act of March 4, 1850.

Mississippi.—"An act to incorporate the Mobile and Ohio Railroad Company," approved February 17, 1848.

Tennessee.—"An act to incorporate the Mobile Railroad Company," approved February 28, 1848.

232 Kentucky.—"An act to authorize the Mobile and Ohio Railroad Company to extend their railroad from the south boundary line of the State of Kentucky to the Mississippi or Ohio rivers," approved February 26, 1848.

United States.—"An act granting the right of way, and making a grant of land to the States of Illinois, Mississippi, and Alabama, in aid of the construction of a railroad from Chicago to Mobile," approved September 20, 1850; and "An act for the relief of the Mobile and Ohio Railroad Company," approved February 18, 1859; also the State laws transferring the donated lands to the company.

A "compendium" of the laws of the several States through which the road passes, and of the acts of Congress referred to, and the deeds of mortgage and trust made by the Mobile and Ohio Railroad Company, has been compiled by George N. Stewart, its solicitor, and printed. A copy of the pamphlet is filed herewith for information.

ESTATES (LANDS).

The master reports that, under the act of Congress approved September 20, 1850, hereinbefore referred to, the Mobile and Ohio Railroad Company became possessed of lands in Alabama and Mississippi, amounting to $1,146,648\frac{92}{100}$ acres, less $692\frac{78}{100}$ acres reserved in Alabama. Said company subsequently acquired by purchase other real estate in Alabama and Kentucky, hereinafter set forth. Under the covenants of the trust, a portion of the lands donated by the United States have been sold to create a sinking fund for the extinguishment of the company's bonds issued under the trust deed. There remains of these lands in the possession and control of the trustees January 1, 1877:

Donated lands	1,087,652.97	acres.
Kentucky lands	1,258.50	"
Total acreage	1,088,911.47	acres,

valued at $1 per acre.

The trustees report city and town lots, value	$66,127.50
Giving total value, real estate	$1,155,038.97

The trustees also have possession of 99,096.36 acres of swamp and overflowed lands, purchased by the company from the State of Alabama, value not stated, but cost $.

233 PROPERTY MOVABLE AND IMMOVABLE.

There was in the possession of the trustees and receivers on the 1st January, 1877, the following other property:

Locomotives, cars and rolling-stock, estimated value....	$955,800 00
Materials, machinery, tools, utensils, etc., in shops, on road, and in depots and trains....................	425,519 95
Buildings, station-houses, round-houses, turn-tables, platforms, furniture and fixings at stations..............	402,666 70
Total..	$1,783,986 65

which, added to the lands, gives a total value, exclusive of the railroads, of $2,939,025.62, being all the property valued and included in the inventories.

ASSETS, INCOME, AND TOLLS.

These items are the subject of quarterly reports to the court by the trustees and receivers, which are on file, and have been regularly examined and passed upon by the master.

The master reports that all the property embraced in the abstracts hereto annexed as Exhibit A, and all of the railroad and branch railroads now operated as the Mobile and Ohio Railroad, and all the assets and income as heretofore reported, are included in the terms and conditions of the trust-deed attached to the bill as an exhibit, and were on the 1st day of January, 1877, in the possession and control of the trustees, W. B. Duncan and A. F. Elliot, and are subject to the decrees of the court in this suit.

Respectfully submitted.

JAMES GILLETTE,
Special Master.

MOBILE, ALA., *March* 10, 1877.

Statement of lands, city and town lots owned by the Mobile and Ohio Railroad on the first day of November, 1876.

Name of State.	Name of county.	Amount acres owned in each county.	Total acres owned in each State.	
Alabama	Mobile	189,120.05		
	Baldwin	19,250.69		
	Washington	205,344.60		
	Choctaw	11,315.78		
	Sumter	5,311.89		
			430,343.01	
Mississippi	Jackson	12,723.54		
	Greene	93,674.66		
	Wayne	188,870.37		
	Clarke	130,905.67		
	Jasper	15,469.80		
	Lauderdale	117,055.11		
	Newton	18,421.61		
	Kemper	41,840.64		
	Noxubee	23,048.63		
	Winston	4,451.13		
	Lowndes	3,435.74		
	Oktibbeha	5,462.19		
	Monroe	1,950.87		
			657,309.96	
Kentucky	Hickman	1,258.50		
			1,258.50	
SWAMP AND OVERFLOW.				
Alabama	Mobile	21,707.33		
	Baldwin	2,814.75		
	Washington	71,574.28		
			96,096.36	
				1,185,007.38

One million one hundred and eighty-five thousand and seven 83-100 acres.

Name of State.	Name of city or town or village.	No. of town, city, or village lots unsold Nov. 1st, 1876.	Estimated value.	Total estimated value.	
Alabama....	Mobile, (city)....	....	$24,825 00		
	Whistler, (town)....	Co's ⅓ interest.	6,000 00		
	Mauvilla, "	180	1,500 00		
	Citronelle, "	460	6,000 00		
				$38,325 00	
Mississippi..	State Line, (village)....	59	2,400 00		
	Waynesboro', "	117	3,425 00		
	Shubuta, "	397	3,452 50		
	De Soto, "	22	1,985 00		
	Quitman, "	12	90 00		
	Meridian, (city)....	217	12,000 00		
	Marion, (village)....	107	500 00		
	Lockhart, "	Unsold area..	250 00		
	Narkeeta, "	" "	600 00		
	Sucarnochee, "	" "	600 00		
	Scooba, "	Co's ½ interest.	1,000 00		
	Wahalak, "	Co's ⅓ interest.	200 00		
	Saltillo, "	18 blocks.	300 00		
	Baldwyn, "	Co's ⅓ interest.	500 00		
	Booneville, "	Co's ⅓ interest.	500 00		
				27,802 50	
					$66,127 50

RECAPITULATION.	Total value.
One million one hundred and eighty-five thousand and seven 83-100 acres estimated at one dollar per acre, 1,185,007.83 acres @ $1.00.	$1,185,007 83
Town and city lots, estimated value............................	66,127 50
Total	$1,251,135 33

One million two hundred and fifty-one thousand one hundred and thirty-five 33-100 dollars.

A. S. GAINES,
Land Commissioner.

236 In the circuit court of the United States, fifth judicial circuit and southern district of Alabama.

WILLIAM B. DUNCAN AND ANDREW F. ELLIOT, trustees,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.

Personally appeared before me, James Gillette, special master in the above entitled cause, A. S. Gaines, who, being duly sworn, deposes and says that he is land commissioner of the Mobile and Ohio Railroad, and

has been since October, 1875, and that the foregoing statement of lands and town lots in the custody and control of the trustees and receivers of said road on the first day of November, 1876, as to acreage and estimated value thereof, is true and correct to the best of his information and belief, and that said information as to the number of acres and lots is derived from the books and records of his office, and that the values are estimated according to the best information he could obtain on the subject.

A. S. GAINES.

Subscribed and sworn to before me this 28th day of November, 1876.

JAMES GILLETTE,
Special Master, United States Commissioner.

237 Exhibit A of Master's Report.

Abstract of inventories of material, Mobile and Ohio Railroad, taken December 31, 1876.

Inventory A.

Mobile depot:			
Schedule 1.	Materials—car repairers	$1,521 48	$1,521 48
Whistler, Ala.:			
Schedule 2.	Materials * in machine shop		
" 3.	" * " pattern "		
" 4.	" " carpenter "	3,716 09	
" 5.	" " coppersmith shop	819 26	
" 6.	" " store room	84,458 38	
" 7.	" " construction shed	3,467 52	
" 8.	" " upholsterer's shop	1,289 81	
" 9.	" " paint shop	2,295 99	
" 10.	" * " repair "		
" 11.	" " iron foundry	2,427 93	98,474 98
Shubuta, Miss.:			
Schedule 12.	Materials in repair shop	859 98	859 98
Meridian, Miss.:			
Schedule 13.	Materials in repair shop	437 00	437 00
Northern division:			
Schedule 14.	Materials at Jackson, Tenn., and Macon, Miss., in store rooms and shops	45,578 13	45,578 13
Total Abstract A			$146,871 57

* Articles in these returned in Schedule 6.

Abstract of inventories of machinery and tools, Mobile and Ohio Railroad, taken December 31st, 1876.

Inventory B.

Mobile, Ala.:				
Schedule 1.	Machinery and tools.	Repair shop	$2,500 00	$2,500 00
Whistler, Ala.:				
Schedule 2.	Machinery and tools.	Blacksmith shop	4,520 00	
" 3.	" " "	Boiler shop	1,151 50	
" 4.	" " "	Copper and tin shop	1,020 25	
" 5.	" " "	Carpenter shop	7,962 00	
		Forward	$14,653 75	2,500 00

238			Brought forward	$14,653 75	$2,500 00
	Schedule 6.	Machinery and tools.	Construction shop	182 00	
	“ 7.	“ “ “	Dry-house	200 00	
	“ 8.	“ “ “	Brass foundry	580 40	
	“ 9.	“ “ “	Iron “	284 75	
	“ 10.	“ “ “	Machine shops	56,609 75	
	“ 11.	“ “ “	Office	411 50	
	“ 12.	“ “ “	Pattern shops	12,046 05	
	“ 13.	“ “ “	Paint “	390 30	
	“ 14.	“ “ “	Freight car shops	433 15	
	“ 15.	“ “ “	Store room	1,045 50	
	“ 16.	“ “ “	Upholsterer's shop	19 05	
					86,856 20
	Schubuta, Miss.:				
	Schedule 17.	Machinery and tools.	Repair shop	1,021 70	
					1,021 70
	Macon, Miss.:				
	Schedule 1.	Machinery and tools.	Blacksmith shop	1,100 00	
	“ 2.	“ “ “	Carpenter “	800 00	
	“ 3.	“ “ “	Coppersmith shop	250 00	
	“ 4.	“ “ “	Machine “	7,000 00	
	“ 5.	“ “ “	Round-house	250 00	
	“ 6.	“ “ “	Boiler shop	500 00	
	“ 7.	“ “ “	Paint shop	50 00	
					9,950 00
	Jackson, Tenn.:				
	Schedule 8.	Machinery and tools.	Blacksmith shop	3,159 00	
	“ 9.	“ “ “	Boiler shop	1,493 65	
	“ 10.	“ “ “	Carpenter shop	1,979 36	
	“ 11.	“ “ “	Coppersmith shop	278 25	
	“ 12.	“ “ “	Machine shop	18,472 60	
	“ 13.	“ “ “	Round-house	326 00	
	“ 14.	“ “ “	Paint shop	150 00	
	“ 15.	“ “ “	Pattern shop	2,231 00	
	“ 16.	“ “ “	Brass foundry	246 50	
	“ 17.	“ “ “	Store room	330 15	
	“ 18.	“ “ “	Master mechanics' office	154 65	
	“ 19.	“ “ “	Car repairers	110 50	
					28,931 66
	Columbus, K'y:				
	Schedule 20.	Machinery and tools.	Car repairers	257 00	257 00
	Total Abstract B				$129,516 56

239 ***Abstract of inventories, buildings, station-buildings, platforms, wood and water-stations, turn-tables, round-houses, section-houses, and cabins, Mobile and Ohio Railroad, taken December 31st, 1876.***

INVENTORY C.

Mobile, Ala.:			
Schedule 1.	Buildings at Mobile	$76,100 00	
			$76,100 00
Whistler, Ala.:			
Schedule 2.	Shop buildings—brick	88,450 00	
	“ “ frame	10,850 00	
			99,300 00
Southern division:			
Schedule 3.	Station buildings and platforms	25,350 00	
“ 4.	Wood and water stations	8,100 00	
“ 5.	Turn-tables and round-houses	4,515 00	
“ 6.	Section houses and cabins	20,625 00	
			58,590 00

Macon, Miss.:			
Schedule 7.	Shop buildings	4,200 00	
" 8.	Office "	2,000 00	
			6,200 00
Jackson, Tenn.:			
Schedule 9.	Shop buildings	35,450 00	
			35,450 00
Northern division:			
Schedule 10.	Station buildings and platforms	53,625 00	
" 11.	Wood and water stations	13,170 00	
" 12.	Turn-tables and round-houses	18,700 00	
" 13.	Section houses and cabins	21,075 00	
			106,570 00
	Total Abstract C		$382,210 00

Abstract of inventories of furniture, fixtures, etc., at stations Mobile and Ohio Railroad, taken December 31st, 1876.

INVENTORY D.

Mobile, Ala.:			
Schedule 1.	Furniture, fixtures, etc., in general office building	$2,250 00	
" 2.	" " " in office of gen. man. & D. S.	2,262 50	
			$4,512 50
Southern division:			
Schedule 3.	Furniture, fixtures, etc., stations on this division	8,394 20	
			8,394 20
Northern division:			
Schedule 4.	Furniture, fixtures, etc., stations on this division	7,550 00	7,550 00
" 5.	Track-scales		
" 6.	Babcock extinguishers		
	Total Abstract D		$20,456 70

240 *Abstract of inventory of utensils, materials, and tools on roadway department, Mobile and Ohio Railroad, December 31st, 1876.*

INVENTORY E.

Southern division:			
Schedule 1.	Utensils, materials, and tools on roadway, including wood, coal, and old iron	$41,933 87	
	Old rails	14,326 00	
			$56,259 87
Northern division:			
Schedule 2.	Utensils, materials, and tools on roadway, including wood, coal, and old iron	51,251 60	
	Old rails	30,191 00	
			81,442 60
	Total Abstract B		$137,702 47

Abstract of inventories of tools, materials, and utensils on passenger and freight trains, Mobile and Ohio Railroad, taken December 31st, 1876.

INVENTORY F.

Southern division:			
Schedule 1.	Tools, materials, and utensils on passenger & fr't trains	$1,767 35	
			$1,767 35
Northern division:			
Schedule 2.	Tools, materials, and utensils on passenger & fr't trains	1,650 00	
			1 650 00
	Total Abstract F		$3,417 35

Abstract of inventories of telegraph materials, etc., Mobile and Ohio Railroad, taken December 31st, 1876.

INVENTORY G.

Southern division:		
Schedule 1. Telegraph materials, incl'd'g 197 8-10 miles, @ $35 per mile	$6,913 00	$6,913 00
Northern division:		
Schedule 2. Telegraph materials, includ'g 31 4-10 miles, @ $35 per mile	1,099 00	1,099 00
Total Abstract G		$8,012 00

241 *Abstract of inventories of locomotives, Mobile and Ohio Railroad, taken December 31st, 1876.*

INVENTORY H.

Southern division:		
Schedule 1. 38 locomotives, valued at	$119,600 00	$119,600 00
Northern division:		
Schedule 2. 50 locomotives, valued at	264,500 00	264,500 00
Total Abstract H		$384,100 00

Abstract of inventory of cars, Mobile and Ohio Railroad, taken December 31st, 1876.

INVENTORY I.

639 box cars	@ $450 00	$287,550 00	
280 flat "	@ 350 00	98,000 00	
31 stock-cars	@ 450 00	13,950 00	
98 { construction cars caboose " boarding " }	@ 400 00	39,200 00	
6 express-cars	@ 2,000 00	12,000 00	
12 baggage-cars	@ 2,000 00	24,000 00	
31 coaches	@ 3,000 00	93,000 00	
2 special cars (pay and officers')	@ 4,000 00	8,000 00	$575,700 00
Total Abstract I			575,700 00

Abstract of inventory of lands in State of Alabama, Mobile and Ohio Railroad, taken December 31st, 1876.

INVENTORY J.

Value of city and town lots owned by M. & O. R. R. in State of Alabama:

Mobile (city)	$24,825 00	
Whistler (town)	6,000 00	
Mauvilla "	1,500 00	
Citronelle "	6,000 00	$38,325 00
Total Abstract J		$38,325 00

242 *Abstract of inventory of lands in State of Mississippi, Mobile and Ohio Railroad, taken December 31st, 1876.*

INVENTORY K.

Value of city, town, and village lots owned by M. & O. R. R. in State of Mississippi.

State Line	(village)	$2,400 00	
Waynesboro'	“	3,425 00	
Shubuta	“	3,452 50	
De Soto	“	1,985 00	
Quitman	“	90 00	
Meridian	(city)	12,000 00	
Marion	(village)	500 00	
Lockhart	“	250 00	
Narkeeta	“	600 00	
Sucarnochee	“	600 00	
Scooba	“	1,000 00	
Wahalak	“	200 00	
Saltillo	“	300 00	
Baldwyn	“	500 00	
Booneville	“	500 00	
			$27,802 50
Total Abstract K			$27,802 50

Abstract of inventory of lands in State of Alabama, Mobile and Ohio Railroad, taken December 31st, 1876.

INVENTORY L.

Value of lands owned by the M. & O. R. R. in the State of Alabama.

Mobile	County—	Number of	Acres	189,120.05	
Baldwin	“	“	“	19,250.69	
Washington	“	“	“	205,344.60	
Choctaw	“	“	“	11,315.78	
Sumter	“	“	“	5,311.89	
					430,343.01
Total Abstract L					$430,343 01

243 *Abstract of inventory of lands in State of Mississippi, Mobile and Ohio Railroad, taken December 31st, 1876.*

INVENTORY M.

Value of lands owned by the M. & O. R. R. in the State of Mississippi.

Jackson	County—	number	of acres	12,723.54	
Greene	“	“	“	93,674.66	
Wayne	“	“	“	188,870.37	
Clarke	“	“	“	130,905.67	
Jasper	“	“	“	15,469.80	
Lauderdale	“	“	“	117,055.11	
Newton	“	“	“	18,421.61	
Kemper	“	“	“	41,840.64	
Noxubee	“	“	“	23,048.63	
Winston	“	“	“	4,451.13	
Lowndes	“	“	“	3,435.74	
Oktibbeha	“	“	“	5,462.19	
Monroe	“	“	“	1,950.87	
					$657,309 96
Total Abstract M					$657,309 96

Abstract of inventory of lands in State of Kentucky, Mobile and Ohio Railroad, taken December 31st, 1876.

INVENTORY N.

Value of lands owned by M. & O. R. R. in the State of Kentucky.

Hickman County—number of acres	1,258.50	
		1,258.50
Total Abstract N		$1,258 50

244 *Recapitulations of abstracts of inventories.*

Inventory A—Materials	$146,871 57	
Inventory B—Machinery and tools	129,516 56	
Inventory C—Buildings, station buildings, platforms, and wood and water stations, turn-tables and round-houses, section houses and cabins	382,210 00	
Inventory D—Furniture, fixtures, etc., at stations	20,456 70	
Inventory E—Utensils, material, and tools on roadway	137,702 47	
Inventory F—Tools, materials, and utensils on passenger and freight trains	3,417 35	
Inventory G—Telegraph materials, etc	8,012 00	
Inventory H—Locomotives	384,100 00	
Inventory I—Cars and coaches	571,700 00	
Inventory J—City and town lots in State of Alabama	38,325 00	
Inventory K—City and town lots in State of Mississippi	27,802 50	
Inventory L—Lands in Alabama owned by Mobile and Ohio Railroad—number of acres	430,343 01	
Inventory M—Lands in Mississippi owned by Mobile and Ohio Railroad—number of acres	657,309 96	
Inventory N—Lands in Kentucky owned by Mobile and Ohio Railroad	1,258 50	
		2,939,025 62
Total amount of inventories		$2,939,025 62

Length of Main track	472 miles.
" " Branches owned	46 "
" " " leased	9 "
" " Side track	48 "
Total	575 miles.

W. BUTLER DUNCAN,
Trustee and Receiver.

FEBRUARY 3, 1877.

Received and Filed February 3d, 1877.

JAMES GILLETTE,
Special Master.

Filed March 14th, 1877.

N. W. TRIMBLE,
Clerk.

245 *Petition to extend time for taking testimony.*

U. S. circuit court southern district of Alabama.

WILLIAM B. DUNCAN ET AL., TRUSTEES, &C.,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama:

Your petitioners, Amedée D. Moran and Louis J. Belloni, j'r, respectfully show to this honorable court as follows:

That they are objectors in the master's office in this cause, having filed objections therein, as more fully appears by proceedings in said master's office, to which they refer as a part of their petition.

That your petitioners are represented in the proceedings in the office of Master Gillette, special master in this cause, by the same counsel who represents Morris Ketchum, the surviving trustee named in the
246 deed securing your petitioners' bonds; that on or about the 27th day of February, 1877, certain William H. Hays, T. Haskins Du Puy, and William S. Pierson, commenced a suit in the court of common pleas for the city and county of New York, for the purpose of restraining the said trustee, to whom your petitioners have confided the legal representation of their rights, from proceeding with the execution of his trust, by suits in the circuit court of the United States for the various districts in which the Mobile and Ohio Railroad is located. The purport and character of the said proceeding will more fully appear by a copy of the complaint therein, which will be filed in the office of the clerk of this court as a part of this petition.

That your petitioners' counsel has been busily engaged in the city of New York in respect of the said proceeding, as well as in respect of bills on behalf of your petitioners, and M'r Ketchum, to avoid the effect of a decree taken adversely to their mortgage by a pro confesso judgment against A. F. Elliott, claiming as trustee for the first-mortgage bondholders, and your petitioners have not been able ever with their utmost diligence to proceed with the examination before the master herein.

247 That the time to take testimony before said master expires on the first of April next, and your petitioners desire to adduce a large body of testimony. In its present shape the testimony does not present their case with any fulness, and a great injustice would be done them if they were obliged to proceed to a hearing in the present state of the evidence.

That no term of the circuit court will be held until June next, as they are informed and verily believe, and the time to take testimony in the master's office should be extended until the 20th of April next, which would still leave the master the same time to file his report as is given under the existing orders of court, and thirty days to file exceptions would likewise remain.

Wherefore your petitioners pray that an order may be granted herein, providing for the taking of testimony in the master's office until the 20th day of April, 1877, and extending the master's time to file his report herein until the first day of May, 1877, and for such other and further relief as may be just.

A. D. MORAN.
LOUIS J. BELLONI, J'R.

E. L. ANDREWS,
Solicitor and of Counsel for Petitioners.

248 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Comes A. D. Moran and L. G. Belloni, j'r, who being duly and severally sworn, deposes and says each for himself: That he is one of the above-named petitioners; that he has read the foregoing petition and knows the contents thereof; that the said petition is true of his own knowledge, except as to the matters therein stated on information and belief, and as to the same he believes it to be true.

A. D. MORAN.
LOUIS J. BELLONI, J'R.

Sworn to before me this 22d day of March, 1877.

GEO. L. INGRAHAM,
Notary Public, N. Y. Ct.

Order on petition.

UNITED STATES CIRCUIT COURT,
Southern District of Alabama:

WILLIAM B. DUNCAN ET AL.
vs.
MOBILE AND OHIO RAILROAD COMP'Y ET AL.

249 Upon the verified petition of Amedie D. Moran and Louis J. Belloni, j'r, and upon motion of Labatt & Aroni, of counsel for petitioners herein, it is ordered that petitioners be allowed to take testimony until the 20th day of April next, and the master in the matter of their application and opposition will suspend the making up of his report until that day, and that after that day no further testimony can be taken by the master on these oppositions or applications.

It is further ordered that as to all other matters the making up of the report, the orders now existing will be continued in force. And the master in the matter of the application and opposition of these petitioners may file his report on or before the first day of May, for exceptions. No further extension will be granted.

March 28, 1877.

(S'g'd) W. B. WOODS,
U. S. Judge.

Filed March 30, 1877.

N. W. TRIMBLE, *Clerk.*

250 *Report of special master.—Filed April 5, 1877.*

In the United States circuit court, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN AND A. F. ELLIOT, TRUSTEES,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY ET AL.
In equity.

To the honorable the circuit court of the United States for the circuit and district aforesaid:

The third paragraph of the decree of the court rendered in this cause March 6, 1876, directs the special master to report:

I. "The bonds which are secured by the respective mortgages or deeds of trust or incumbrances, and the amount thereof, and of the interest due thereon, and which form a (present or future) valid claim upon the said corporation;

II. "And if the debt exist in any other form than that of bonds, then that he report the debt which may be due, or may become due, on the said several securities of the said corporation. Also,

III. "The master will report the names of the holders of the securities of the company which may be presented and proved to him, and the sum due each holder."

Under this direction and in conformity with paragraphs four and six of said decree, the undersigned, as master, gave notice by publication that he was ready to receive the proofs of debts secured by the mortgages of the company, and of the mode of making proofs, and before whom they could be made.

Said notice was advertised in the following newspapers for the periods specified, to wit: The Mobile Register, Mobile, Ala., daily, April 27 to Oct. 15, 1876; New York Times, New York, tri-weekly, July 26 to Aug. 31, 1876; The World, New York, tri-weekly, July 25 to Aug. 31, 1876; Commercial and Financial Chronicle, New York, July 15 to Aug. 12, 1876; North American and U. S. Gazette, Philadelphia, Sept. 21 to Sept. 25, 1876; Columbus Index, Columbus, Miss., weekly, Aug. 4 to Sept. 15, 1876; Whig and Tribune, Jackson, Tenn., weekly, July 29 to Oct. 15, 1876; London Times, London, Eng., Sept. 6, &c.

251 Publications were authorized in London, Paris, Frankfort, and other localities in Europe, under the direction of the consuls or vice-consuls of the United States. Copies and proof of said publications are herewith filed, except that copies of the German and French publications have not yet been received.

The special master attended at the times and places published, for the length of time indicated, except that the sessions in the city of New York, where a majority of claims were held, was continued until the 30th September, and in Mobile proofs were received and filed until the first Monday in February, 1877. Pursuant to the fourth paragraph of the decree of reference, commissioners of the circuit courts of the United States were authorized to take proof of debts, and in London and other cities of England, Paris, France, Frankfort, Germany, and Amsterdam, Holland, the consuls or vice-consuls of the United States were designated "to advertise for the proof of bonds and coupons and to take proofs." The master "prescribed a mode for the identification of the bonds so presented and proved to the said officers."

The master further reports that under the authority given to "examine the books of the Mobile and Ohio Railroad Company and its officers, so as to report with exactness the debt due by the corporation which is secured by mortgage or which create liens on the property of the corporation," he examined said books and said officers, and now presents in detail the result of the inquiry.

I. "The bonds which are secured by the respective mortgages or deeds of trust, or incumbrances, and the amount thereof, and of the interest due thereon, and which form a (present or future) valid claim on said corporation."

The funded debt, with the liabilities thereon, as shown by the books of the Mobile and Ohio Railroad Company, March 1, 1877, is as follows:

1. *First-mortgage sterling bonds.*

£225 sterling (or $1,000 each, bearing date November 1, 1853, due November 1, 1883, with semi-annual coupons, £6.15 each, payable 1st May and November, in London; issued under the company's mortgage, bearing date November 1, 1853. By certificates attached to 2,566 of these bonds, in pursuance of a resolution of the board of directors, dated January 5, 1859, the holders were enabled to collect, "by the presentation at the office of the company in Mobile, $40 for each coupon," or 8 per cent. interest on the bonds so certificated, rated at $1,000 each. The remaining uncertificated bonds of this issue carry 6 per cent.

sterling interest, or £6.15 for each semi-annual coupon, rated on the company's books at $32.75 gold, or $36 currency. Authorized 252 issue, 6,000 first-mortgage sterling, £225 sterling each, rated on the books of the company at $1,000 each. Issued of Nos. 1 to 6000, according to the company's books:

5,976 bonds	$5,976,000 00		
Redeemed and cancelled by sinking-fund arising fron sales of lands, 293 uncertificated and 74 certificated bonds	367,000 00		
Outstanding 5,609		$5,609,000 00	
Coupons matured and unpaid and not funded to November 1, 1876		1,289,941 80	
Total sterling bonds and coupons to November 1, 1876			$6,898,941 80

2. *Interest bonds.*

These bonds of various series, as follows, were issued to fund accrued coupons of the first-mortgage sterling bonds, maturing from 1861 to 1867, inclusive. The original coupons supporting these bonds are held in pledge by the company, except as to the series known as funded interest F, and F1, which series was issued through the Union Trust Company, of New York City, and the coupons are held there:

(a) "Ten-year interest" bonds, bearing date November 1, 1866, semi-annual coupons, 8 per cent., payable at Mobile, May and November 1.

Series O—Nos. 1 to 382, inclusive, and 384 to 679, inclusive—678 bonds at $1,000	$678,000 00	
Series P—Nos. 1 to 144—144 bonds at $500	72,000 00	
Series Q—Nos. 1 to 467 and 470 to 474—472 bonds at $200	94,400 00	
Total issued	$844,400 00	
Redeemed or cancelled Nos., 94 P, and 10, 11, 12, 120, 142, 292, 398, 426, and 427 Q	2,300 00	
Outstanding	$842,100 00	
Coupons matured and unpaid to November 1, 1876	202,104 00	
Total ten-year interest bonds and coupons		$1,044,204 00

(b) "Interest arrearage" bonds, dated November 1, 1868, due November 1, 1883, semi-annual coupons, payable May 1 and November 1.

Series F1.—Nos. 1 to 36—36 bonds at $1,000		$36,000 00
Less Nos. 2 to 11 and No. 22, cancelled		11,000 00
		$25,000 00
Series F2.—Nos. 1 to 14—14 bonds at $500	$7,000	
Less Nos. 1 and 3, cancelled	1,000	
		6,000 00
Series F3.—Nos. 1 to 7—7 bonds at $300	$2,100	
Less No. 1, cancelled	300	1,800 00
Series F4.—Nos. 1 to 29—29 bonds at $100	$2,900	

253 Less Nos. 2, 3, 4, and 28, cancelled		400	
		2,500 00	
Total issued		$35,300 00	
Less redeemed: No. 1 F1, No. 2 F3, and No. 17 F4		1,400 00	
Outstanding		$33,900 00	
Coupons matured and unpaid to November 1, 1876		8,448 00	
Total bonds and coupons, arrearage interest, F1 to F4			$42,348 00
(c) "Funded interest" bonds, dated November 1, 1868, due Nov. 1, 1883, issued through the Union Trust Company, N. Y., semi-annual coupons, payable May 1 and November 1.			
Series F—Nos. 1 to 477 inclusive, 468 bonds, issued at $1,000		$468,000 00	
Series F1—Nos. 1 to 370 incluivse, 369 bonds, issued at $500		$184,500 00	
Total issued		$652,500 00	
Less redeemed: Nos. 144, 200, 201, 287, 424, 472, 473, and 475 F, and Nos. 62, 79, 80, 215, and 322 F1		10,500 00	
Outstanding		$642,000 00	
Coupons matured and unpaid to November 1, 1876		155,280 00	
Total bonds and coupons funded interest F and F1.			$797,280 00
(d) "Sterling interest" bonds dated November 1, 1867, due November 1, 1883, semi-annual coupons, for £6 and £3 each, or 6 per cent. sterling, payable in London. Series supported by original coupons held in pledge by Mess'rs C. M. Lampson & Co., London.			
Series B—Nos. 1 to 764, £200 each...	£152,800		
Series C—Nos. 1 to 76, £100 each...	7,600		
Issued and outstanding	£160,400		
Rated on company's books at $4.80 per £ sterling gold		$769,920 00	
Coupons matured and unpaid to November 1, 1876		152,444 16	
Total sterling interest bonds and coupons			$922,364 16
Total interest bonds and coupons			$2,806,196 15

54 3. *Tennessee substitution bonds.*

Dated July 1, 1871, due July 1, 1901, No. 1 to 1685 inclusive, for $1,000 gold each, or £205 sterling, semi-annual coupons, due 1st January and July, for $35 gold in New York, or £7. 3. 6 in London, at holder's option. These bonds are secured by a first mortgage on 118 miles of the main line and equipment in the State of Tennessee, dated July 1, 1871, and purporting to be in substitution of a statutory lien reserved by the State for its bonds loaned.

Total issue 1,685 bonds, gold	$1,685,000 00		
Less Nos. 123, 140, 141, 142, 404, 539, 540, 762, 1249, 1250, 1283, 1285, 1324, 1325, 1547, 1529, and 1326, redeemed	17,000 00		
Outstanding		$1,688,000 00	
Coupons matured and unpaid to January 1, 1877 (gold at 1.10 currency)		385,308 00	
Total Tennessee substitution bonds and coupons			$2,053,308 00
Total bonds outstanding, issued, and purporting to have been issued and secured as above stated, and interest to the dates of last matured coupons			$11,758,445 96

4. *Second mortgage bonds*

These bonds are of various series and dates and purport to be secured by a mortgage executed February 15, 1860, creating a lien of $1,500,000, on the whole line of the Mobile and Ohio Railroad, to provide for liquidation of debts for construction and equipment.

(a) Series L—Old issue, dated irregularly from 1st March, 1867, to 1st March, 1872. Amounts and maturity irregular Nos. 1 to 277, 8 per cent. coupons, due annually 1st March. This series has been mostly cancelled by the issue of new bonds.

Outstanding March 1, 1877	$62,204 42	
" New issue, irregular amounts, dated March 1, 1872 and 1873, coupons 8 per cent., due annually March 1. Nos. 1 to 294 (less Nos. 4, 70, 71, 72, and 128 cancelled.) 209 bonds issued March 1, 1872, due March 1, 1882. 80 bonds issued March 1, 1873, due March 1, 1883. 289 bonds issued	$241,954 05	
Total issues L	$304,158 47	
Less redeemed per company's books: Nos. 19, 20, 104, 242, and 251, (new issue)	2,651 42	
Outstanding	301,507 05	
255 Coupons matured and unpaid to March 1, 1877	72,998 01	
Total bonds and coupons, series Liquidation L.		$374,505 06

b) Series dated 1st March, 1867, due 1st March, 1877.

Series R, $1,000 each, Nos. 1 to 486		$486,000 00	
" S, 500 each, Nos. 1 to 490		245,000 00	
" T, 300 each, Nos. 1 to 516		154,800 00	
" U, 100 each, Nos. 1 to 236		23,600 00	
Total issued		$909,400 00	
Less redeemed and cancelled:			
Nos. 35 and 36 R	$2,000		
Nos. 415, 416 and 414 S	1,500		
Nos. 38, 39, 130, 131, 146 to 181 T	12,000		
Nos. 32, 84, 85 and 93 U	400		
		15,900 00	
Outstanding		$893,500 00	
Coupons matured and unpaid to March 1, 1877		214,440 00	
Total bonds and coupons, second mortgage, this series			$1,107,940 00

(c) Series dated March 1, 1871, due March 1, 1877, annual coupons, due March 1.

Series Rr,	$1,000 each, Nos. 1 to 210	$210,000 00	
" Ss,	500 each, Nos. 1 to 60	30,000 00	
" Uu,	100 each, Nos. 1 to 162	16,200 00	
	Total issued	256,200 00	
	Coupons matured and unpaid to March 1, 1877	61,488 00	
	Total bonds and coupons, second mortgage, this series		$317,688 00
	Total second mortgage bonds and unpaid coupons thereon, as per company's books		$1,800,133 06

5. *Gainesville Branch bonds.*

Dated November 1, 1870, and due November 1, 1880, interest 8 per cent. payable semi-annually, coupons, May and November, issued under mortgage dated November 1, 1870, on the Gainesville Branch.

Issued and outstanding 53 bonds, Nos. 1 to 53	$53,000 00	
Coupons matured and unpaid to November 1, 1876	12,720 00	
Total Gainesville Branch bonds and coupons		$65,720 00

6. *Convertible bonds.*

Dated December 1, 1873, due December 1, 1883. No coupons. Interest payable quarterly at the office of Duncan, Sherman & Co., New York City, 1st March, June, September and December, at the rate of 8 per cent. per annum. Amounts irregular.

Of the authorized issue of	$1,000,000		
The company holds	523,500		
Leaving outstanding		$476,500 00	
Interest unpaid to March 1, 1877		85,770 00	
Total debt on this issue, March 1, 1877			$562,270 00

For these bonds there is a pledge of 40,000 shares of company's stock, convertible at holder's option, and in common with all other issues of bonds, they are embraced in the terms of a consolidated mortgage of the company.

Total funded debt and interest as per company's books as of March 1, 1877 .... $14,186,569 02

7. *Consolidated first mortgage 7 per cent. sinking-fund gold bonds.*

Dated January 1, 1874; due January 1, 1904.

Authorized issue $15,000,000.

15,000 bonds at $1,000 gold each, interest coupons, semi-annual, payable 1st July and January, $35 gold each, at company's office, or £7.3.6 sterling in London.

It was designed by the terms of a mortgage dated January 1, 1874, that this issue should retire by substitution all previous existing bonded indebtedness of the company. It appears from an inspection of the bonds in the company's vaults, that of 6,000, from No. 1 to 6000, executed in whole or in part and delivered in New York, 5,391 bonds, from No. 610 to 6000, have been returned cancelled.

It does not appear that the bonds were ever parted with, either by the trustees or the company, other than that 609 of them, from No. 1 to

609 inclusive, were hypothecated to secure the floating debt as fully shown hereafter.

To the extent of the amount now outstanding	$594,000 00
(Nos. 362 to 376 having been released) and	
Coupon interest to January 1, 1877, at 7 per cent	124,740 00
Total	$718,740 00

may become a part of the bonded debt.

A tabular "Statement from the general ledger of the Mobile and Ohio Railroad, of the funded debt of the Mobile and Ohio Railroad Company, as of March 1, 1877," is hereto annexed as Exhibit B 1, and made part of this report.

The master herewith files for the information of the court a copy of each of the series of bonds above described.

257 II. The debt existing in other form than of bonds which is due or may become due on the several securities of the corporation.

The secured floating debt of the Mobile and Ohio Railroad Company was the subject of a report filed in court by this master on the 4th March, 1876. The amount then reported as bills payable was $526,061.86, mostly for supplies and money borrowed to pay interest on the funded debt. Its character and amount have not changed since said report, except that by the appropriation, on the part of some creditors, of the collaterals held by them in extinguishment of their claims, the bills payable now amount to $516,061.86, to which must be added, as also secured by pledge of the company's bonds, $19,325.31 Mobile and Ohio Railroad Company's overdraft. The face values of the collaterals now outstanding for the security of the floating debt-holders are as follows

First-mortgage interest bonds	$40,000
Second-mortgage bonds	157,800
Convertible bonds	30,000
Consolidated sinking-fund gold bonds	594,000
Total (excluding coupons)	$821,800

A detailed statement of the bonds deposited as collateral, and names of the holders, is herewith attached as Exhibit B 2, and has been verified by personal inspection of the securities by the master. The amounts of first and second mortgage and convertible bonds are included in the totals of the funded debt hereinbefore stated. The amount of consolidated mortgage and matured coupons, viz, $718,740.00, must be added to said funded debt in the event of the appropriation of the hypothecated securities by the floating debt creditors.

Of unsecured floating debt of the Mobile and Ohio Railroad Company there appears standing on the books for unpaid labor $603.00, bills audited $3,315.61, total $3,918.61.

There is a debt, consisting of judgments rendered in the courts of the several States through which the road passes, of which no record appears on the company's books, nor is there any evidence before the master showing their amounts or nature, or to what extent they are valid liens. From the best information that has been obtained, viz, an inspection of the records of the several courts by an agent of the trustees, this debt with costs amounted in July, 1876, to $170,000, or thereabouts. It is claimed, however, by the company, that much of this has been satisfied, or otherwise disposed of, though not discharged from the record.

258 **III. The names of the holders of the securities presented and proved, and the sum due each holder.**

A large number and variety of claims have been presented and proved which appear to be valid liens upon the trust property. They have been classified and arranged under appropriate headings, and are herewith filed in court. Where proof was made embracing different classes of securities, the same were divided. The names of the holders of bonds and coupons, and the sum due each holder, as the same were presented and proved, are fully set forth in Exhibit C, schedules 1 to 10, hereto annexed as a part of this report. Upon all bonds therein reported, the coupon interest is stated to that last maturing.

The aggregate amounts of bonds and coupons of the various series respectively presented and proved are as follows, represented by 482 claimants:

Schedule 1.	First mortgage sterling bonds:			
	£225 each or $1,000 (4,081 bonds)	£918,225	$4,081,000 00	
	Coupons to November 1, 1876	187,292-5	911,457 73	
				4,992,457 73
2.	Sterling interest bonds, B and C:			
	£200 and £100	141,900	690,556 35	
	Coupons to November 1, 1876	26,652	129,701 96	
				820,258 31
	(NOTE.—The reduction of coupons of sterling bonds, and of bonds and coupons of sterling interest bonds, payable in London, to United States standard money, is at the rate of 4.8665 under section 3565 Revised Statutes of the United States.)			
3.	Ten year interest bonds O, P, and Q:			
	$1,000, $500 and $200		584,600 00	
	Coupons to November 1, 1876		158,404 00	
				743,004 00
4.	Funded interest F and F 1, and interest arrearage F1 to F4:			
	$1,000, $500, and $1,000, $500, $300 and $100		419,500 00	
	Coupons to November 1, 1876		122,296 00	
				541,796 00
5.	Tennessee substitution bonds (gold)		120,000 00	
	Coupons to January 1, 1877		91,805 00	
				211,805 00
6.	Second mortgage bonds R. S. T. U., and Rr. Ss. & Uu.:			
	$1,000, $500, $300, $100, and $1,000, $500, $100		900,600 00	
	Coupons to March 1, 1877		221,168 00	
				1,121,768 00
7.	Second mortgage liquidation L bonds		80,789 68	
	Coupons to March 1, 1877		19,398 98	
				100,188 66
8.	Convertible bonds		275,165 00	
	Interest to March 1, 1877		44,224 90	
				319,389 90
9.	Gainesville branch bonds:			
	Detached coupons to November 1, 1874			4,240 00
10.	Income bonds, E and N		600 00	
	Accrued interest and coupons to March 1, 1877		748 00	
				1,348 00
	Total bonds and coupons			$8,856,255 60

259 The claims existing in other form than of bonds (but which are secured by deposit of the company's sealed obligations), which were presented and proved, and the names of the holders are shown in Exhibit D, hereto annexed as a part of this report. There are 34 of these claims, numbered from 501 to 534 inclusive, amounting, principal and interest March 1, 1877, $310,787.47.

The claims presented, which are not accompanied by satisfactory proof showing them to be valid liens upon the property of the company, are submitted to the court with Exhibit E. They consist of Tennessee tax-certificates, and disputed tax-claims and judgments, amounting to $13,111.84.

Henry Bright, of Northampton, Massachusetts, has filed affidavit showing the numbers and amounts of certain bonds and coupons belonging to him, which were stolen from the vault of the Northampton National Bank, on the 26th January, 1876. None of these bonds claimed have been presented to the master. The affidavit is herewith submitted, marked F.

W. D. Dunn, of Mobile, has filed sworn statement of the company's paper, endorsed by him for its accommodation, and outstanding to the amount of $166,588, to secure which the company's consolidated mortgage bonds have been deposited in the Bank of Mobile. Said statement is submitted, marked G. The amount is included in the *the* secured floating debt hereinbefore reported.

Since the claims herein reported were filed, a majority of them in number and amount have been transferred to the custody and control of W. H. Hays, W. H. Pierson, and T. Haskins Du Puy, as a committee on reorganization of the Mobile and Ohio Railroad Company. On the 23d January, 1876, said committee filed proofs of $4,297,267.32 of the company's obligations, exclusive of coupons and of Tennessee substitution bonds, or about 60 per cent. of the bonds proved to the master. Since said date, said committee has filed affidavit showing its holdings of the principal funded debt to have increased to $7,736,961.00 out of a total issue outstanding (excluding Gainesville Branch bonds) of $11,492,167.00.

This report, with that heretofore made, embrace all matters referred to the master as to the mortgage liens and property not mentioned in the second paragraph of the decree, as to which a further report will be made.

Respectfully submitted.

JAMES GILLETTE,
Special Master.

MOBILE, ALA., *April 2d*, 1877.

260 EXHIBIT A OF MASTER'S REPORT.

In the circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN AND ANDREW FOSTER Elliot, trustees of the first mortgage bondholders,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY and others.

Notice to all persons holding liens and charges on the railroads or other property of the Mobile and Ohio Railroad Company.

The undersigned, special master, appointed by the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, in a decree rendered in the above entitled cause on the 6th day of March, 1876, hereby gives public notice of said appointment.

By the terms of said decree the master is ordered to report:

First.—"The mortgages, deeds of trust, agreements, judgments, or other instruments which create a charge, lien, or encumbrance on the said mortgaged property (of the Mobile and Ohio Railroad), with the order and priority of each of them, in imposing a charge upon the said property, and entitled to payment from the same."

Second.—"The bonds which are secured by the respective mortgages, deeds of trust, or encumbrances, and the amount thereof, and of the interest due thereon, and which form a present (or future) valid claim upon the said corporation (the Mobile and Ohio Railroad Company), and if the debt exist in any other form than of bonds, then, that he report the debt which may be due, or which may become due on the said several securities of the said corporation," and "the names of the holders of the securities of the company, which may be presented and proved to him, and the sum due to each holder."

All persons interested in the matters hereinbefore stated will take notice, that for the purpose of executing the requirements of said decree, and to enable the holders of bonds, coupons, liens, or claims of any description against said Mobile and Ohio Railroad Company, secured by mortgage, or which create a charge, to present in person, or by attorney, their demands and proofs before him, the master will attend at the United States court-room, in the city of Mobile, Alabama, between the hours of 12 m. and 3 p. m. each day, from Monday, the 15th day of May, 1876, until the 31st day of said month, and at the court-house in Columbus, Mississippi, on Monday, Tuesday, and Wednesday, the 17th, 18th, and 19th days of July, 1876, and at the court-house in Jackson, Tennessee, on the 21st and 22d days of said month, and in the city of New York, at No. 11 Pine street, from Monday, the 7th day of August, 1876, to the 31st day of said month.

And again, at Mobile, from Monday, the 2d day of October, 1876, until the 15th day of said month, when the time for taking proof will be closed.

But for the purpose of receiving proof of bonds, liens, claims, and other
evidences of debt against said company in the condition aforesaid,
261 and for correspondence relating to the same, the master's office
at Mobile will be open on every judicial day of the week, from Monday, the 15th day of May, until the 15th day of October, 1876, according to the terms of the decree.

Due notice will be given of the times and places of receiving proofs of bonds, liens, or claims held in foreign countries, and of the times and places where proofs will be received in other cities of the United States, should the same be deemed necessary.

As to the mode of making proof, it is required that either the original bond, coupon, claim, or other evidence of debt shall be presented to the master for identification and verification; or, where originals are not presented, affidavit and proof may be made before the master, according to the forms of the proofs taken of claims in bankruptcy.

In the case of bonds, coupons, or other securities presented, the affidavit must show the number, amount, and date of issue of each bond, coupon, or security so proved, with the full address of the owner thereof. And in the case of claims, or other evidences of debt, a certified copy, sworn to in like manner, must be furnished.

JAMES GILLETTE,
Special Master

JOHN A. CAMPBELL and
P. & T. A. HAMILTON,
Solicitors for Trustees and Receivers.
GEORGE N. STEWART.
Solicitor for Mobile and Ohio Railroad Company.

Statement from the general ledger of the Mobile and Ohio Railroad of the

Date of issue.	Class of Bond.	Description of bond.	Value of bond.	When due.	Authorized issue.
1 Nov., 1853	1st mortg.	Sterling non-certificate.....	£225 sterling.......	1 Nov., 1883	$6,000 000
1 " "	" "	Sterling certificate.........			
1 " 1866	" "	Ten year interest O, P, Q..	$1,000, $500, $200....	1 " 1876	1,600 000
1 " 1868	" "	Interest arrearage F1 to F4.	$1,000, $500, $300, $100.	1 " 1883	
1 " "	" "	Funded interest F and F1..	$1,000, $500............	1 " "	
1 " 1867	" "	Sterling interest B and C..	£200, £100............	1 Nov., "	769,920
1 July, 1871	" "	Tennessee substitution.....	$1,000 gold, or £205..	1 July, 1901	1,685,000
		Total first mortgage.......	....	....	$10,054,920
1 Mar., 1867	2d mortg.	Series R, S, T, and U......	$1,000, £500, $300, $100	1 Mar., 1877	1,500,000
1 " 1871	" "	Series Rr, Ss, and Uu.....	$1,000, $500, $100.....	1 " "	
1 " 1872	" "	Liquidation or 4th issue L..	Irregular amounts....	1 " 1882	
1 " 1873	" "	Liquidation or 4th issue L..	" "	1 " 1883	
1 Nov., 1870	Special m'tgage	Gainesville Branch	$1,000	1 Nov., 1880	53,000
1 Dec., 1872	Iss'ed for stock.	Convertible 8 p'r c.........	$1,000................	1 Dec., 1883	1,000,000
			....	....	$12,607 920

In the circuit court of the United States, fifth judicial circuit and

ees, vs. The Mobile and Ohio Railroad Company et al. James Gil-

funded debt of the Mobile and Ohio Railroad Company, as of March 1, 1877.

Issued.	Redeemed.	Outstanding.	Rate of interest.	Matured coupons.	Date of last maturity.	Total bonds & coupons.
$5,976,000 00	$293,000 00	$3,117,000 00	£13 10s. or	$676,981 80	Nov. 1, 1876	$3,793,981 80
	74,000 00	2,492,000 00	$65 gold*	612,960 00	" "	3,104,960 00
			8 per c. cur.			
	2,300 00	842,100 00	" "	202,104 00	" "	1,044,204 00
1,532,200 00	1,400 00	33,900 00	" "	8,448 00	" "	42,348 00
	10,500 00	642,000 00	" "	155,280 00	" "	797,280 00
769,920 00	....	769,920 00	6 per c. g'ld*	152,444 16	" "	922,364 16
1,685,000 00	17,000 00	1,668,000 00	7 " "	385,308 00	Jan. 1, 1877	2,053,308 00
$9,963,120 00	$398,200 00	9,564,920 00		2,193,525 96		11,758,445 96
909,400 00	15,900 00	893,500 00	8 per c. cur.	214,440 00	Mch. 1, 1877	1,107,940 00
256,200 00	....	256,200 00	" "	61,488 00	" "	317,688 00
62,204 42 241,954 05	2,651 42	301,507 05	" "	72,998 01	" "	374,505 06
53,000 00	....	53,000 00	" "	12,720 00	Nov. 1, 1876	65,720 00
476,500 00	....	476,500 00	" "	85,770 00	Mch. 1, 1877	562,270 00
$11,962,378 47	$416,751 42	$11,545,627 05		$2,640,941 97		$14,186,569 02

* Currency calculated for 110 gold.

C. A. WETTON, *Auditor.*

southern district of Alabama. W. B. Duncan and A. F. Elliot, trust-
lette, special master.

W'M BUTLER DUNCAN and
A. FOSTER ELLIOTT,
By T. HASKINS DUPUY,
Attorney and Agent of Trustees and Receivers.

EXHIBIT B 2 OF MASTER'S REPORT.

Accounting department Mobile and Ohio Railroad.—Statement of Mobile and Ohio Railroad Company's notes secured by collaterals.

Name of holder.	Date.	When due.	Amount of note.	Numbers of bonds.	Amount of first mortgage.	Amount of second mortgage.	Amount of convertible.	Amount of consolidated.	Amount of stock.	Remarks.
Burnham, Parry, Williams & Co	1875. January 28	1875. May 21	8,000 00	Nos. 251 | 284, 539—549, $1,000 each.				$45,000 00		
Do	February 3	" 31	8,000 00							
Do	" 23	June 21	8,500 00							
Do	April 26	August 24	8,000 00							
John Reynolds	1874. Dec'ber 14	Decem. 15	2,400 00	Nos. 285 | 294, $1,000 each				10,000 00		
Do	1875. January 12	1876. January 9	2,400 00							
Do	Febru'ry 21	Febr'y 23	2,400 00							
A. Iselin & Co	March 3	1875. Decem. 30	47,700 00	Nos. 170 | 199, 1, 33, 62 | 67, 73 | 75, 80—42 @ $1,000 each.		42,000 00				New series L.
				Nos. 22, 81—2 @ $500 each		1,000 00				" " L.
				Nos. 1, 53 | 59, 88—8 @ $500 each.		4,000 00				Series Ss.
				No. 276		2,000 00				Old series L.
				No. 224		1,000 00				Old series L.
				Numbers unknown			30,000 00			No. 238 seen by master.
Gallatin Nat'l Bank of New Y'k	May 19	Demand.	50,000 00	640 | 679 @ $1,000 each, 200 | 241 @ $1,000 ea.	40,000 00	42,000 00			1,400 shares.	Series O.
Perkins, Livingston & Post	January 21	1875. Decem. 10	16,044 67	Nos. 550 | 609—60 @ $1,000 each.				60,000 00		
Do	" "	" "	5,062 22							
Do	" "	1876. January 9	11,920 93							
Do	" "	" "	11,920 93							
Gilead A. Smith & Co	" 18	1875. Decem. 22	10,850 73	Nos. 501—538, 295 | 300—44 @ $1,000 ea.				44,000 00		
Do	" 29	1876. January 26	10,911 86							
Do	Febru'ry 23	Febr'y 22	10,972 98							

Overdraft	1874. Decem. 23	1875. April 26	19,325 31	Nos. 130 | 145, 147 | 167, 168 | 169—39 @ $1,000 each.	....	39,000 00	....	....	....	New series L.
				203, $1,000, 256 @ $500, 474, $300.	....	1,800 00	....	....	400 shares.	Old series L.
Mobile Savings Bank	1874. Decemb'r 5	1875. Decem. 11	1,125 00	Nos. 246 ¦ 270—25 @ $1,000 each.	....	25,000 00	....	....	....	New series L.
Do	" "	" "	1,125 00							
Do	1875. March 20	" 12	450 00							
Totals	....	....	$237,109 63	....	$40,000 00	$157,800 00	$30,000 00	159,000 00	1,800 shares.	

NOTE.—There is also hypothecated as general collateral with W. H. Pratt, to secure payment of sundry loans included in bills payable statement consolidated mortgage bonds as follows: No. 1 to 250, 301 to 350, 383 to 500; also 351 to 361, and 377 to 382.

C. A. WETTON, *Auditor.*

In the circuit court of the United States, fifth judicial circuit and southern district of Alabama. W. B. Duncan and A. F. Elliot, trustees, vs. The Mobile and Ohio Railroad Company et al. James Gillette, special master.

EXHIBIT C OF MASTER'S REPORT.

Recapitulation of bonds and coupons of the Mobile and Ohio Railroad Company, presented and proved to the special master.

Number of schedules.	Series.	BONDS.		COUPONS.		GRAND TOTAL.	Amount in United States money.
		Number, &c.	Amount.	Interest coupons to—	Amount of coupons attached and detached.		
Schedule one.....	First mortgage sterling......	4081	£918, 225 0s 0d	Nov. 1, 1876.	£187, 292 5s 0d	£1, 105, 517 5s 0d	$4, 992, 457 73c gold.*
“ two.....	First mortgage sterling interest (B, 676 and C, 67)........	743	141, 900 0s 0d	“ “ “	26, 652 0s 0d	168, 552 0s 0d	820, 258 31c “ *
	Total........	4824	£1, 060, 125 0s 0d	....	£213, 944 5s 0d	£1, 274, 069 5s 0d	
“ three....	First mortgage ten-year interest (O 463, P 112, and Q 328).	903	584, 600 00	Nov. 1, 1876.	$158, 404 00	$743, 004 00	1, 284, 800 00
“ four.....	First mortgage interest arrearage and funded interest (arrearage F1 21, F2 9, F3 5, F4 15; fund. F 274, F1 234	558	419, 500 00	“ “ “	122, 296 00	541, 796 00	
“ five.....	Tennessee substitution........	120	120, 000 00	Jan. 1, 1877	91, 805 00	211, 805 00 gold	211, 805 00 gold.
“ six......	Second mortgage (R 401, RR 167, S 363, Ss 38, T 351, U 164 and UU 104........	1588	900, 600 00	M'ch 1, “	221, 168 00	1, 121, 768 00	1, 221, 956 66
“ seven....	Second mortgage, series L (old 43 and new 81)........	124	80, 789 68	“ “ “	19, 398 98	100, 188 66	
“ eight....	Convertible........	225	275, 165 00	“ “ “	44, 224 90	319, 389 90	319, 389 90
	Total........	3518	$2, 380, 654 68	....	$657, 286 88c	$3, 037, 951 56c	
“ nine.....	Special mortgage—Gainesville branch........	.....	....	Nov. 1, 1874.	4, 240 00	4, 240 00	4, 240 00
“ ten......	Income bonds (1E and 1N)........	2	600 00	M'ch 1, 1877.	748 00	1, 348 00	1, 348 00
	Total........	2	$600 00	....	$4, 988 00	$5, 588 00	
	GRAND TOTAL........	8344	$7, 152, 811 03	....	$1, 703, 444 57c	....	$8, 856, 255 60c

*NOTE.—The reduction of sterling interest bonds and of sterling coupons, payable in London, to U. S. standard money, is at the rate of 4.86-65, under section 3565 Revised Statutes of the United States.

NOTE.—The schedules to which this recapitulation refers, containing names of holders of securities of the company and amount due each, are too voluminous for publication.

JAMES GILLETTE,
Special Master.

In the circuit court of the United States, fifth judicial circuit and southern district of Alabama, W. B. Duncan and A. F. Elliott, trustees, vs. The Mobile and Ohio Railroad Company et al.

Floating debt of the Mobile and Ohio Railroad Company (secured by deposit of the company's bonds), presented and proved to the special master:

Principal amounts	$282,295 91	
Interest to March 1, 1877	28,455 10	
Protest fees	36 46	
	$310,787 47	
Promissory notes		$278,001 95
Open accounts		32,309 31
Interest certificates		476 21
Total—gold	$44,558 37	$310,787 47
currency	266,229 10	

EXHIBIT E.—SUMMARY.

Floating debt, miscellaneous, unsecured claims and judgments against the Mobile and Ohio Railroad Company, presented and proved to the special master:

Principal	$9,592 86
Interest to March 1, 1877	3,320 69
Costs	198 29
Total	$13,111 84

EXHIBIT F.

Affidavit of Henry Bright, of Northampton, Mass., relating to bonds of the Mobile and Ohio Railroad Company, stolen from Northampton National Bank, 26th January, 1876:

Description of bonds.

First mortgage sterling bond, No. 5290, for £225, and coupons from May 1, 1875.

Ten-year interest, series O bond, No. 244, for $1,000, and coupons from May 1, 1875.

Second mortgage, series RB bonds, Nos. 1, 2, 3, and 4, for $1,000 each, and coupons from March 1, 1876.

Second mortgage, series T bonds, Nos. 207 and 208, for $300 each, coupons from March 1, 1876.

Second mortgage, series U bonds, Nos. 97 and 98, for $100 each, coupons from March 1, 1876.

Convertible bond, No. 245, for $3,250. No coupons.

EXHIBIT G.

Affidavit, with statement in detail of Mobile and Ohio Railroad Company's paper, endorsed by W. D. Dunn.

Filed April 5th, 1877.

N. W. TRIMBLE, ***Clerk.***

In the circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W. B. DUNCAN ET AL.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al.
} In equity.

To the honorable the circuit court of the United States for the circuit and district aforesaid:

Pursuant to the decree made and entered on the 6th day of March, 1876, in the above-entitled cause, the special master has reported the property included in the terms and conditions of the deed of trust attached to complainant's bill, and which has come to the possession and control of the trustees, subject to the decree of this court, and he has reported, under the third paragraph of the decree, the bonds secured by the respective mortgages of the Mobile and Ohio Railroad Company, and the amount of the funded debt, and his proceedings at the sessions held for taking proof of the debts due upon the several securities of the said corporation and the claims presented and proved to him, and the names of the holders of the securities presented and proved and the sum due each holder.

The second article of the decree of reference under which the present report is made is as follows:

"The court orders that the said master report the mortgages, deeds of trust, agreements, judgments, or other instruments which create a charge, lien, or incumbrance on the said mortgaged property, with the order and priority of each of them, in imposing a charge upon the said property, and entitled to payment from the same."

Under this article this master respectfully submits the following report:

Due notice was given to the solicitors of record in the cause, and the solicitors of parties who had filed objections under the ninth paragraph of the decree, of the times and places of executing the reference and of receiving such evidence as might be submitted. The time for taking testimony and for filing report was extended by orders of the court, dated December 4, 1876, and February 7 and 20, 1877, until 267 the 1st of April, 1877, during which period the master was attended by the solicitors of the various parties to the record and of objecting bondholders, and by witnesses. He also had before him the pleadings, exhibits, orders, and records in the cause.

Minutes of the master's sessions and copies of the notices issued, and the testimony before him, are filed in the cause.

The master made a full examination of the books and records of the company, which were freely placed at his disposal by the officers of the company under the orders of its vice-president.

First mortgage.

1. It appears from the pleadings, exhibits, and proofs contained in the record, that on the 1st November, 1853, under the charter and acts by which the Mobile and Ohio Railroad Company was incorporated, said company executed and delivered to certain trustees, whose successors are the complainants in this cause, its deed of trust of all the property

owned by said corporation, and lying between the respective termini of said railroad, constructed and to be constructed, together with all its rails, bridges, fences, warehouses, fixtures, privileges, rights, franchises, real estate, and all other property, real or personal, owned or to be thereafter owned, including certain lands donated by act of Congress, described by said deed, but saving and excepting certain lands in Mobile County not then fully paid for, and saving and reserving the rights and liens which might attach to one hundred and eighteen miles of the road and construction thereon in the State of Tennessee, by statute of said State, in the event of its aiding in the construction of said railway. A copy of said deed of trust is attached to the bill of complaint, marked "Exhibit B."

The purpose of said deed was to furnish a perfect and adequate security in trust for the holders of an authorized issue of bonds, to the amount of not more than six millions of dollars, principal, in sums of £225 sterling each, of even date with the mortgage, payable in thirty years, with semi-annual coupons attached, each being for £6 15s. sterling, principal and interest payable in London. Each of said sterling bonds was to be the same as one thousand dollars money of the United States, and said bonds were not to exceed six thousand in number.

Bonds numbered from 1 to 6,000 inclusive were executed by said company under said mortgage, of which, from the books of the company, it appears 5,976 were issued and 5,609 are now outstanding, amounting, with coupons matured and unpaid and not funded, to the sum of $6,898,941.80. The bonds proved before the master were 4,081, amounting to $4,081,000.00. and coupons matured and unpaid, also proved, amounted to $911,457.73.

It appears that owing to the interruption of business and the
268 deterioration of the road during the civil war, the interest maturing from 1861 to 1867, inclusive, was not paid by said company, nor was the interest fully paid after 1867, up to and including 1869. The coupons, however, under agreements of the company, were placed on deposit in order to secure the mortgage lien which attached to them, the company executing and delivering therefor further bonds, known as "ten year interest," "funded interest," and "interest arrearage" bonds. Some of these series were delivered in Mobile by the company, some through the Union Trust Company of New York, and others, known as "sterling interests," were delivered through Mess'rs C. M. Lampson & Co., of London. It appears from the records and proofs before the master that the original coupons supporting these various series are held in trust by the Mobile and Ohio Railroad Company as to the series known as "ten year interest," dated November 1, 1866, due November 1, 1876, and as to the series known as "interest arrearage," dated November 1, 1868, due November 1, 1883.

The coupons supporting the "funded interest" bonds, dated November 1, 1868, due November 1, 1883, are held by the Union Trust Company. The coupons supporting the "sterling interests," dated November 1, 1867, due November 1, 1883, are held by Mess'rs C. M. Lampson & Co., of London.

The mode of this arrangement is shown by agreements between the railroad company and first mortgage bondholders in London, in February, 1867, and August, 1868, certified copies of which the master returns with the evidence in the cause, and he also returns certified copies of the agreements or resolutions governing other issues of interest bonds, as the same appear on the records of the company.

The master further reports, as to the sterling bonds of the first issue, that the rate of interest agreed to be paid by the company was 6 per cent.

The company, by resolution of its board of directors, dated January, 1859, agreed to give to certain of the bonds a rate of interest equal to 8 per cent. on one thousand dollars, when received in New York or at the treasury of the company. A certificate was attached to a portion of the bonds which enabled the holders to collect that rate of interest.

While such arrangement or certificate may be binding upon the company and the parties accepting it, the master cannot report it as affecting the rights between parties who hold liens upon the trust property.

The master finds that the deed of trust, dated November 1, 1853, represented by plaintiffs, a copy of which is attached to their bill in this cause, is a first mortgage of the Mobile and Ohio Railroad Company, and 269 is earliest in date, and establishes a prior lien to any other mortgage upon the property described in it or comprehended under its terms, whether then in possession, or since acquired, being on the main line and branches of the said railroad to the Ohio River, and its appurtenances of every kind or description, and upon the lands included in its terms, whether then in possession, or acquired since, excepting that portion of the said railroad known as the "Gainesville Branch," and with the reservation set forth in said trust-deed as to so much of the main line of said railroad and equipment as exists in the State of Tennessee.

The master has already reported the bonds which were issued and outstanding under said first deed of trust, and also the bonds issued as a substitute for, but not in extinguishment of, the coupons which from time to time matured and were unpaid, which said bonds were known as interest bonds. A full description of all said bonds with a statement of their amounts outstanding, and of the coupons matured and unpaid thereon, as shown on the company's books, will be found in the master's report upon the funded debt and in Exhibit B 1 thereto, the aggregate amount being $9,705,137.96.

The master has also reported the bonds and coupons secured by the aforesaid deed of trust which were presented and proved to him by the holders, and the sum due each holder, in Exhibit C of said report, schedules one to four, amounting to $7,097,516.04.

The master further reports that all of the bonds and coupons embraced in the schedules referred to are included within and secured by the terms of the said first mortgage of the 1st November, 1853, and are a first lien upon the property described therein, excepting so far as the lien of the Tennessee substitution bonds, next herein named, may be established as superior thereto and subject to a further report of the coupons which matured in 1874.

And the master further reports that the interest bonds hereinbefore described are a first mortgage lien of equal amount with the coupons for which they were substituted, and interest thereon from dates of maturity.

Tennessee mortgage.

2. In respect to the reservation contained in the trust deed in favor of the specific incumbrance claimed to exist on the line in Tennessee, being one hundred and eighteen miles within that State, the master has had some doubts as to whether he should make any report.

Mess'rs Duncan, Iselin, and Wilson, the trustees named in the Tennessee substitution mortgage, so-called, have not availed themselves of

the permission accorded to them in the fifth article of the decree of reference, to become plaintiffs in this cause, nor did they propound their deed of trust to the master or appear on the reference in response
270 to the various notices sent to Mess'rs Iselin and Wilson, or their counsel, as shown in the master's proceedings. The facts, however, appear in the record in this cause, or in the reports and books of the company.

The Mobile and Ohio Railroad Company borrowed of the State of Tennessee her bonds, to aid in the construction of the railroad in that State, in conformity to the act of the general assembly of that State, dated February 11, 1852, to establish a system of internal improvements, and the amendatory acts upon the same subject.

The act of February 12, 1852, authorized the loan of bonds of the State to railroad companies. The bonds to run not less than thirty, nor more than forty years. They were to bear interest half-yearly, at 6 per cent. per annum. These acts reserve a prior and paramount lien or charge upon the railroads built within the State prior to all other liens, and reserve large remedial powers for the enforcement of that lien and to secure the State from damage from the loan of its bonds, both principal and interest, of which the road borrowing the bonds was to pay.

It appears that the State did, under this law, lend its bonds to the Mobile and Ohio Railroad Company from time to time as the work of construction progressed, until finally the amount in bonds issued to the company was about $1,296,000.

The law limited the extent of the loan to ten thousand dollars per mile of road.

In consequence of hostilities and deterioration, the railroad company was in default in the payment of interest and in the payment of a percentage for a sinking fund for years, whereby the original debt was increased to the sum of $1,684,800, as appears by the admission of the railroad company, contained in the resolution of the board of directors, dated 25th May, 1871.

The State of Tennessee, to relieve herself of the burden of railroad debts, and to aid the railroads, passed remedial acts on the 25th February, 1869, and subsequently, whereby the railroad company was authorized to issue its own bonds to provide means to procure Tennessee State bonds, and to cancel and surrender them to the State. These new bonds of the company were to be deposited with the comptroller. Whenever State bonds were produced and canceled, the comptroller was to deliver to the company a like amount of its own bonds with an endorsement that the bonds of the company thus delivered should be a first mortgage bond, taking the place of the bond issued by the State.

Printed extracts of the laws of Tennessee, referring to this substitution, are attached to complainant's bill, as Exhibit A, to which reference is made.

271 Under these acts the Mobile and Ohio Railroad Company on the 25th May, 1871, by resolutions, authorized the issue of 1,685 bonds of the company, of one thousand dollars each, in gold coin of the United States, or £205 sterling each, payable 1st July, 1901, in New York or London, with interest at 7 per cent. per annum, payable semiannually, and declared Mess'rs W'm Butler Duncan, A. Iselin, and R. T. Wilson, agents of the company, to effect the substitution, and directed the deed of trust made to them, which was made July 1, 1871, conveying all of said road, its property and equipment, lying in the State of Tennessee, to secure the payment of said 1,685 bonds and interest. Copy of the resolution of the board of directors Mobile and Ohio Rail-

road Company, and of the deed of trust referred to, is marked "Exhibit D" to the bill of complaint in this cause.

The master reports that this mortgage or deed of trust, if valid under the reservations of the deed of 1853, attached to the bill, and which are expressed in other and subsequent mortgages of the company and its resolutions, and the reservations in the laws of the State of Tennessee, and the powers granted in the same, is a prior lien on that portion of the line of the railroad within the limits of that State.

But as the trustees have not come before the master, he reports, by consent of counsel who appeared before him, that the case is not in a condition to warrant a report upon the amount, validity, or priority of this incumbrance, and that the proceedings in this case should not be operative to affect the deed of trust to Duncan, Iselin, and Wilson. Should they hereafter appear, the facts are sufficiently shown in the papers in the cause to enable a report to be made.

The master reported in his report, filed 5th inst., the outstanding bonds purporting to be secured by this deed of trust as 1,668, of which there were presented and proved to him by the holders 120 bonds and 2,623 coupons, leaving *fo* the bonds 1,548 not proven. The names of the holders of the bonds and coupons so presented and the sum due each holder, are given in Exhibit C (schedule 5) of said report.

Second mortgage.

3. The master further reports, that on the 1st day of February, 1860,
the Mobile and Ohio Railroad Company, by its deed of said date, made in
pursuance of resolutions of the company which are recited in said deed,
conveyed the property therein described, which is all the property,
effects, and income of the road, including that already conveyed to R.
A. Baker, of Alabama, (who is since deceased, and whose place has
been supplied by W'm D. Dunn, of Mobile), to George H. Young,
of Mississippi, and Samuel Williams, of Tennessee (who is de-
272 ceased, and whose place has been filled by W'm Dickson, of Ala-
bama), as trustees to secure the payment of certain bonds de-
scribed in said deed and recited in the resolutions. A printed copy of
said mortgage is attached to complainant's bill as Exhibit E, to which
reference is made, and is also propounded in the answer of W'm D.
Dunn, one of the trustees of said second mortgage, filed in this cause.

The master finds and reports that said deed is a second mortgage upon all the property, effects, and income of said defendant wherever lying and being. He has already reported in the funded debt statement the outstanding bonds of the various series issued under this mortgage, according to the books of the company, as amounting, with the coupons matured and unpaid to March 1, 1877, $1,800,133.06, of which the bonds and coupons presented and proved to the master amounted to $1,221,956.66.

The descriptions of the bonds, names of holders, and amounts due each will be found on schedules 6 and 7 of Exhibit C to the report last filed.

Consolidated mortgage.

4. The master further reports that on the 1st day of January, 1874, the said corporation executed a further mortgage on all the property described in the preceding deeds, and vesting all its property and right of property, real, personal, or mixed, and all corporate powers and franchises of every kind and description, in W'm Butler Duncan and Sam-

uel L. M. Barlow, of New York, to secure the payment of a proposed issue of 15,000 bonds of one thousand dollars gold, or £205 sterling each, with interest-coupons attached, payable semi-annually at 7 per cent., which issue was designed to retire all existing bonded indebtedness of the company.

It appears that this mortgage is a third lien upon all the property of the Mobile and Ohio Railroad Company, subject in all respects to the prior liens hereinbefore recited.

It has been satisfactorily shown to the master that of the fifteen thousand bonds authorized to be issued of this series, but six thousand were executed, and of these all have been cancelled by the trustees, except six hundred and nine, which were hypothecated to secure the floating debt of the company. Of these there are five hundred and ninety-four outstanding. The particulars are fully shown in the report hereinbefore referred to, and in exhibits thereto B 2 and D.

Gainesville branch mortgage.

5. In addition to the liens hereinbefore described, the defendant corporation on the 24th March, 1871, executed to W'm D. Dunn, John Reid, jr., and Robert C. Crawford, of the city of Mobile, as trustees, its deed of mortgage on the branch road and property thereto attached, known as the "Gainesville branch," extending from a point on the main line of the Mobile and Ohio Railroad to the town of Gainesville, 273 Alabama, being 21 miles. Said property was conveyed in trust to secure the payment of fifty-three bonds made by the Mobile and Ohio Railroad Company, each for one thousand dollars, dated 24th March, 1871, payable 1st November, 1880, with interest at the rate of 8 per cent. per annum from 1st November, 1870, payable semi-annually on the 1st days of May and November in each year.

The master reports that this mortgage was given to secure the purchase money for said branch, and the debt due under it is a first lien thereon, but on no other property.

The trustees thereof have not propounded their claim before the master, but the lien of said mortgage is admitted in the pleadings. None of the bonds have been presented or proved. Coupons amounting to $4,240.00 have been presented and proved. (Schedule 9, exhibit C, of the debt report.)

The debt on this issue, on the 1st November, 1876, was $65,720.00 according to the company's books.

Convertible bonds.

6. The master further reports that said corporation has made a further issue of its bonds, dated December 1st, 1873, and maturing 1st December, 1883, which said bonds are known as "convertible bonds," and appear by resolution and on their face to be convertible into stock at the rate of twenty-five dollars per share in place of one hundred dollars, which is the par value per share of the stock of said corporation. The authorized issue of said bonds was one million of dollars, of which amount the company's books show $476,500.00, issued and outstanding, with an accumulation of interest to March 1, 1877, of $85,770.00.

Of these amounts there have been presented and proved to the master the sum of $275,165.00 of principal, and $44,221.90 of interest, in all $319,389.90. The particulars, with the names of the holders, are shown in schedule 8, exhibit C, of the funded debt report hereinbefore quoted.

The master finds and reports that this issue, in common with all other securities of the corporation, is embraced in the terms of the company's third or consolidated mortgage, which has been described. Said convertible bonds have no other lien than such as said mortgage confers, which is subordinate to all other mortgages described in this report.

Floating debt.

7. The floating debt has been the subject of reports heretofore filed in this cause. To the extent of the principal amount of $535,387.17, and interest thereon, it is a lien upon the property of the corporation; that is, to the extent that it is secured by the deposit of its sealed obligations, chiefly consisting of the bonds of the third or consolidated mortgage. 274 The particulars of this debt, as shown by the books of the company, will be found in the debt report and exhibit D thereto.

The amount proved to the master, with interest to March 1, 1877, was $310,787.47.

Judgments.

8. The master has reported the judgments presented to him in exhibit E of the previous report. The claims therein shown, numbered from one to ten inclusive, are not considered as valid liens upon the trust property, except the following, which the master reports are liens inferior to the mortgages and incumbrances hereinbefore recited.

The claims of John Williams, Norton & Co., W'm D. Wainwright, John Brooks, and J. Y. Keith, and John Brooks and others, for judgments obtained in the several courts of the States through which the road passes; said judgments and increment, amounting to $10,362.10, may be reported as above stated.

The master files this report under the order of the court, dated March 6th, 1876, extended in the orders of the 4th December, 1876, and the 7th and 20th of February, 1877, to settle the order of payment of the classes of debt creating a charge on the property of the Mobile and Ohio Railroad Company, and to determine the priority of payment among the creditors of the said company as established before him under these orders.

By an order made on the 28th day of March, 1877, the time was extended to the 20th April, to allow certain parties to strengthen their opposition to the allowance of certain claims which have been proved, and until testimony is taken, and the report upon it is made, the report of the debt and the priority of payment will not be complete.

There is included in the debt reported upon the claim of Alexander Duncan for coupons of first mortgage bonds of 1874, held by him. This claim is contested by certain bondholders who have objected to its allowance, and the extension of time referred to in the order of March 28th is for their benefit.

Any confirmation, therefore, of this report should contain a reservation as to the coupons referred to, as well as to the Tennessee lien.

Respectfully submitted.

JAMES GILLETTE,
Special Master.

MOBILE, ALA., *April* 6, 1877.

Filed April 6th, 1877.

N. W. TRIMBLE, *Clerk.*

275 In the circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN AND A. F. ELLIOT, trustees,
vs.
MOBILE AND OHIO RAILROAD COMPANY AND others.

Resolutions and agreements of the Mobile and Ohio Railroad Company relating to issue of bonds, filed as evidence with master's report of April 6th, 1877.

JAMES GILLETTE,
Special Master.

Received and filed 6th April, 1877.

N. W. TRIMBLE, *Clerk.*

276 *Resolutions and agreements of the Mobile and Ohio Railroad Company, relating to the issue of bonds funding interest under the first mortgage.*

TEN-YEAR INTEREST BONDS.—Series O, $1,000; P, $500; Q, $200—dated November 1, 1866; due November 1, 1876. Issued for funding interest on income bonds and coupons of interest on the sterling bonds. Authority: Resolutions of December 13th, 1865, January 10, 1866, and instructions from the executive committee.

(Extracts from minutes.)

DECEMBER 13TH, 1865.

Resolved, That the subject of the exchange of bonds and the funding of matured coupons be referred to the president and executive committee to adjust a plan for the exchange of the bonds and the redemption of said coupons, and report to the board at their next meeting.

JANUARY 10TH, 1866.

The report of the executive committee regarding the exchange of bonds and the funding of matured coupons was read, and, on motion, was referred back to the president and executive committee for revision.

The outstanding income bonds of the company of the 1st, 2d, and 3d issues, which matured July 1st, 1861, July 1st, 1862, and June 1st, 1865, respectively, will be redeemed by an exchange of sterling bonds of £225 for each $1,000 of incomes. Interest on the income bonds to be computed to 1st November, 1866, and an interest bond issued therefor (including any past-due coupons) bearing 8 per cent. interest, payable semi-annually, 1st May and November, at ten years after date, say 1st November, 1866.

Coupons of interest on the sterling bonds, past due and maturing up to November 1st, 1866, can be funded in interest bonds that date, payable 10 years, with interest at 8 per cent. per annum, payable semi-

I certify the above to be correct.

A. L. WILLOUGHBY,
Secretary M. and O. R. R. Co.

277 STERLING INTEREST BONDS.—Series B, £200; C, £100—date, November 1, 1867, due November 1, 1883; coupons due 1st May and November. Payable at the counting-house of C. M. Lampson & Co., London. Issued for unpaid interest upon first mortgage bonds. Authority: Agreement February 4th, 1867.

Agreement with European bondholders.

LONDON, *February 4th*, 1867.

The undersigned, holders of sterling bonds of the Mobile and Ohio Railroad Company, in view of the great losses sustained by the company during the late American war, and to give time to said company to restore its affairs to healthy condition, agree to cut off and fund the interest coupons attached to or belonging to their bonds respectively, including all that have been matured and that will mature prior to the 1st of May, 1868. Simple interest at 6 per cent. per annum to be allowed on each coupon from the time it has matured or may mature up to the 1st of November, 1867. The company to issue "coupon bonds" for the amount, to mature in 1883, bearing the same interest, and coupons payable at the same time and place of the original bonds. The first coupon on each bond to mature and be payable on the 1st of May, 1868. And that the security may not be decreased, the coupons to be funded as above are to be taken off the bonds to which they now belong and deposited, as collaterals, with C. M. Lampson & Co., as trustees, to be held to secure the payment of the bonds to be issued under this agreement.

(Signed)
pp. WILLIAM CRAWSHAY, } 523 bonds.
H. A. WITHERS, }
THOMPSON & FORMAN, 508 bonds.
W'M FORMAN & CO., 62 bonds.
THE EBBU VALE CO. AND OTHERS,
p. JOSEPH ROBINSON, ab. 90 bonds.
C. M. LAMPSON & CO., 57 bonds.
GEO. PEABODY & CO. (in liquidation), 50 bonds.
For partners and self, JNO. EDW. BARTLETT, 28 bonds.
BAILEY BRO'S & CO.,
JOS. BAILEY.
J. S. MORGAN, 3 bonds.
J. S. MORGAN & CO., overdue coupons, £432.
GEO. PEABODY, 9 bonds.

I have to certify that the foregoing is a correct copy of the original document lodged with me by Judge Brown, president of the Mobile and Ohio Railroad Company.

C. M. LAMPSON & CO., *Trustees.*

64 QUEEN STREET, *February* 6, 1867.

278 This agreement is embraced in the minutes of the board of directors March 13, 1867, and accepted.

A. L. WILLOUGHBY, *Secretary.*

INTEREST ARREARAGE BONDS.—Series F 1, $1,000; F 2, $500; F 3, $300; F 4, $100. Datė, November 1, 1868. Due November 1, 1883. Issued for unpaid interest upon first-mortgage bonds. Authority: Agreement August 1st, 1868, and resolutions December 2d, 1868.

Agreement.

AUGUST 1ST, 1868.

1st. The agreement heretofore made by said company at London on February 4, 1867, through its former president, Hon. Milton Brown, by which all past due coupons on first-mortgage sterling bonds of said company up to and including the coupons due the first day of November, 1867, were to be funded in interest bonds payable November 1st, 1883, the coupons so funded to be deposited with C. M. Lampson & Co., of London, as collateral security for the payment of said interest bonds shall be carried out, and the bonds issued and delivered to the proper parties, and the same shall be done with all such coupons belonging to parties holding in the United States; and the coupons so funded by holders in the United States shall be deposited with James Tinker and Isaac Knox, of the city of New York, and the said C. M. Lampson & Co. and James Tinker and Isaac Knox shall certify upon interest bonds so issued that coupons have been deposited with them for the amount of such interest bonds, and as collateral therefor; and in the event it shall be found impracticable to fund said coupons with the majority in amount of said first-mortgage sterling bondholders, then the coupons that shall have been funded under this agreement (both with the English and other bondholders), shall be returned to the owners, and the interest bonds given therefor shall be returned to said railroad company, and the foregoing provisions for funding shall be void; and should any dissenting bondholders succeed in enforcing by legal proceedings any rights contrary to the aforesaid terms, then the assenting bondholders are permitted, notwithstanding they may have funded aforesaid, to apply for and have the same relief with the dissenting bondholder, and the coupons and interest bonds aforesaid shall be returned as aforesaid.

2d. The holders of said first-mortgage sterling bonds, and of the interest bonds which have been heretofore issued or which are to be issued under the provisions of article first of this agreement, agree to receive in payment of coupons due May 1st, 1868, and those falling due up to and including those of November, 1869, the first-mortgage sterling bonds of said company, so far as amounts will justify (it being understood 279 that said first-mortgage sterling bonds are each in the sum two hundred and twenty-five pounds sterling) and for any sum to be funded not equal thereto, said company is to issue interest bonds, which said interest bonds are to be secured by deposit of coupons in the hands of C. M. Lampson & Co., of London, and Tinker and Knox as aforesaid.

3d. The bondholders assenting to this agreement may nominate seven members of the board of directors of said company until such time as said company shall resume and continue the payment of interest, which persons so designated, the said Murdock, president as aforesaid, pledges all his influence, and that of the other present directors, so far as he can do so.

4th. The bondholders to be authorized to select the auditor of said company to such time as said company shall resume and continue interest payments.

5th. The holders of second-mortgage bonds agree to fund all interest coupons of 1868 and 1869 in interest bonds secured by deposit of the coupons so funded in the hands of C. M. Lampson & Co. for those held in England, and in the hands of said Tinker and Knox for those held in the United States.

6th. A bill in chancery to be filed to the next term or terms of court or courts, as counsel may advise, for the foreclosure of the mortgage given by said Mobile and Ohio Railroad for the security of its first-mortgage sterling bonds, and a decree to be obtained with all possible expedition for the foreclosure of said mortgage according to its terms in favor of the holders of said first-mortgage sterling bonds, they agreeing in the decree to suspend its execution to the 1st of May, 1870, with the condition that said decree shall then be executed unless interest is paid, or it may be executed at any time before the 1st of May, 1870, with the consent of the board of directors of said company.

The decree is to settle the entire equities of the case, and to direct the application of the moneys that may be realized under it, whether from income or sales, and in such way as to preserve and protect the equities of all parties according to their respective priorities.

The bondholders, however, agreeing that the interest due and to become due to the State of Tennessee (and which by statute of that State has a prior lien in so much of said road as is in said State, with power to seize said portion of said road in default of payment), shall first be paid from the income of said road.

7th. A monthly statement of the receipts and disbursements of the road shall be furnished to the said C. M. Lampson & Co., of London, and Tinker and Knox, of New York.

8th. This agreement shall be binding when the majority in amount of the first and second mortgage bondholders shall have assented thereto.

280 9th. The original of this agreement bearing the signatures of the English bondholders shall be deposited with Messrs. C. M. Lampson & Co., London, who shall be authorized to give certified copies thereof to parties in interest, and the copies so certified shall have the same force and effect as the original.

And the original of this agreement, bearing the signatures of the other bondholders, shall be deposited with Mess'rs Tinker and Knox, of New York, who shall give copies as aforesaid, of the force and effect aforesaid.

10th. The respective parties hereby pledge, each to the other, good faith in the execution of this agreement according to its spirit, the object being to enable said company, by the indulgence given, to pay its debts and restore itself to prosperty, while at the same time it secures to the bondholders the ultimate payment of their claims and the preservation of their liens according to their respective priorities.

I certify the foregoing to be a correct copy from the minutes of the board of directors, December 2, 1868.

A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

Extract Minutes Board of Directors.

DECEMBER 2, 1868.

1st. Resolved, That for all coupons of sterling bonds up to and including the November, 1867, coupons, to be considered as from 6 per cent. bonds, and interest on coupons to be added at 6 per cent. for which 8 per cent. currency bonds shall be issued to American holders, and bonds payable in London, in English currency, for English holders, at 6 per cent.

2d. Resolved, That for all coupons of 1868 and 1869, on both sterling and interest bonds, first mortgage bonds are to be given to American holders, counting (25) twenty-five coupons without interest as equivalent to a bond, and to the English holders, interest on coupons is to be added to coupons, it being understood that whenever the party funding has not coupons enough to command a first mortgage bond, interest bonds shall be issued to him.

3d. Resolved, That all persons who have heretofore funded coupons, shall be permitted, if they so desire, to surrender their bonds and refund under the foregoing plan.

4th. Resolved, That the bonds issued for English holders, shall be payable in London, at the office of C. M. Lampson & Co., on the 1st of November, 1883, and those issued for the American holders shall be payable at the office of the company, in the city of Mobile, on the 1st of November, 1883. The coupon in each case to be payable May 1st and November 1st, of each year, in London and Mobile.

5th. Resolved, That the coupons of all bonds funded into interest bonds shall be deposited with James Tinker and Isaac Knox, of the city of New York, as collaterals for the payment of said bonds for the American holders, and with C. M. Lampson & Co., of London, for the English holders.

281 6th. Resolved, That the foregoing resolutions are intended to be in conformity with the agreement made with English bondholders on the 1st August, 1868, and any item that may have been omitted in these resolutions, and which may be contained in that agreement, shall be considered as incorporated herein, it being the solemn judgment of this board that the adoption of the contract aforesaid, in conformity to the terms of the foregoing resolutions, is of vital interest to the stockholders of this company.

I certify the foregoing to be a correct copy from the minutes of the board of directors, Mobile and Ohio Railroad Company.

A. L. WILLOUGHBY,
Secretary M and O. R. R. Co.

Extract Minutes Board of Directors Mobile and Ohio Railroad Company.

DECEMBER 2D, 1868.

Resolution unanimously adopted.

Whereas, The president has submitted to this board a plan of agreement made by him, on the 1st of August, 1868, with the bondholders, for the farther extension of interest payments, by funding coupons past due, and to mature in 1868 and 1869, and has stated to the board the reasons which governed his action in concluding said agreement; and

Whereas, The interest of every stockholder will remain in peril until some friendly arrangement can be effected with the bondholders for extension of interest payments as aforesaid:

Now, therefore, resolved, That the agreement submitted to this board by the president, as made by him in London, August 1st, 1868, be, and the same is hereby, ratified; and the president is authorized to take such steps as may be necessary to complete the same.

I certify the above to be a true copy from the minutes of the board of directors of the Mobile and Ohio Railroad Company.

A. L. WILLOUGHBY,
Secretary M. and O. R. R. Co.

NOTE.—The coupons for which these bonds are issued are deposited with the company, as there were only a few bonds issued.

FUNDED INTEREST BONDS.—Series F, $1,000; F1, $500—date November 1, 1868; due November 1, 1883. Issued for unpaid interest on first mortgage bonds. Authority: Resolutions July 15th, 1869.

Resolutions July 15th, 1869.

Resolved, That the resolution of December 2d, 1868, relative to funding past due coupons, be modified or changed, as follows:

282 1st. English bondholders may fund all coupons from first-mortgage sterling bonds up to and including November 1st, 1867, into interest bonds of £200 each, bearing 6 per cent. interest, payable in London, at the office of C. M. Lampson & Co., November 1st, 1883, counting each coupon at £6.15, with simple interest at 6 per cent.

2d. All coupons from first-mortgage sterling bonds, due in 1868 and 1869, to be exchanged for first-mortgage sterling bonds, counting (25) twenty-five coupons for each first-mortgage sterling bond of £225 and no interest.

3d. Coupons from November, 1867, to November, 1869, from sterling interest bonds, to be valued at £6 each, and to be funded into sterling bonds (first mortgage) of £225 each, for their face, and no interest—say 37½ coupons of £6 each for a first-mortgage sterling bond of £225.

4th. American bondholders may fund all coupons up to and including November, 1867, counting each coupon at ($40) forty dollars, with 6 per cent. simple interest, into interest bonds, bearing 8 per cent. interest, payable November 1st, 1883, at office of the company.

5th. Coupons from first-mortgage sterling bonds and interest bonds, of 1868 and 1869, to be counted at ($40) forty dollars each and no interest, to be exchanged for first-mortgage sterling bonds, counting (25) twenty-five coupons for each first-mortgage sterling bond of £225.

6th. All American holders who have funded under previous resolution, shall be allowed to surrender their bonds and coupons and refund under the above regulations if they so desire.

Resolved, That the Union Trust Company, of New York, is hereby appointed trustee and depositary for the Mobile and Ohio Railroad Company and the American holders of its first-mortgage bonds, of the coupons to be exchanged for sterling and interest bonds, under the agreement made between said company and the bondholders aforesaid.

The said funding of the coupons into first-mortgage bonds and interest bonds to be made at the office of said Union Trust Company in New York.

The foregoing appointment is made in the place of James Tinker and Isaac Knox, heretofore designated as trustees for the parties aforesaid.

Resolved, That the president be, and he is hereby, authorized to cause to be prepared, executed under the seal of the company, the bonds provided for under the above resolutions, and to deliver the same to the Union Trust Company in New York.

I certify the foregoing to be a correct copy from the minutes of the board of directors of the Mobile and Ohio Railroad Company.

A. L. WILLOUGHBY,
Secretary M. and O. R. R. Co.

283 **Circuit court of the United States, southern district of Alabama.**

Personally comes before me, James Gillette, special master in the cause of W. B. Duncan et al. vs. Mobile and Ohio Railroad Company et al., A. L. Willoughby, who, being duly sworn, says he is secretary and treasurer of the Mobile and Ohio Railroad Company, and has been secretary and treasurer since 1865; that he is custodian of the minutes of the board of directors of said company, and that the annexed papers, marked A, B, C, and D, contain true copies of all resolutions, agreements, and instruments pertaining to the issue of the interest bonds of said company, from November 1, 1866, to November 1, 1868, inclusive, known as "Ten year interest, O, P, Q;" dated November 1, 1866, "Sterling interest, B and C;" dated November 1, 1867, "Funded interest, F and F 1;" dated November1, 1868, and "Arrearage interest, F 1 to F 4;" dated November 1, 1868, as the same appears on the minutes of said board.

A. L. WILLOUGHBY.

Subscribed and sworn to before me this 30th March, 1877.

JAMES GILLETTE,
Special Master.

Affidavit of James Tinker, of the firm of C. M. Lampson & Co., London, relating to the issue of sterling interest bonds B and C.

In the circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN AND A. FOSTER ELLIOT, trustees and complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al., def'ts.

James Tinker, of the city of London, England, being duly sworn, doth depose and say that he is a member of the firm of C. M. Lampson & Co., of London, England, and has been for more than sixteen years a member of said firm; that said C. M. Lampson & Co. hold certain coupons of the Mobile and Ohio Railroad Company's first-mortgage bonds, 284 amounting to one hundred and thirty-three thousand five hundred and fifteen pounds sterling, in trust, to secure the payment of certain bonds of said Mobile and Ohio Railroad Company, known as sterling interest bonds; that the said coupons are those which matured semi-annually from November 1st, 1861, to November 1st, 1867, inclusive, on said first-mortgage bonds, numbered as per list annexed, marked "Schedule A"; that said coupons, together with simple interest thereon at the rate of 6 per cent. per annum, from their respective dates of maturity to November 1st, 1867, amount to one hundred and fifty-seven thousand three hundred and fifty-eight pounds eight shillings and two pence sterling (£157,358.8.2); that at the time of making the adjustments with the several holders of said first-mortgage bonds, in each

case, a further amount of first-mortgage interest had accrued subsequent to November 1st, 1867, and prior to the actual delivery of said sterling interest bonds, a part of which interest, amounting in the aggregate to two thousand five hundred and forty-one pounds eleven shillings and ten pence sterling (£2,541.11.10), was not paid, nor in any other way provided for, but was, by agreement with said company, included in the amount for which said bonds were issued, making the aggregate amount of said issue one hundred and fifty-nine thousand nine hundred pounds sterling (£159,900); that of said sterling interest bonds 764 are for £200 each, and numbered 1 to 764, inclusive, and are called "Series B," and 71 are for £100 each, and are numbered from 1 to 50, and 56 to 76, inclusive, and are called "Series C"; that the terms of said sterling interest bonds are as follows:

"Whereas the Mobile and Ohio Railroad Company is indebted to , or bearer, in the sum of two hundred pounds sterling, for unpaid interest upon first mortgage sterling bonds of this company, as represented by certain coupons for interest deposited by said with Mess'rs C. M. Lampson & Co., of London, with interest thereon at the rate of six per cent. per annum:

"Now, the said Mobile and Ohio Railroad Company hereby promises, on the presentation of this bond at the counting-house of Messr's C. M. Lampson & Co., London, on the first day of November, A. D. 1883, to pay to the said , or bearer, the said sum of two hundred pounds sterling, and do hereby promise and agree to pay interest on the said sum at the rate of six per cent. per annum, semi-annually, until the payment of said principal sum herein named, according to the tenor and effect of the coupons hereto attached.

"This obligation is issued by said Mobile and Ohio Railroad Company in pursuance of an agreement entered into at London between the said company and holders of its sterling bonds, dated February 4th, 1867, and to carry the same into effect, and stands in the room and place of the coupons so detached from said sterling bonds and deposited as aforesaid, and is entitled to all the liens and securities which attached to or in any wise belonged to said original coupons."

285 And deponent further says that the agreement dated February 4th, 1867, referred to in said sterling interest bonds, and under which said bonds were issued, provides that the said first mortgage coupons should be "deposited as collateral with C. M. Lampson & Co., as trustee, to be held to secure the payment of the bonds to be issued under this agreement."

And further deponent saith not.

JAMES TINKER.

Sworn at No. 530 Old Broad street, city of London, England, this the 28th day of September, A. D. 1876, before me.

[SEAL.] ADAM BADEAU,
Consul-General of the United States of America, and
Notary Public ex-officio of the United States at London aforesaid.

Schedule A.

List of numbers of first mortgage Mobile and Ohio Railroad bonds from which the coupons referred to in the annexed affidavit were cut.

1 | 506, 510 | 521, 541 | 582, 586 | 589, 599 | 600, 602, 722 | 727, 730,
751 | 765, 855 | 864, 868 | 904, 907 | 949, 955 | 1250, 1337 | 1354, 1501 |

1583, 1546 | 1750, 1902, 1969, 1989, 1993, 2068, 2154, 2161, 2261 | 2500, 2539, 2641, 2646, 2657 | 2659, 2693 | 2695, 2698, 2717, 2731, 3353, 3407, 3693 | 3695, 3737, 3775, 3781, 3796, 3799, 3808, 3935, 3938, 3941, 4294, 4297, 4388 | 4389, 5268 | 5269, 5450, 5759, 5951 | 5970.

1542 bonds—19,780 coupons @ £6.15: £133,515.

Agreement referred to in affidavit of James Tinker.

LONDON, *February 4th*, 1867.

The undersigned, holders of sterling bonds of the Mobile and Ohio Railroad Company, in view of the great losses sustained by the company during the late American war, and to give time to said company to restore its affairs to healthy condition, agree to cut off and fund the interest coupons attached to, or belonging to, their bonds, respectively, including all that have matured, and that will mature prior to the 1st of May, 1868; simple interest at 6 per cent. per annum to be allowed on each coupon from the time it has matured, or may mature, up to the 1st November, 1867. The company to issue coupon bonds for the amount, to mature in 1883, bearing the same interest and coupons payable at the same times and place of the original bonds; the first coupon on each bond to mature and be payable on the first of May, 1868; and that the security may not be decreased, the coupons to be funded as above 286 are to be taken off the bonds to which they now belong and deposited as collateral with C. M. Lampson & Co., as trustees, to be held to secure the payment of the bonds to be issued under this agreement.

(Signed)
p. p. WILLIAM CRAWSHAY,
H. A. WITHERS, 523 bonds.
THOMPSON & FORMAN, 508 bonds.
WILLIAM FORMAN & CO., 62 bonds.
THE EBBU VALE CO. & OTHERS,
p. JOSEPH ROBINSON, ab. 90 bonds.
C. M. LAMPSON & CO., 57 bonds.
GEO. PEABODY & CO., in liq., 50 bonds.
For partners and self, JNO. EDW. BARTLETT, 20 bonds.
BAILEY BRO'S & CO.,
JOS. BAILEY.
J. S. MORGAN, 3 bonds.
J. S. MORGAN & CO., overdue coupons, £432.

I, George Curtis Lampson, a partner of the firm of C. M. Lampson & Company, of London, England, do solemnly swear that the foregoing paper-writing is a true and faithful copy of an original agreement, dated 4th February, 1867, of the Mobile and Ohio Railroad, for the funding of the back and unpaid coupons; and that the same agrees with said original agreement, word for for word, in every particular.

GEO. C. LAMPSON.

Sworn at the consulate-general of the United States of America, No. 530 Old Broad street, in the city of London, this the 5th day of July, 1876, before me.

[L. S.] J. NUNN,
Vice and Deputy Consul-General, and Notary Public, Ex-officio, of the United States, at London, and a Commissioner to administer oaths in the Supreme Court of Judicature in England.

Received and filed.

JAMES GILLETTE,
Special Master.

287 *Resolutions and agreements of the Mobile and Ohio Railroad Company, relating to the issue of bonds under the second mortgage. Extract from minutes, June 8th* 1857.

Authorising the issue of $500,000 8 per cent. income bonds.

Resolved that an issue of not exceeding ($500,000) five hundred thousand dollars of 8 per cent. income bonds be, and the same is hereby, authorized, for the purpose of completing and equipping the road north of Mississippi line. The bonds to be payable in not less than (8) eight years from 1st July next, with interest coupons attached, payable semi-annually, from the net income of the road in operation in Tennessee and Kentucky; and that not exceeding ($100,000) of this issue be, and the same is hereby, appropriated, under the direction of the president, for use upon the line in Kentucky.

A true copy from the minutes.

A. L. WILLOUGHBY,
Secretary and Treasurer.

NOTE.—Bonds I, L, M, N were issued under authority of the above resolution.

Letters—I, $1,000; L, $500; M, $250; N, $100.

Date—September 1st, 1857.

Due—September 1st, 1867; payable at company's office, Mobile.

Interest—8 per cent.

Coupons payable—First March and September, at Bank of Tennessee, Trenton, Tennessee.

Issued for extension of road through Kentucky and Tennessee, and for other purposes.

Authority—See copy of resolution board of directors, June 8, 1857.

Security—Issued in accordance with charter, for a loan of $500,000, to be applied to the extension of the road through Kentucky and Tennessee, and for other purposes.

Further security—So much of the net annual income of the road is set apart as will pay the interest at the times herein provided, and, in addition thereto, so much of the net annual income of the road in operation through Kentucky and Tennessee as may be sufficient to provide for the payment of the principal hereof at maturity.

These bonds are known as the Tennessee construction bonds, or the "Trenton bonds."

288 *Extract from minutes January* 20, 1859.

Considering the propriety of issuing 2nd-mortgage bonds.

The president stated his object in calling the meeting to be to consider the propriety of issuing second-mortgage bonds, or to provide in some other manner for the payment or arrangement of the floating indebtedness of the company.

Several plans having been suggested, M'r Lyon presented the following resolutions, which were seconded and adopted, viz:

Resolved, that it be the duty of the executive committee to ascertain the correct amount of the floating debt or debts due from this company, either in judgment or otherwise, and upon ascertaining the same, amount due, when due, and for what account, that they offer to each creditor the obligation of this company, hereto attached, for the amount due, with coupons for interest attached; and that in all cases where the creditors of the company will accept the same, that they adjust and close such indebtedness upon the terms stated.

Resolved further, that the obligations of the company thus to be given shall operate as a lien upon the income of the road not already appropriated.

A true copy from the minutes.

A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

Form of proposed obligation.

Whereas the Mobile and Ohio Railroad Company is indebted to , in the sum of dollars, with interest thereon at the rate of eight per cent. per annum from this date till paid: Now the said Mobile and Ohio Railroad Company hereby promises, ten years after the date hereof, to pay the said the said sum of dollars, with interest thereon annually, according to the coupons hereto attached, this obligation to operate as a lien upon the income from the road not already appropriated.

NOTE.—This bond is the L bond, and is known as the fourth issue or "Liquidation bond."

289 Fourth issue income-bonds, irregular amounts.
Letter, L.
Dated when issued.
Due ten years from date; payable at the office of the company, Mobile.
Interest, eight per cent.
Coupons payable 1st March, office of company in Mobile.
Issued for settlement of the floating debt or debts.
Authority, see copy of resolution board of directors herewith.
Security, lien upon the income of the road not already appropriated.
This bond is known as the "Liquidation bond" or fourth issue.

Extract from minutes February 2d, 1860.

Whereas by resolution of this board the 8th of June, 1857, an issue of not exceeding $500,000, at 8 per cent., income-bonds were authorized, for the purpose of completing and equipping the road north of the Mississippi line, the bonds to be payable in not less than eight years from the 1st of July, 1867, with interest-coupons attached, payable semi-annually from the net income of the road in operation in Tennessee and Kentucky, and that not exceeding $100,000 of this issue be appropriated under the direction of the president for use upon the line in Kentucky; and—

Whereas by resolution of the board of the 20th January, 1859, the executive committee of this board was authorized to ascertain the correct amount of the floating debt of the company, and offer to the creditors the obligations of the company for the amount of such debts, and providing that such obligations of the company shall operate as a lien upon the income of the road not already appropriated:

Resolved, therefore, that, in the execution of these two resolutions, the president of this company be, and he is hereby, authorized to execute a deed or deeds of mortgage upon the property, effects, and income of the road, subject in all respects to the first mortgage already executed, and that under the resolution of 20th of January, 1859, the president be authorized to

President authorized to execute deed of mortgage subject to the 1st mortgage, and to issue bonds payable not less than ten (10) years.

make the bonds of the company payable at a period not less than
290 ten years, and to bear 8 per cent. interest, and to issue the same as an amount sufficient to cover the floating debt of the company found to be due at the time of issuing any such mortgage-bonds (to be secured by a mortgage upon the property, effects, and income of the road, subject to the first mortgage). This power to issue bonds under the resolution of 20th January, 1859, to be so construed as not to authorize the issuing of bonds to an amount exceeding one million dollars ($1,000,000).

A true copy from the minutes.

A. L. WILLOUGHBY,
Secretary.

NOTE.—According to this resolution, bonds I, L, M, N, Tennessee construction L. liquidation, or fourth issue, are included in the second mortgage.

Extract from minutes, Mobile, February 20, 1860.

The president reported that under the resolution of 2d February, 1860, he executed a mortgage and named trustees; whereupon the following resolution was read and adopted:

Approval of deed of mortgage 15th February, 1860.

R. A. Baker, George H. Young, Sam'l Williams, trustees.

Resolved, That the deed of mortgage from this company to R. A. Baker, George H. Young, and Sam'l Williams, as trustees, dated 15th day of February, 1860, and executed by the president, under and by virtue of the authority conferred by the resolution of this board of the 2d of February, 1860, and acknowledged before Sidney T. Douglas, as notary public, as required by the laws of Alabama and Tennessee, and also as commissioner of deeds for Kentucky, as required by the laws for that State, and before John R. Tompkins, as commissioner for Mississippi, as required by the laws of that State, which has been presented to this board, be, and the same is hereby, in all respects, approved, ratified, and confirmed, as the act and deed of this company, for the uses and purposes therein contained.

A true copy.

A. L. WILLOUGHBY, *Secretary.*

291 *Extract from minutes, Mobile, April* 20, 1867.

Authorizing the preparing of the unsold ten-year 2nd mortgage bonds, to retire the income bonds maturing in 1867.

Resolved, That for the purpose of retiring the income bonds of the company, maturing 1867, and making a settlement with the creditors of the company of the liabilities reported in Statement B of the last annual report as due on old account, amounting to $645,000, by funding the same, the executive committee are hereby authorized to prepare the unsold second mortgage ten years bonds, ordered by resolution of the boards 20th January, 1859, and set apart the same for such settlement.

Provided, That the company shall reserve to itself the right to anticipate the payment of said bonds at any time before maturity.

A true copy.

A. L. WILLOUGHBY, *Secretary.*

Extract from minutes executive committee, Mobile, May 7th, 1867.

Form of 2d mortgage bond adopted.

Resolved, That the following form of bond be adopted as the second mortgage bond of this company, under the resolution of the board April 20, 1867:

MOBILE AND OHIO RAILROAD COMPANY.

Whereas, the Mobile and Ohio Railroad Company is indebted to in the sum of dollars, with interest thereon at the rate of eight per centum annum from this date; now the said Mobile and Ohio Railroad Company hereby promises, ten years after date hereof, to pay to the said or bearer, at the office of the company in Mobile, the sum of dollars, with interest annually thereon according to the coupons hereto attached. The said Mobile and Ohio Railroad Company reserves to itself the right to redeem this obligation at any time after five years from the date hereof, upon giving thirty days' notice, by public advertisement, of such intention. Interest hereon to cease after the time of payment is declared.

This obligation is secured by mortgage of the company's property, dated 15th day of February, anno Domini 1860.

292 In witness whereof the said railroad company has caused this bond to be signed by the president and treasurer, and its corporate seal to be affixed, at its office in the city of Mobile, this 1st day of March, A. D. 1867.

A true copy.

A. L. WILLOUGHBY, *Secretary.*

NOTE.—Letters—R, $1000; S, $500; T, $300; U, $100.

Date—March 1st, 1867.

Due—March 1st, 1877; payable at office of company, Mobile.

The Mobile and Ohio Railroad Company reserves to itself the right to redeem at any time after five years from date, upon giving thirty days' notice by public advertisement of such intention; interest to cease after the time of payment so declared.

Coupons—Payable 1st March of each year, at company's office, Mobile.

Interest—Eight per cent.

Issued for retiring the income bonds maturing in 1867, and making settlement with creditors on old account.

Authority—Resolutions of board of directors, April 20, 1867, and of executive committee, May 7, 1867.

Security—The second mortgage.

Extract from minutes, Mobile, May 8th, 1867.

W. D. Dunn and W'm Dickson nominated trustees under 2d mortgage in place of Rob't A. Baker and Sam'l Williams, deceased.

Resolved, That W'm D. Dunn and W'm Dickson, esq's, be nominated trustees under the mortgage deed of this company, dated 15th February, 1860, in place of Robert A. Baker and Samuel Williams, deceased, and with the approval of George H. Young, esq., surviving trustee appointed.

A true copy.

A. L. WILLOUGHBY, *Secretary.*

Extract minutes executive committee, March 10, 1868.

Exchanging Trenton bonds for ten-year old bonds, 2d mortgage to be an extension thereof.

Resolved, That the vice-president proceed to Trenton, Tenn., and confer with the holders of the bonds known as "Trenton bonds," and if possible learn the object of the threatened movement heralded in the Memphis Bulletin of the 4th inst., and he is authorized to settle all such matured bonds by the delivery to the holders of an equivalent amount of ten-year bonds as an extension thereof. Said ten-year bonds being secured by the second mortgage of the company, as authorized by resolution of the board of April 20th, 1867.

A true copy.

A. L. WILLOUGHBY, *Secretary.*

293 *Extract from minutes, Mobile, July* 14, 1869.

Liquidation bonds I. may be taken up with 2d mortgage bonds.

Resolved, That the liquidation bonds of this company due in March last, amounting to $28,731.63, may be taken up in the discretion of the president and vice-president with second mortgage bonds.

A true copy.

A. L. WILLOUGHBY, *Secretary.*

Extract minutes board of directors Mobile and Ohio Railroad Company, February 8, 1871.

Whereas, under and in pursuance of certain resolutions of the board of directors adopted on the 8th day of June, 1857, on the 20th day of January, 1859, and on the 2d day of February, 1860, provision was made for the issuance of one million five hundred thousand dollars ($1,500,000) of the bonds of this company, bearing eight per cent. interest.

The payment of said bonds, with the interest accruing thereon, was secured by a mortgage-deed to Robert W. Baker, George H. Young, and Samuel Williams, as trustees, made and executed by the company to said trustees on the 18th day of February, 1860, the same being the second mortgage of his company; and—

Whereas, a part of said bonds, with the interest thereon, have become due, and are now remaining unpaid:

Resolved, therefore, That the president be, and he is hereby, authorized and directed to issue a sufficient amount of the bonds of this company, in sums of one hundred, five hundred, and one thousand dollars each, to pay all said unpaid bonds, and the unpaid interest thereon.

The bonds so to be issued to bear date on the 1st day of March, 1871,
and to be payable on the 1st day of March, 1877, and shall bear 8 per
cent. interest, payable annually, on the 1st of March of each year, until
the maturity of said bonds, and for which interest-coupons shall be
thereto attached; which said bonds, in order to preserve all the rights
and liens of the persons taking them, shall recite what they are
294 issued for, and to be applied in payment of the matured and un-
paid bonds, and interest thereon, secured by the second mortgage
of this company, and therefore covered and secured by said second
mortgage.

Resolved, That with the view of preserving, beyond all doubt, the rights and liens of all persons who may receive the bonds to be issued under the above resolution, all the past due bonds and coupons which may be surrendered to the company shall, after being counted, be sep-

arately labelled, and preserved by the company; thus showing the past due bonds and coupons received from each individual.

I certify the forgoing to be a correct copy from the minutes of the board of directors of the Mobile and Ohio Railroad Company.

A. L. WILLOUGHBY,
Secretary M. and O. R. R. Co.

NOTE.—Letters—Rr, $1,000, Ss, $500, Uu, $100.

Date—March 1st, 1871.

Due—March 1st, 1877. Payable at office of company, Mobile.

The Mobile and Ohio Railroad Company reserves to itself the right to redeem at any time after two years from date upon giving thirty days' notice by public advertisement of such intention, interest to cease after the time of payment is declared.

Coupons payable 1st March of each year, company's office, Mobile.

Interest—Eight per cent.

Issued for—In payment of the matured and unpaid bonds and the interest thereon, secured by the second mortgage.

Authority—Resolution of the board of directors, February 8, 1871.

Security—The past due bonds and coupons so surrendered.

Extract from the minutes of the board of directors of the Mobile and Ohio Railroad Company, May 24, 1872.

Resolved, That the president be, and he is hereby, authorized and directed to issue a sufficient amount of the bonds of this company in such sums as may be required, and as far as needed (not to exceed the remainder of the amount authorized by the second mortgage of this company), payable ten years after date of issuance and to be appropriated to the payment of the floating debt described in said
295 second mortgage, and to the renewal of matured bonds and coupons heretofore issued under said mortgage.

A true copy from the minutes.

A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co

NOTE.—Bonds, Series L, were issued Nos. 1 to 294, inclusive.

Letter—L. Irregular amounts.

Date—When issued.

Due—Ten years after date. But the Mobile and Ohio Railroad Company reserves to itself the right to redeem at any time after two years from date of bond, upon giving thirty days' notice by public advertisement of such intention, interest to cease after the time of payment is declared.

Payable at the office of the company, Mobile.

Interest—Eight per cent.

Coupons payable 1st March of each year at office of company, Mobile,

Issued for payment of floating debt described in second mortgage. and to the renewal of matured bonds and coupons issued under second mortgage.

Authority—Resolution board of directors, May 24, 1872.

Security—Second mortgage.

United States circuit court, southern district Alabama. In equity.

W. B. DUNCAN ET AL., TRUSTEES, *vs.* M. AND O. R. R. CO. ET AL.

Personally appeared before me, James Gillette, special master in said cause, A. L. Willoughby, secretary of the Mobile and Ohio Railroad Company, who, being sworn, saith: That the foregoing pages, from No. one to twenty, inclusive, contain true copies of resolutions, agreements, and instruments pertaining to the issue of the company's bonds known as second mortgage bonds, as the same appears on the minutes of the board of directors of said company, from June 8th, 1857, to May 24th, 1872, both inclusive; also, marginal notes and memoranda explanatory of the same, not upon said minutes.

A. L. WILLOUGHBY.

Subscribed and sworn to before me.

JAMES GILLETTE,
Special Master.

296 *Resolutions and agreements of the Mobile and Ohio Railroad Company, relating to the issue of bonds under the Tennessee mortgage.*

Resolutions of December 14, 1870, and report of committee, February 8, 1871.

Preamble and resolutions of April 21, 1871.

Preamble and resolution of May 25, 1871.

Resolutions of June 19, 1871.

NOTE.—For the above designated resolutions see "extracts from the minutes Mobile and Ohio Railroad Company," printed on pages 62 to 72, inclusive, of part 5, proceedings and testimony before the special master, and minutes of reference.—SPECIAL MASTER.

Resolutions of the Mobile and Ohio Railroad Company, relating to the purchase of Mississippi, Gainesville and Tuscaloosa Railroad, and the issue of bonds therefor, known as Gainesville branch bonds. Extract minutes board of directors Mobile and Ohio Railroad Company. Mobile, June 17th, 1870.

Present, Hon. A. Murdock, president; C. E. Rushing, vice-president; Mess'rs W. D. Dunn, R. H. Smith, P. Hamilton, F. B. Clark, James Crawford, Jno. Reid, j'r, and John J. Walker.

The following resolution was adopted:

Whereas, The Mississippi, Gainesville and Tuscaloosa Railroad is largely indebted to this company:

Resolved, That the president be, and he is hereby, authorized to enter into an agreement for the purchase and leasing of the Mississippi, Gainesville and Tuscaloosa Railroad, with the other creditors of said road.

A true copy from the minutes.

A. L. WILLOUGHBY,
Secretary M. and O. R. R. Co.

297 *Extract minutes board of directors Mobile and Ohio Railroad Company. Mobile, March 23d, 1871.*

Present, Hon. A. Murdock, president; C. E. Rushing, vice-president; Mess'rs Hamilton, Crawford, Dunn, Reid, and Walker.

The president stated that the meeting was called to make the necessary arrangements for the transfer of the Mississippi, Gainesville and Tuscaloosa Railroad to the company by Colonel James Crawford.

The following preamble and resolutions were read:

Whereas, By an act of the general assembly of the State of Alabama, approved March 3, 1871, the Mobile and Ohio Railroad Company is authorized to purchase from James Crawford the railroad extending from a point on the Mobile and Ohio Railroad in the State of Mississippi, commonly called the Gainesville Junction, to the town of Gainesville, Alabama; and the property along the track of said railroad lately belonging to the Mississippi, Gainesville and Tuscaloosa Railroad Company, and the franchises of said company; and it is considered to be the interest of the Mobile and Ohio Railroad Company to make such purchases on the terms hereinafter mentioned;

Therefore, resolved, 1st. That the president of this company be, and he is hereby, authorized to purchase from the said James Crawford, for this company, said railroad property and franchises at the price of fifty three thousand six hundred and one and 97-100 dollars ($53,601.97), with interest thereon from the first day of November last; and, in making such purchase, to covenant and agree for and in the name of this company, to continue said railroad in operation in future as is now done.

Resolved, 2d. That for the purchase of said property the president of this company be, and he is hereby, authorized for, and in the name of this company, to make and deliver to said Crawford fifty-three bonds of this company, signed by the president and treasurer of the company, and sealed with its seal; each of said bonds to be for the sum of one thousand dollars, payable to the said Crawford or bearer, at the office of this company, in the city of Mobile, on the first day of November, 1880, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first days of May and November of each year from the first day of November, 1870, and to attach to each of said bonds coupons for the payment of the semi-annual interest thereon, as aforesaid; such coupons to be signed by the treasurer and payable at the office of this company in Mobile; and the balance of the purchase-money for said property, amounting to six hundred and one 97-100 dollars ($601.97), the president is hereby authorized to pay to said Crawford, with interest thereon from the first of November, 1870, whenever required to do so by said Crawford.

Resolved, 3d. That to secure the punctual payment of said bonds and coupons the president of this company, for it and in its name, be, and he is hereby, authorized to convey the property which may be so
298 purchased from said Crawford by a deed of trust to William D. Dunn, John Reid, j'r, and Robert C. Crawford, as trustees, with power to them, or any one or more of them, upon default of payment of said bonds and coupons, or any of them, for three months after maturity, to sell the said property, or any part thereof, at public auction for cash, and apply the proceeds of such sale to the payment of said bonds and coupons eq'ally and rateably; and on any such default of payment each of said bonds shall become presently due and payable.

Major Walker moved the adoption of the above. M'r Hamilton seconded the motion. M'r Rushing called for the ayes and nays, which resulted as follows: Mess'rs Murdock, Rushing, Dunn, Hamilton, Reid and Walker voted aye.

On motion, Colonel Crawford was excused from voting.

A true copy from the minutes.

A. L. WILLOUGHBY,
Secretary.

NOTE.—For copy of the mortgage of the Gainesville branch, see p. 31, "Compendium" of Mortgages.

Resolution Mobile and Ohio Railroad Company relating to the issue of convertible bonds. Extract minutes board of directors Mobile and Ohio Railroad Company. Mobile, November 10, 1873.

Present, Hon. A. Murdock, president; C. E. Rushing, first vice-president; Mess'rs Ja's Crawford, W'm D. Dunn, Jno. Reid, j'r, C. W. Butt, Cha's Walsh, F. B. Clark.

The following preamble and resolutions were unanimously adopted:

Whereas, This board, by resolutions passed on the 18th day of April, 1873, in pursuance of instructions by the stockholders of this company, proposed at their annual meeting, on the 15th of April, 1873, and adopted by their vote on the 17th of April, 1873, for the purpose of apportioning among said shareholders property of the company acquired since its organization, but not represented by the stock certificates theretofore issued, and of equalizing all proprietary interests therein, directed the issue to such stockholders of certificates for additional stock to an amount equal to that then held by them, on condition, however, of a money payment to the company by them respectively of twenty-five dollars for each share of such new stock, to be paid in instalments of $5.00 on 1st July, 1873, $10.00 on 1st November, 1873, $5.00 on 1st January, 1874, and $5.00 on 1st April, 1874, with interest on such portions as should not be promptly paid at the said dates; and

299 Whereas, Said money payment, while it was necessary to equalize such new issue of stock with that formerly issued, is also of essential importance to the company in order to raise means to meet the obligations of the company, for whose payment such unrepresented property of the company is liable, and

Whereas, A portion of such new stock remains unapplied for and has been forfeited to the company, while a large portion of said stock has been claimed and payment therefor, in whole or in part, duly made, on the terms heretofore declared, and the interest of the company will be advanced by the realizing by the company at an early day of the full amount of said twenty-five dollars per share, not yet fully paid up:

Now, then, to secure this end, and to place all persons who, on or before the first of January, 1874, shall, under these resolutions, have advanced to this company the said assessment of twenty-five dollars per share of new stock on an equal footing:

1st. Be it resolved, That the president of this company cause to be prepared and executed under the seal of the company, in such sums and denominations as may be most convenient, with proper letters and numbers, for purpose of record, bonds of this company to an amount, in the aggregate, not exceeding one-fourth of the par value of the whole issue of new stock which may be issued under these and the former resolutions. Said bonds shall be dated December 1st, 1873, and made payable ten years thereafter at the city of New York, and bear interest at the rate of eight per cent. per annum, payable quarter yearly at the office of

Mess'rs Duncan, Sherman & Co., in the city of New York, and may be registered bonds. or with coupons for interest attached, at the option of the party to whom said bonds under these resolutions may be delivered. And the said company, by its president, or either of its vice-presidents, may contract for the disposal of said bonds, as provided by these resolutions, before the same are ready for delivery.

2d. Be it further resolved, That the bonds issued hereunder, as registered bonds, shall be duly registered in a proper book, and of which a duplicate shall be kept at the office of Duncan, Sherman & Co., and of this company, and be transferable in said book at the office of Duncan, Sherman & Co., and bear interest as provided in the foregoing resolution, all under such rules and regulations as the president of this company may prescribe, which said registered bonds may at any time be converted into coupon bonds at the option of the holder thereof upon presentation of the same to Mess'rs Duncan, Sherman & Co., at their office in the city of New York.

3. Be it further resolved, That each and every stockholder who, under these resolutions, may be entitled to an issue of new stock, and who already has or have paid, or on or before the 1st of January, 1874, shall have paid the said twenty-five dollars per share to the company, under these or the former resolutions of this board, or his assignee or assignees, shall be entitled to receive therefor the bonds of this company provided for in the foregoing resolutions, to an amount equal to the
300 aggregate of the sum so paid by him or them. But such bonds shall only be delivered to said parties upon their surrender to the company, or to the trustees hereinafter named, for cancellation, all certificates of new stock, or of partial payments of new stock, heretofore issued to them under the former resolution of this board providing for the issue of such new stock.

4th. Be it further resolved, That the holders of bonds issued and received under the foregoing resolutions shall, at any time before the maturity of said bonds, upon the delivery of said bonds to the agents and trustees of this company hereinafter named and who are duly authorized to act in the premises, be entitled to receive therefor shares of the capital stock of this company, at the rates of one share for every twenty-five dollars of the principal of the bond or bonds so delivered up and returned.

5th. Be it further resolved, That the president of this company cause forthwith to be prepared certificates for new stock, corresponding to the amounts of new stock which each shareholder will be entitled to under these resolutions, which said certificates, when so prepared, the said president shall place in the hands of Mess'rs Duncan, Sherman & Co., in trust and as trustees for the use and benefit of the holders of the bonds authorized by these resolutions, under the terms of the last foregoing resolutions. And said Mess'rs Duncan, Sherman & Co. are hereby authorized and empowered, upon the delivery to them of any of the bonds issued hereunder, before the maturity thereof, to deliver to said bondholder so surrendering his bonds a certificate of stock at the said rate of one share of stock for every twenty-five dollars of the principal of the bonds so returned, and shall immediately notify the company of every such exchange of bonds for stock. And thereafter the holder of such stock so issued shall be entitled in full to all the rights and privileges of a stockholder in this company, to the extent of the stock so issued to him. All certificates for stock remaining in the hands of Mess'rs Duncan Sherman & Co., uncalled for at the maturity of said bonds, shall thereupon be by them returned to the company to be cancelled. The

certificates of stock authorized by this resolution may be issued with the name of the holder in blank, or to Mess'rs Duncan, Sherman & Co., trustees hereunder, as may be found most expedient.

6th. Be it further resolved, That each bond issued hereunder shall contain such reference to the stock in whose right it is issued that the said stock can be ascertained and identified.

7th. Be it further resolved, That the foregoing shall in no way interfere with the rights of stockholders to receive their new stock on compliance with the terms of the resolutions of this board heretofore adopted the 18th day of April, 1873.

A true copy of the minutes.

A. L. WILLOUGHBY, *Secretary.*

301 *Resolution of the Mobile and Ohio Railroad Company, relating to the issue of consolidated mortgage bonds, also the deed of trust or mortgage. Extract from minutes board of directors Mobile and Ohio Railroad Company. Mobile, February* 18, 1874.

Present, Hon. A. Murdock, president; W. D. Dunn, J. Crawford, C. W. Butt, F. B. Clark, M. Waring, J. Reid, j'r, W. P. Halliday.

The following preamble and resolution were unanimously adopted:

Whereas the present outstanding funded indebtedness of this company consists of several series of bonds, bearing different rates of interest and having different times of payment, and a portion thereof is approaching maturity, it is the opinion of the board that the best interests of the company would be subserved by a consolidation of its entire indebtedness to be funded in a single mortgage of an amount sufficient to provide also for future contingencies.

And whereas, with this view the president has submitted to this board a form of consolidated mortgage, and of a bond, which are as follows, to wit:

This indenture, made this first day of January, in the year one thousand eight hundred and seventy-four, between the Mobile and Ohio Railroad Company, a corporation created, organized and established by and under the laws of the States of Alabama, Tennessee, Mississippi and Kentucky, party of the first part, and William Butler Duncan, of the city of New York, banker, and Samuel L. M. Barlow, of the same city, counsellor-at-law, parties of the second part, witnesseth, that whereas the said party of the first part is the owner of a continuous line of railway from Mobile, in the State of Alabama, to Columbus, on the Mississippi River, in the State of Kentucky, a distance of four hundred and seventy-two miles, in addition to certain branch lines, to wit, Columbus, fourteen miles; Oktibbeha, eleven miles; Gainesville, twenty-one miles; amounting in all to five hundred and eighteen miles, and of the franchise necessary to operate the same and all the properties appertaining thereto; and also, certain lands donated by acts of Congress to said company, saving and excepting therefrom such portions of said lands as
302 may heretofore have been sold or conveyed by the said party of the first part; and also, all other lands and real estate owned by the said party of the first part in all the States aforesaid.

And whereas the said party of the first part is authorized to execute a mortgage upon its said road, its property and franchises, and in conformity with such authority it now proposes to borrow money for the purpose of discharging all existing liens upon its property, and for the purpose of completing and equipping its lines, and for the general im-

provement of its roads, and to these ends its proposes to execute, issue, and negotiate its bonds of the general tenor hereinafter set forth, for an aggregate amount of fifteen millions of dollars, viz, fifteen thousand bonds, of one thousand dollars, or two hundred and five pounds sterling each, dated of even date with these presents, and payable in gold coin of the United States at the maturity thereof, to wit, on the first day of January, one thousand nine hundred and four, with interest coupons thereto attached, conditioned for the payment of interest thereon semi-annually, at the rate of seven per centum per annum, in gold coin of the United States, or in sterling at the option of the holder, which said bonds and coupons will be in substance and effect as follows, and numbered from one to fifteen thousand, inclusive:

(Form of bond.)

$1,000.] UNITED STATES OF AMERICA. [$1,000.

No. .] CONSOLIDATED MORTGAGE BOND. [No.

The Mobile and Ohio Railroad Company promises to pay the bearer of this bond, at its agency in the city of New York, on the first day of January, 1904, for value received, one thousand dollars in United States gold coin, with interest thereon, at the rate of seven per centum per annum in gold, payable semi-annually, according to the tenor of the coupons annexed, free of all United States Government tax; the true performance of all which is secured by a mortgage upon all the lands, railways, equipment, fixtures, and franchises of the company, bearing even date herewith, made to William Butler Duncan and Samuel L. M. Barlow, as trustees, and this bond shall not be valid until said trustees sign the certificate endorsed hereon. This bond is *is* also secured by a sinking-fund and is redeemable by lot as in the said mortgage is provided.

In witness whereof the said Mobile and Ohio Railroad Company has caused its corporate seal to be hereto affixed and the same to be attested by its president and secretary, this first day of January, 1874.

President.

Secretary.

$35.] (Coupon.) [£7, 3s. 6d.

The Mobile and Ohio Railroad Company will pay bearer, on the first day of , 18 , as he may elect, thirty-five dollars in United States gold coin, in the city of New York, or seven pounds three shillings and sixpence sterling, in the city of London, for six months' interest on bond No. .

A. L. WILLOUGHBY,
Secretary.

303 (Trustees' certificate.)

The undersigned certify that this bond is one of a series of fifteen thousand, issued and to be issued for the like amount, and of the same tenor and date, to secure which, the mortgage herein described was executed to us, and which mortgage has been duly recorded.

This bond may be registered in the owner's name on the company's books, such registry being noted on the bond by the company's transfer agent, after which no transfer shall be valid unless made on the company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which it shall be transferable by delivery, but it may be again registered as before.

The registry of the bond as above shall not restrain the negotiability of the coupons by delivery.

(Endorsement.)

No. .

CONSOLIDATED FIRST-MORTGAGE SEVEN-PER CENT. SINKING-FUND GOLD-BOND. MOBILE AND OHIO RAILROAD CO.

$1,000.

Principal due 1st January, 1904. Interest payable 1st January and 1st July.

And whereas it is the intention of the party of the first part hereby to secure the punctual payment of the said bonds and coupons proposed to be issued, and also and until the same shall be discharged by payment in like manner to further secure all the existing indebtedness of the said company hereinafter set forth, by the execution and delivery of this indenture to the party of the second part as trustees as aforesaid, which last mentioned indebtedness now existing, to discharge which the bonds to be issued under this mortgage are in part to be applied, and as a further security for which this indenture is made, is as follows, viz:

A series of first mortgage bonds, amounting in the aggregate to the sum of	$5,720,000 00
(Secured by a deed of mortgage, dated November 1st, 1853.)	
A series of bonds, called interest-bonds, amounting in the aggregate to	844,000 00
A series of bonds, called interest-arrear bonds, amounting in the aggregate to	35,000 00
A series of bonds, called funded-interest bonds, amounting in the aggregate to	625,500 00
A series of sterling-interest bonds, amounting in the aggregate to	769,920 00
(Which last four items are for interest on the said first-mortgage debt.)	
A series of bonds, called Tennessee substitution bonds, amounting in the aggregate to	1,685,000 00
(Upon which a lien exists upon the company's road in that State.)	
A series of matured income bonds, so called, amounting in the aggregate to	9,900 00
304 A series of second mortgage bonds, amounting in the aggregate to	1,455,858 47
(Secured by a mortgage dated February 15, 1860.)	
A series of bonds, issued upon the Gainesville branch, amounting in the aggregate to	53,000 00
(And secured by a mortgage on said Gainesville branch.)	
A series of bonds, called convertible bonds, issued under an authority of the board of directors, under date of November 10th, 1873, amounting in the aggregate to.	1,000,000 00

It being hereby distinctly covenanted and agreed that all of said bonds above mentioned, amounting in the aggregate to not exceeding twelve million five hundred thousand dollars, issued and to be issued, are and are hereby declared to be secured as first or prior liens by this mortgage, the new proposed bonds to be issued hereunder for an equal amount being reserved to retire or pay the same as hereinafter expressed.

Now, therefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises and of one dollar to it in hand paid by the parties of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the faithful payment of all of said bonds, as well *as* those already issued as above mentioned as those now proposed to be issued as herein set forth, and the interest due and to become due thereon according to their tenor and effect, has granted, bargained and sold, aliened, assigned and conveyed, and by these presents doth grant, bargain and sell, alien, assign, and convey to the parties hereto of the second part and to the survivors of them and their successors, trustees as aforesaid, all the right, title, and interest which the said party of the first part now has or may hereafter acquire in and to its franchises, its entire line of railway constructed as hereinbefore stated, extending from Mobile, in the State of Alabama, through and across the States of Mississippi and Tennessee, to Columbus, on the Mississippi River, in the State of Kentucky, together with all branches thereof constructed or to be constructed, together with the tolls, incomes, rents, issues, and profits thereof, and all real estate, rights of way, easements, fixtures, rolling stock, machinery, tolls, and equipments, and all other personal property thereunto belonging in all of said States, the true intent of this indenture being to vest all and every the property and right of property, real, personal, and mixed, and all the corporate powers and franchises of every kind whatsoever belonging or appertaining to the said party of the first part, or hereafter to be acquired, touching the aforesaid lines of railroad in the said parties of the second part.

To have and to hold the above described premises, property, rights, franchises, and appurtenances to the said parties of the second part, and the survivors of them and their successors, as joint tenants, and not as tenants in common, to the only proper use, benefit, and behoof of them, the said parties of the second part, and the survivor of them, and their successors forever.

305 And the said party of the first part, for itself, its successors and assigns, hereby covenants to and with the said party of the second part, the survivor of them and their successors, that it both shall and will, from time to time, whenever and so often as thereunto requested by the said trustees, the survivor of them, or successors, execute, acknowledge, and deliver all and any such further deeds, conveyances and assurances in the law for the better assuring unto the said trustees upon the trust herein expressed, all and singular, the lands and premises aforesaid, or hereafter to be acquired as aforesaid, as by the said trustees, or the survivor or successors, or their counsel learned in the law, shall be reasonably devised, advised or required, in trust, nevertheless, for the equal benefit and security of all persons or corporations who may be, or who may become holders of the above mentioned consolidated mortgage bonds, without any preference of any one of the said consolidated mortgage bonds over any other or others by reason of priority in time of issue, negotiation thereof, or otherwise; except so far as regards the bonds drawn at the annual drawing held, or hereafter

provided, and for the uses and purposes herein declared and expressed.

It is hereby covenanted, declared, and agreed, that the premises, property, rights, franchises, and interest hereby mortgaged or conveyed, are to be had and holden by the said trustees and their successors upon and for the trusts, uses, and purposes following, that is to say:

First. Until default shall be made in the payment of the interest or the principal of any of the consolidated mortgage bonds aforesaid, the said party of the first part shall hold, use, and enjoy all its said property, and shall take and receive the income, earnings, and profits thereof for its own proper use, as fully as if this indenture had not been made. And further, unless and until default be made as aforesaid, and until all the first mortgage bonds heretofore issued by the said party of the first part, as aforesaid, be exchanged for the consolidated mortgage bonds to be issued under these presents, as herein and hereby provided for, or otherwise retired, nothing herein contained shall in any manner interfere with the sale and disposition of the lands donated to the said party of the first part by the Congress of the United States, in manner and for the uses and purposes described in the said first mortgage or deed of trust executed by the said party of the first part; but the said parties of the second part shall, with the approval of the said party of the first part, appoint a suitable agent to co-operate in and about the sale and disposition of said lands, as provided in said first mortgage, and under such regulations as said parties of the second part may prescribe, see to the proper application of the moneys realized from such sales, as provided for in said first mortgage and in pursuance thereof; and upon the exchange or retiring as aforesaid of the said first mortgage bonds, and the using of the trusts therein heretofore created, then the said proceeds of said sales of said lands are applied to the withdrawal and retirement of the bonds issued under and in conformity to these presents; and of all their doings in this respect, by the said parties and their agent or agents, full records shall be made and
306 kept, and always subject to the inspection of the parties to this indenture. If default shall be made in the payment of the interest upon any of said consolidated mortgage bonds, on the demand of the bona fide holders of the coupons representing at least one fifth of the said bonds secured by this indenture, and ninety days after the said demand, the aforesaid trustees, or the survivor of them, or their successors, shall enter upon and take possession of all the above described property, franchises, and lines of said railroad, and by their agents duly appointed, shall direct the management of the same, collecting all incomes and receipts, and after defraying the necessary and proper expenses of operating the said railroad of the said company, shall pay from the proceeds thereof all the interest then due and in arrears upon said consolidated mortgage bonds; or the said trustees, in their discretion, may proceed, after ninety days' notice, to be given in one or more newspapers published in the city of Mobile, in the State of Alabama, and in the cities of New York and Boston, and London, in England, to sell at public auction in the city of Mobile, Alabama, such part of the said railroad company's property as shall be sufficient to discharge all said past due and unpaid interest, selling in the first instance the property of said company other than its lands, roadway, station buildings, shops, and franchises; but if said property shall be insufficient to pay all said past due interest, then at and under the same notice to proceed to sell the remainder of the property, roadway, lands, stations, and franchises, in such order as said trustees, or the survivor of them, his or their successors or successor may determine, until the full amount of

such overdue and unpaid coupons shall have been realized, with all legal costs and expenses, and after any default shall have been made in the payment of the principal of any or either of the said consolidated mortgage bonds as aforesaid, for ninety days from the time of demand for the payment of the same by the holders, and upon the demand of one-fifth in amount of said bonds remaining due at the time; then, and in that event, and if so required by the bona fide holders of said amount of bonds, the aforesaid trustees, the survivor of them, or their successors, shall enter upon the premises and take possession of the entire property, lines of railroad, and franchises of the said Mobile and Ohio Railroad Company, and shall proceed, by their duly appointed agents, to conduct the business of the same, and to control its affairs, receipts, and disbursements until the amount of any past due and unpaid principal and interest on said consolidated mortgage bonds shall have been fully discharged; or, in their discretion, the aforesaid trustees, the survivor of them, or their successors, after ninety days' notice, published in the newspapers aforementioned, may proceed to sell at public auction all such property, franchises, or such parts thereof as they may deem sufficient to satisfy and discharge all such claims, and in such order as they, or the survivor of them, or their successors, may determine to be proper.

And in case of any sale, as in either event herein authorized, said parties of the second part shall have power, and the same is hereby expressly conferred, to execute good and sufficient conveyance to
307 the purchaser or purchasers of the same, passing thereunto all right, title, and interest of the said Mobile and Ohio Railroad Company in the property and franchises so sold.

And it is hereby expressly agreed that any and every sale so made as aforesaid shall be a perpetual bar, both at law and in equity, against the party of the first part, hereto, its successors and assigns, and against all and every person claiming or to claim the premises then sold, or any part thereof, by, through, or under it, its successors or assigns. The proceeds of such sale, after deducting the cost and expenses thereof, and the expenses of this trust, shall be by the aforesaid trustees applied in the first instance to the discharge of the past due and unpaid interest, and next to the payment of the principal of said bonds hereunder issued pro rata; and the residue thereof (if any) shall be by them paid over to the said Mobile and Ohio Railroad Company.

Second. The said party of the first part further covenants and agrees that out of its net earnings, that is to say, out of the earning left after the discharge of all expenses incident to the conduct of its business, maintenance of its property, and the discharge of its obligations on account of interest, to redeem annually one per centum of the entire amount of said consolidated mortgage bonds issued and then outstanding as hereinbefore provided; and in order to determine which of said bonds shall be so annually redeemed, the said party of the first part shall give notice in one or more newspapers published in the State of Alabama, and in at least one newspaper published in the city of New York and in London, the same to be published for thirty days, of the amount of bonds to be redeemed as required by this deed, of the time and place at which by lot the specific bonds to be redeemed shall be determined; such election of the bonds so to be redeemed by lot as aforesaid, to be made under the supervision of the aforesaid trustees, the survivor of them, or their successors, and in manner and form as they shall prescribe. Notice for at least thirty days in the newspapers afore said shall be given by the party of the first part, certified by the trustee.

aforesaid of the specific bonds so selected by lot, and then redeemable according to the provisions of this deed; thirty days after which said bonds shall cease to bear interest. The bonds so redeemed to be cancelled under the supervision of the aforesaid trustees, who shall keep a registry thereof by their numbers; and in default of a sufficiency of net earnings for any year to provide such fund for redemption, the deficit thereof shall be made good and employed in the redemption of bonds out of the net earnings, and the net earnings of the year or years next succeeding, in which there are such net earnings; and the expenses attending such drawings of bonds and the publication and notification as herein required, may be defrayed by said trustees out of said sinking-fund. Provided, That such redemption of the bonds issued under this mortgage shall begin for and with the fiscal year ending January 1st, 1880.

Third. The said party of the first part further covenants and agrees to deposit with the banking-house of Duncan, Sherman & Co., 308 New York, twelve million five hundred thousand dollars of the bonds herein authorized to be issued, not to be pledged or used in any manner by the party of the first part, except in the manner and for the purpose hereinafter specified, but the same or their proceeds shall be drawn out from time to time, only upon the order of the president of the aforesaid company, countersigned by the aforesaid trustees, the survivor of them, or their successors; the coupons upon such bonds as remain so deposited to be regularly cancelled by the said party of the first part, in the presence of the said trustees, as the same mature. The existing liens upon the mortgaged premises, exclusive of the bonds hereby secured, amounting to a sum not exceeding the said sum of twelve million five hundred thousand dollars, to provide for the payment of which this deposit is to be made.

The said bonds, when and as the same are so drawn out shall be applied or used under the supervision of the said trustees solely in the acquisition, by exchange or otherwise, as the president and board of directors of the said Mobile and Ohio Railroad Company may arrange, and from time to time determine, of the aforesaid existing outstanding liabilities of said company; and no greater amount of said bonds shall be drawn out or used than shall equal the amount of such existing liabilities purchased or acquired as aforesaid, until all of said liabilities, as above set forth, are fully purchased or acquired, the aggregate amount of such liabilities not exceeding, as aforesaid, the said sum of twelve million five hundred thousand dollars.

And the said party of the first *party of the first* part hereby covenants and agrees with said parties of the second part that the said mortgaged premises hereby conveyed are free and clear of all incumbrances save and except only the aforesaid liabilities, amounting in the aggregate to a sum not exceeding twelve million five hundred thousand dollars. The evidences of such existing indebtedness and liens, as the same are so purchased or acquired, as herein contemplated, to be deposited with the aforesaid banking-house for the further security of the bonds issued under this mortgage, and to be accordingly so endorsed across their face by the said trustees for the time being, until all such outstanding obligations shall have been replaced, substituted, or discharged by the issues under this deed; then the same to be delivered over to the said party of the first part after the same are duly cancelled by said trustees; or the said trustees having, by some proper endorsement thereof, put an end to their assignability or negotiability, may deliver the same to the party of the first part, to be held by it as a protection to its title, in such form as may be found proper, so as in no case to interfere with the priority of the lien of this instrument over said indebtedness so purchased and surrendered; and except to the extent of the incumbrances hereinbefore specified, this conveyance is made with general warranty of title by the said party of the first part.

Fourth. The party of the first part shall and will at all times keep at its general office, in the State of Alabama, an appropriate book,
309 to be designated as the "Registry of First Mortgage Bondholders,"
and any and every holder of the bonds secured hereby, shall be entitled to have his name and address, and the numbers of the bonds so held or owned by him duly inscribed therein, upon the production at said office of such of said bonds as he may, by an endorsement to be made thereon, inscribe in his name as holder or owner; and after such registration such bonds shall not pass by delivery unless the same shall again be registered as payable to bearer, but such registration shall not compel the party of the first part to pay any overdue coupons on any such bonds to the registered owner, but the same may be paid to the bearer thereof.

Fifth. It is further mutually covenanted and agreed, that said trustees shall not, nor shall either of them or their successors be in any manner responsible for the default or misconduct of each other in said trust, nor for the neglect, default, or misconduct of any agent or attorney appointed pursuant to these presents, or for anything in respect to said premises, or the trusts hereby created, except personal misconduct or gross negligence in the execution of said trusts.

Sixth. It is further provided and declared that the said trustees, or either of them, or any succeeding trustee or trustees, may at any time hereafter, by an instrument in writing duly signed and forwarded to the said party of the first part, resign his or their office, and withdraw from the further execution of this trust; and thereupon, or in case at any time hereafter either of said trustees, or any trustee hereafter appointed, shall die, or be removed by a court of competent jurisdiction, or become mentally or otherwise incapacitated to execute the trusts, the president of the company, with the written approval and assent of the holders of bonds (the said consolidated mortgage) secured hereby, to the aggregate extent of not less than one-third of the said bonds outstanding and unpaid, may appoint a trustee or trustees to fill such vacancy, and in such case the new trustee or trustees appointed, either while he or they shall continue to be such, shall have and possess, and be subject to the like rights, powers, estates, and duties, as if he or they had been originally trustees hereunder, and, during any vacancy in the trusteeship, the remaining or surviving trustee shall have power to execute the trusts until the vacancy is filled. In default of appointment as aforesaid, it shall be the duty of the parties of the second part, or in case of neglect for a reasonable time, then for the party of the first part to apply to a court in Alabama having jurisdiction in the premises, for the appointment of a trustee or trustees to fill such vacancy or vacancies, and so from time to time.

And it is further provided and declared, that the due appointment of a trustee or trustees shall be effectual to vest in him or them the appropriate estate, rights, powers, and duties as herein provided in that behalf without any new deed or conveyance; but, nevertheless, the party of the first part hereby covenants, in any and every such case, to make and execute, upon request, any such deeds and conveyances or assurances as may be appropriate for more fully and certainly vesting in and confirming to such new trustee or trustees, such estate, rights, powers,
310 and duties; and in every case of resignation of a trustee, the re-

signing trustee shall, if requested, make and execute such conveyances or assurances to his successors.

And the said party of the first part further covenants that the party of the first part shall and will well and truly pay, or cause to be paid, unto the holder or holders of said bonds, the principal and interest thereof, as such principal and interest becomes payable, according to the tenor of said bonds respectively, and of the coupons thereto attached.

Seventh. It is further provided and declared, that if the said party of the first part shall well and truly keep and perform the foregoing covenants and agreements on its part to be performed, and shall well and truly pay the said bonds hereby secured, with interest thereon, according to the tenor thereof, then these presents shall be void, otherwise to remain in full furce.

In testimony whereof, the said, the Mobile and Ohio Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by its president and secretary, the day and year first above written.

President.

Secretary.

And in testimony of their acceptance of the trusts herein conferred and imposed, the said trustees have hereunto severally set their hands and seals.

Therefore resolved, That the plan of issuing a consolidated mortgage is approved, and the foregoing form of mortgage and bond is ratified and adopted by this board, and the president is hereby authorized and empowered to execute the mortgage, and to have the bonds prepared in accordance with the forms aforesaid, under the corporate seal of the company, attested by the secretary, and to cause the coupons thereto attached to be properly authenticated, in order that the whole may constitute a binding and valid obligation upon the company.

A true copy.

A. L. WILLOUGHBY, *Secretary.*

311 *Resolution Mobile and Ohio Railroad Company authorizing hypothecation of its securities. Extract from minutes, April 27, 1874*

Resolved, That the president be invested with full discretion over the available securities held and owned by the company in "Consolidated bonds," "Convertible bonds," "First and second mortgage bonds," and "Stock," old and new, and is fully authorized to dispose of the same by sale, hypothecation, or otherwise, for the settlement and adjustment of debts, and providing for the financial wants of the company, on such terms and conditions as he may deem advisable.

Certificate of hypothecation of Mobile and Ohio Railroad Company's consolidated mortgage bonds.

The Mobile and Ohio Railroad Company have deposited with the Bank of Mobile its consolidated mortgage bonds, at seventy-five cents on the dollar, as collateral security for the note of the company numbered .

Dated.

Payable.

To the order of.

For $.

It is understood that all coupons attached to said bonds are to remain there until after maturity of the paper for which said bonds are pledged.

(Signed) W'M H. PRATT,
President Bank of Mobile.

312 *Resolution of the Mobile and Ohio Railroad Company (certificate) attached to certain of its first mortgage sterling bonds.*

No. .] OFFICE OF THE MOBILE AND OHIO RAILROAD COMPANY,
Mobile, January 5th, 1859.

At a meeting of the board of directors of this company, held this day, it was unanimously

Resolved, That first-mortgage bonds of this company, numbered , shall entitle the holder or holders to collect each interest coupon at maturity, by presentation at the office of the company, at Mobile, at forty dollars for each coupon, in lieu of £6 15s. in London, not hereby interfering with the right of the holder or holders of such bonds to collect in London, according to the tenor of said coupons.

MOBILE AND OHIO RAILROAD COMPANY.
By

Secretary.

313 *Order allowing compl'ts to prove any exhibits.*

W'M BUTLER DUNCAN AND A. FOSTER ELLIOT
vs.
MOBILE AND OHIO RAILROAD COMPANY ET ALS.
} In chancery.

In the circuit court of the United States, southern district of Alabama.

On motion of the plaintiffs in this cause the court orders that the plaintiffs may prove any exhibit or document which, according to the practice of the court, may be proved viva voce at the hearing, may be proved by affidavit in the master's office upon two days' notice to the adverse party, or at the hearing, as they may be advised. And that defendants may have the benefit of this order.

(S'gn'd) W. B. WOODS, *Judge.*

APRIL 23, 1877.

Filed 25th day of April, 1877.

(S'gn'd) N. W. TRIMBLE, *Clerk.*

314 *Exceptions to master's report.*

In the circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN & AL., TRUSTEES, &C.,
vs.
THE MOBILE & OHIO R. R. CO. ET ALS.
} On bill, &c.

Exceptions to master's report.—Filed April 6th, 1877.

Come the trustees of the 2nd mortgage of said defendant corporation, defendants in said cause, and L. J. Belloni & Charles Moran, objecting creditors, and except to said reports of said master in said cause, as follows:

1. For that the said master hath not shown by said report that he made publication that he was ready to receive proof of debts secured by the mortgages of said company, and of the manner of making proofs, and before whom they could be made, as required by the orders of said court.

2nd. For that said master in his report "upon the funded debt of the M. & O. R. R. Co. and the debt due upon the securities of the said 315 corporation, and the claims presented and filed, and the amounts due each holder," hath stated coupons matured and unpaid and not funded to Nov. 1st, 1876, and 1st mortgage bonds at $1,289,941.80, including in said sum certain coupons held by Alexander Duncan and others, the validity of which is disputed by exceptions; whereas the said master ought not to have included in said statement any of said coupons so held by said Duncan, but ought to have reported the indebtedness of said company on coupons matured and unpaid to Nov. 1st, 1876, precisely as it existed at said date upon coupons the validity of which was recognized by all the parties to said cause.

3rd. For that the said master in his said report hath stated coupons matured and unpaid to Nov. 1st, 1876, on "10-year interest bonds," at the sum of $202,104.00; on "interest-arrearage" bonds, at $8,448.00; on "funded-interest" bonds, at $155,280.00; on "sterling-interest" bonds, at $152,444.16, including in said various sums certain coupons, 316 held by said Alexander Duncan and others, the validity of which is disputed by exceptants; whereas the said master ought not to have included in said sums any of said coupons so held by said Duncan and others, but ought to have reported the coupons matured and unpaid on said bonds to 1st Nov., 1876, precisely as they were at said date, recognized as valid by all the parties to said cause.

4th. For that the footings of the sterling and coupon indebtedness of said company and interest, bonds, and coupons of said company in said report are incorrect, inasmuch as they include the said coupons so in dispute as aforesaid.

And said exceptants except to the report of said master under decree of March 6th, 1876, filed April 6th, 1877, "upon the mortgages, &c., creating liens or charges upon the trust property and upon the priorities of the same."

1st. For that the said master in and by said report has reported proved before him coupons matured and unpaid amounting to $911,457.73. 317 This sum exceptants state includes coupons held by Alexander Duncan and others, the validity of which is disputed by exceptants.

2nd. For that the said master in his said report and in exhibits C schedules one to four, has reported the bonds and coupons secured by the first mortgage of said company as amounting to $7,097,516.04 and that the same are a first lien upon the property of said company described in said mortgage, except the lien of the Tennessee substitution bonds, if the same be established as superior thereto and subject to a further report of the coupons which matured in 1874: whereas, the said master ought to have stated the said bonds and coupons without including in the total thereof the said coupons of 1874, which exceptants aver are disputed as invalid and not a lien upon the property included in said mortgage.

3rd. For that the master in his said report, hath reported that 318 the "interest bonds described in said report are a first-mortgage lien of equal amount for the coupons for which they were substituted and interest thereon from date of maturity; whereas said master ought to have reported that they are not a first-mortgage lien and not a lien at all upon said mortgaged property; or if a lien, that they are subject and subordinate to the lien of the second mortgage.

Mobile, April 27, 1877.

(S'gn'd) **E. H. GRANDIN,**
For Trustees 2nd Mortgage,
Defendants in said cause.

(S'gn'd) **E. L. ANDREWS,**
Sol'l'r for Moran & Belloni, Exceptants.

Filed April 27th, 1877.

(S'gn'd) **N. W. TRIMBLE,** *Clerk.*

319 *Order allowing further time to adduce evidence before the master.*

In the circuit court of the United States, southern district of Alabama.

DUNCAN AND ELLIOTT
vs.
MOBILE AND OHIO RAILROAD COMPANY.

On the petition of the Rogers Locomotive and Machine Works it is hereby ordered that the counsel for the 2nd-mortgage trustees have two days further time to adduce evidence before the special master to sustain the answer of the 2nd-mortgage trustees, the time to include Wednesday, April 25th, 1877.

April 21, 1877.

(Signed) **W. B. WOODS,** *Judge.*

320 *Order extending time for master to file report.*

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

W. B. DUNCAN ET ALS., TRUSTEES,
vs. No. 90.
THE MOBILE AND OHIO RAILROAD CO. ET ALS.

Ordered that the master have until the first Monday in May in which to file his report upon the objections of Belloni and Moran in this cause, instead of the 1st day of May as heretofore ordered.

May 2. 1877.

(Signed) **W. B. WOODS,** *Judge.*

321 *Report of special master.—Filed May 3, 1877.*

In the circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN AND A. F. ELLIOT, trustees,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.

To the honorable the circuit court of the United States for the circuit and district aforesaid.

The master has heretofore reported under the decree of reference of

March 6, 1876, the property included in the terms of the trust deed and in the possession and control of trustees and receivers, plaintiffs in this cause; also the bonds secured by the respective mortgages of the Mobile and Ohio Railroad Company, and the funded debt as shown by the books of the defendant corporation and otherwise proved, and the claims presented and proved by the holders thereof, with the amount due each holder.

He also reported the mortgages, deeds of trust, or other instruments creating a charge or lien upon the trust property, and the order and priority of each of them.

Reservation was made in said last report of all conclusion as to the objections filed by Moran Brothers to the Tennessee substitution bonds, and the objection of L. J. Belloni, jr., to the first mortgage coupons of 1874 as any liens upon the trust property. The time for the contestation of said matters was extended by the court on the application of said objectors to the 20th April, 1877. A further order, made on a petition of the Rogers Locomotive and Machine Works, filed by E. H. Grandin, of counsel, also acting for second-mortgage trustees, extended the time for said trustees to adduce testimony in support of their answer to the 25th of April.

The following report relates to these contested matters.

The ninth article of the decree of March 6, 1876, provides as follows:

"Exceptions to the reports may be filed by the parties to the bill, but should any creditor who shall prove his claim be desirous to contest any other claim proved, and the trustees representing the claim of such creditor shall neglect or refuse to make the exception proposed by the creditor, upon proof that he has made the request of the trustee, 322 and the neglect or refusal by him, the master shall allow of the exception or contestation, and shall report upon it as if made by the trustee."

Under this provision, E. L. Andrews, esq., as counsel for L. J. Belloni, j'r, a first-mortgage bondholder, claiming to hold six bonds, presented through the trustees, Duncan and Elliot, on the 25th November, 1876, certain objections to the claim of Alexander Duncan and others, holding first-mortgage coupons of May and November, 1874, which objections were substantially as follows:

That the May and November coupons, 1874, of the Mobile and Ohio Railroad Company's first-mortgage bonds were presented at the usual places of payment and were then and there paid to the parties so presenting them, and were surrendered by said parties, and were received by the payors who had heretofore acted as agents of the company about the payment of its coupons, and that said coupons after said payment became inoperative as a claim against said company or as a lien upon any of its property.

Said objections were answered by George N. Stewart, esq., of counsel for Alexander Duncan, claiming that said Duncan was the sole and lawful owner of said coupons for full value paid, and, as such owner, entitled to payment out of the trust property with the mortgage liens appertaining to the bonds of which said coupons formed a part.

M'r Andrews, as solicitor for Mess'rs Moran, of New York, also filed objections to the proof or admission of the Tennessee substitution bonds and coupons as a prior lien, or any lien, on the Mobile and Ohio Railroad, or any part thereof. Similar objections to the Tennessee lien and to the coupons of 1874 are presented in the answers of the second-mortgage trustees, filed with the pleadings in the cause.

The master gave due notice to the attorneys of record in the main cause and to counsel for objectors, of the times and places of taking proof in regard to said objections and upon all other matters before him, and was attended by the following solicitors: P. Hamilton, of counsel for trustees and receivers; George N. Stewart, of counsel for Mobile and Ohio Railroad Company, and Alexander Duncan; W'm G. Jones and E. H. Grandin, representing trustees of the second mortgage; and E. L. Andrews, of New York, solicitor for objectors, Moran Brothers and Belloni; E. H. Grandin also appeared as solicitor for objectors.

The master's sessions were held at Mobile, commencing first Monday in December, 1876, and continuing, under various orders and extensions,
until April 25, 1877, during which period much testimony was taken,
which is herewith returned to the court, together with minutes of
323 the proceedings. Testimony was also taken by commission in
London and New York, and is also returned. Under an order
dated 18th January, 1877, all testimony taken or to be taken, with reference to priorities of liens, was ordered to be printed, which has been done. Proof was offered with reference to the title of trustees complainants, as denied in the answers of the second-mortgage trustees; and also as to matters pertaining to the organization or reorganizaion of the Mobile and Ohio Railroad Company. As said matters were deemed entirely outside of the scope of the reference, the same were excluded, so far as practicable, and when objected to. Nevertheless, a large part of the testimony taken is of an irrelevant nature, does not pertain to the object presented by the objections, and is not pertinent to any of the matters of liens and priorities referred by the court.

As to the Tennessee substitution bonds, which are claimed to be a lien upon so much of the property as lies in the State of Tennessee, i has been heretofore reported that the trustees of that lien declined to avail themselves of the permission to become parties, contained in the fifth article of the decree of reference, and refused to appear before the master and defend against the objections filed; and it was considered that said matter was not properly in condition for a report at this time.

Counsel for trustees, complainants, and for the Mobile and Ohio Railroad Company, objected to the taking of testimony upon the exceptions of Moran Brothers to the Tennessee claims; but said testimony was taken in full. The master deemed it his duty to receive it under the ninth article of the decree hereinbefore quoted, and under the order of March 28th, allowing objectors further time to take testimony. Said testimony is herewith returned to the court, but without further report.

The only matter left open on which a report is necessary is the claim of Alexander Duncan for the allowance of the first-mortgage coupons of May and November, 1874.

As to this the master reports:

In September, 1876, in New York City, Alexander Duncan, by his attorney, George A. Leete, presented and made proof of his ownership of certain coupons under the first mortgage, which fell due May 1 and November 1, 1874, to the aggregate of eighty-five thousand five hundred and seventy-five pounds sterling of the coupons of the first-mortgage sterling and sterling-interest bonds, and of one hundred and eighteen
thousand six hundred and fifty-six dollars of coupons of currency in-
terest bonds. The total amount of the claim in currency, rating
324 the pound sterling at 4.86.65 (under section 3565 Rev. Statutes of
the United States), is $535,106.74, exclusive of interest on the
coupons from dates of maturity, which is also claimed.

The particulars of this claim, as of all others, appear in the schedules to the funded debt report, filed April 5, 1877, showing the various series of bonds to which the coupons pertain, and the number and amount of said coupons. Said coupons were detached from the bonds uncancelled, and were severally presented to the master for inspection, and were carefully verified as to numbers, amounts, and dates, with the proofs made.

Other coupons were presented for Alexander Duncan and proof made, to which no objections have been filed, except as to those pertaining to the Tennessee substitution bonds, embraced in the issues raised by the answer of the second mortgage trustees and in the objections of Moran. The objections of Belloni pertain exclusively to the coupons which fell due in May and November, 1874, upon bonds issued under or secured by the first mortgage.

The proofs of all of Alexander Duncan's claims were filed in September, 1876, and have been returned to the court with the master's report of April 5, 1877.

The question appears to be whether or not the coupons of 1st May and 1st November aforesaid were extinguished by the sums paid to the holders for them, so as to be no longer securities protected by the first mortgage, or whether they stand in claimant's hands as uncancelled, with all the rights of the mortgage, and as all other coupons due and unpaid.

It is in evidence and admitted that the former holders of said coupons have been satisfied and have no further claim, having received the money coming to them for the same.

The evidence shows that the coupons of 1874 are held uncancelled by Alexander Duncan, and were proved by him before the master as his property. The question, however, seems to be as to the nature and effect of the mode and manner of payment.

As to the mode and manner the evidence is very complete.

For instance, the coupon holders who presented them for payment at the company's offices in Mobile were handed back their coupons after they had been verified or counted by the treasurer or his assistant, and placed in envelopes endorsed with memoranda of the number and amounts, and the holders were told to take them to the Bank of Mobile, where they would be paid. On presentation at said bank to the teller, the coupons were retained by the bank officer and the bank's cheques or money was given for them. The mode and manner of payment in
325 London and New York was not the usual mode. In London the coupons for May, 1874, were taken up on instructions from Duncan, Sherman & Co. by the Union Bank, and for November by the Credit Foncier. In New York the evidence is that they were not paid in the usual manner, and that the holders were informed that they were being purchased and held uncancelled.

It is in proof that the railroad company did not pay them, and supplied no money for their payment. The May and November interest for 1874, on first-mortgage bonds, stands on the company's books as unpaid and in default. It does not appear that the Mobile and Ohio Railroad Company paid one of those coupons, or that it intended to do so.

It is shown by evidence that the money to take up said coupons was furnished by Duncan, Sherman & Co., out of their own moneys, or from funds furnished by Alexander Duncan and others.

The proof is full as to the intent of Duncan, Sherman & Co., and their agents, the Bank of Mobile, Credit Foncier, &c., with the assent of the company, not to pay or satisfy said coupons so as to extinguish them; ut, on the contrary, their plainly expressed intention was that they should be purchased and remain uncancelled with all the rights that purchasers would have. Their taking up the coupons without extinguishment was with the consent of the company, by the express agreement with its officers that they were to be purchased with all lien rights as existing mortgage security preserved and held until the company could pay them.

It is not shown in evidence that in any instance the company or its officers retained possession of any of these coupons, but they were received from the parties presenting them, by Duncan, Sherman & Co.'s purchasing agents. There is no proof that they have ever been in the possession of the company since the original holders received the money for them and surrendered them to said agencies.

Evidence was adduced to show that a portion of the original owners did not know that the company was not paying. It appears that some did not know and did not inquire. Others did and were fully informed. Payment was not made at the treasurer's counter as usual. It appears that all who inquired were informed of the nature of the payment. There was evidence to show that a written notice was posted up in view in the treasurer's office. The evidence is full that the purchasing agencies and the officers of the company fully understood the transaction. Evidence offered to show that the matter was kept secret failed.

The master conceives that the question does not depend on the fact whether the parties receiving payment knew who made it. It 326 seems that is immaterial to the inquiry. The debtor company consented to the transaction, and the party paying did not intend to extinguish the security, which was a negotiable paper passing by delivery. It is sufficient that the parties most interested, viz, the company owing and the party paying the debt, both concurred in the expressed intent that the coupons should be held as a valid subsisting lien, to make it so in this case. It certainly could not have been intended that the lien should be destroyed. The evidence in the shape of telegrams, correspondence, and instructions passing between Duncan, Sherman & Co. and their agencies in taking up the coupons, and with the officers of the company, prior to the maturity of the coupons, seems to the master to be conclusive as to the intention to preserve the lien, which intention should govern this case.

There was evidence to show that the company could have paid the coupons, if it would, in preference to other debts which were paid, some of which were unsecured. The master is of the opinion that it is immaterial whether the company, by better management, could have paid or not. So long as the company by its own officers was in possession of its property and income, although subject to be taken possession of by the trustees, and although it may appear that it did pay inferior debts, that is not a matter material and should not be allowed to affect the rights of the claimant.

It is undeniable that the defendant corporation did not pay this debt. The coupon-holders received the money, but it was not the money of the company, whose books fail to show the payment of one first-mortgage coupon of May and November, 1874, or since those dates. It was claimant's money which purchased the coupons for full value, and he holds them uncancelled with all the rights and liens of the bonds from which they were taken.

The master therefore finds and reports to the court that the claim of Alexander Duncan for the detached coupons of 1874, which has been objected to on this reference, is a just and lawful claim, and should be allowed, with interest from the time or times when due, as a valid subsisting lien of the same force and effect as other coupons of the first mortgage unpaid, with all the liens applicable to said mortgage.

This report disposes of all matters before the master not heretofore reported upon.

Respectfully submitted.

JAMES GILLETTE,
Special Master.

MOBILE, *May* 3, 1877.

Filed May 3, 1877.

N. W. TRIMBLE, *Clerk.*

DEMAND ON DUNCAN & ELLIOT.

CIRCUIT COURT OF THE UNITED STATES,

For the Fifth Judicial Circuit and Southern
District of Alabama.

W. B. DUNCAN AND A. F. ELLIOT,
vs.
MOBILE AND OHIO RAILROAD
COMPANY, et al.

In Equity.

To W. B. Duncan and A. F. Elliot:

In pursuance of a decree in the above cause, the undersigned, as owner and holder of six thousand dollars of the First Mortgage Bonds of the Mobile and Ohio Railroad Company, proved before the Special Master herein, does hereby demand that you do object to the proof or admission by the Master herein, of any Coupons of the First Mortgage Sterling Bonds of the Mobile and Ohio Railroad Company which became due on the first days of May and November, 1874, as liens of equal rank with the said First Mortgage Bonds, and as liens upon the property of said Company.

In case of non-compliance with the foregoing request on or before the 11th day of November, 1876, and notice of the same to me I shall deem that you refuse to comply herewith.

LOUIS J. BELLONI, Jr.,
43 Pine Street,
New York City.

Geo. L. Ingraham,
Attorney for L. J. Belloni, Jr.
November 10th, 1876.

ANSWER TO DEMAND.

UNITED STATES CIRCUIT COURT,
Southern District of Alabama.

William Butler Duncan and Andrew F. Elliot, Trustees, etc., against The Mobile and Ohio Railroad Company

Gentlemen: We have received this day a notice subscribed by you, purporting to be given in a suit entitled, "W. B. Duncan and A. F. Elliot against The Mobile and Ohio Railroad Company et al," and endorsed on the back "Demand on Duncan & Elliot" and addressed ^ on the back to W. B. Duncan and A. F. Elliot. Assuming that notice to be addressed to us in our official character as Trustees of the First Mortgage of the Mobile and Ohio Railroad Company, and that it is intended to be entitled in the suit in which we as such trustees are complainants, we note that you require us "in pursuance of a decree in the above cause the undersigned as owner and holder of six thousand dollars ($6,000) of First Mortgage Bonds of the Mobile and Ohio Railroad Company proved before the Special Master herein does hereby demand that you do object to the proof or admission by the Master herein of any coupons of the First Mortgage Sterling Bonds of the Mobile and Ohio Railroad Company, which became due on the first days of May and November, 1874, as liens of equal rank with the said First Mortgage Bonds, and as liens upon the property of

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^

said Company. In case of non-compliance with the foregoing request on or before the eleventh day of November, 1876, and notice of the same to me, I shall deem that you refuse to comply herewith." We have to inform you that in compliance with your request we as trustees under said First Mortgage and as complainants in said suit do object to the proof or admission by the Master herein of any coupons of the First Mortgage Sterling Bonds of the Mobile and Ohio Railroad Company, which became due on the first days of May and November, 1874, as liens of equal rank with the said First Mortgage Bonds and as liens upon the property of said Company.

We further notify you that we shall forward to the Master at Mobile a copy of your communication and of this reply.

Dated, New York, November 10, 1876.

Yours, etc.,

WILLIAM BUTLER DUNCAN and
ANDREW F. ELLIOT,
Trustees.
By William Butler Duncan.

To Louis J. Belloni, Jr., Esq.,
43 Pine Street, New York City, and
To George L. Ingraham, Esq.,
Attorney for L. J. Belloni, Jr.

NEW YORK, November 10, 1876.

Duncan & Elliot, Trustees, &c.,
Ag't The Mobile and Ohio R. R.

James Gillette, Esq.,
Special Master, &c.

Dear Sir: We herewith hand to you a notice received by us to-day, from Louis J. Belloni, Jr., of the city of New York and our reply thereto.

Yours respectfully,
W. BUTLER DUNCAN, and
A. FOSTER ELLIOT,
Trustees and Receivers M. & O. R. R.
By W. Butler Duncan,

Filed this 15th day of November, 1876.
JAMES GILLETTE,
Special Master.

Objections of L. J. Belloni, Jr., to the allowance of Coupons of 1874.

CIRCUIT COURT OF THE UNITED STATES,

In and for the Fifth Judicial Circuit and Southern District of Alabama.

W. B. DUNCAN AND A. F. ELLIOT.
vs.
MOBILE AND OHIO RAILROAD COMPANY, et al.
In Equity.

To the United States Circuit Court for the Southern District of Alabama, and to the Special Master Commissioner appointed by the said Court in the above cause:

Objections taken by First Mortgage Sterling Bondholders of the Mobile and Ohio Railroad Company, to the proof or admission of the coupons for May and November, 1874 claimed by Alexander Duncan and others.

First. For that the said Coupons of the First Mortgage Sterling Bonds of the Mobile and Ohio Railroad Company were presented by the then holders thereof, on or about the 1st days of May and November, 1874, at the usual and accustomed places where the coupons of the said bonds had been hitherto paid, and that the said coupons were then and there paid to the parties so presenting them, and were surrendered by said parties and the said coupons were received by the payers thereof, who had theretofore acted as agents of the said Mobile and Ohio Railroad Company in and about the payment of its coupons on its First Mortgage Sterling Bonds. And the matters above recited in reference to said coupons transferred in the case of the coupons of the bonds held by this objector; and that no notice or claim was made at or before the time of the payment aforesaid of any purchase of said coupons by any one whatsoever; and no such claim or notice came to this objector's knowledge, nor was the same in any way called to his attention. But, on the contrary, the published notices in the newspapers at the said times announced over the signature of Duncan, Sherman and Company, from whom the above named Alexander Duncan claims title; that the aforesaid coupons would be paid on presentation. And it was in pursuance of such notice of payment that this objector presented his coupons and received payment thereof. And the said coupons, after said payment, became inoperative as a claim against said Company, or a lien upon any of its property.

Wherefore, the said Louis J. Belloni, jr., objects to the reception of any proof of said coupons as a claim or lien, herein, or as a claim or lien of equal rank with the First Mortgage bonds aforefaid.

Second. To the admission of said coupons by the Master herein as a claim or lien upon or against the property of the said Mobile and Ohio Railroad Company, or to a claim or lien of equal rank with the First Mortgage Sterling Bonds, or to any Report of said Master in favor of the admission or validity of said coupons or claims, or secured by liens as aforesaid.

Third. And this objector claims to except to any such admission, proof, or Report herein, and claims leave and direction of said Master for the introduction of proof of the facts set forth in the foregoing exceptions, or to any of the same that are not admitted by any claimants on said coupons.

Fourth. And this objector claims a hearing before the Master, and such other relief as may be just.

LOUIS J. BELLONI, Jr.

Geo. L. Ingraham, Att'y for L. J. Belloni, Jr.
E. L. Andrews, of Counsel.

Filed November 25, 1876.

JAMES GILLETTE,
Special Master.

Objections of Moran Bros. to Tennessee Substitution Bonds.

UNITED STATES CIRCUIT COURT.
Southern District of Alabama.

W. B. DUNCAN et al. *vs.* MOBILE AND OHIO RAILROAD COMPANY et al.	MASTER'S OFFICE: Objections of Charles Moran, Daniel C. Moran, and Amedee D. Moran, composing the firm of Moran Brothers.

Objections taken by First Mortgage Sterling Bondholders to the proof or admission of the so-called Tennessee Substitution Bonds and Coupons as first or any liens on the Mobile and Ohio Railroad or any part thereof.

First. For that the lien of the State of Tennessee assigned to the Trustees of the Tennessee Substitution Bonds, was paid and satisfied by the surrender to the State of its own bonds and the cancellation of the same by the State officials before the assignment of said State lien.

Second. For that the said State Bonds were procured from the then holders thereof by means of the resources or credit of the Mobile and Ohio Railroad Company, and through persons acting as agents thereof, and to the profit of the Railroad Company.

Third. For that the lien of the State was not assignable to any one whatsoever.

Fourth. For that the Mobile and Ohio Railroad Company could not, by force of any deed executed in 1871, confer upon bonds then issued a priority over the First Mortgage Bonds or any other existing lien issued previously.

Fifth. For that the Mobile and Ohio Railroad Company could not, for its own benefit, and with a view to its own profit, keep alive the extinct lien of the State to aid or sustain its credit upon new obligations.

Sixth. For that the legislation of the State of Tennessee whereby it was attempted to assign its satisfied lien for the benefit of holders of new bonds, was an endeavor to impair the obligation of the contract between the First Mortgage Sterling Bondholders and the Mobile and Ohio Railroad Company,

Seventh. For that the lien of the State of Tennessee was limited by the comtract between the company and the First Mortgage Sterling Bondholders to ($10,000) ten thousand dollars per mile, and cannot, in any event, be made to exceed that amount, with proper interest.

Eighth. For that the holders of the over-due coupons on the State Bonds issued under the State lien who surrendered the same and accepted bonds of the State in lieu thereof, accepted and thereby agreed to rely upon and be satisfied with the credit of the State of Tennessee, and thus relinguished whatever liens they may have possessed under the surrendered coupons.

Ninth. For that the coupons of the so-called Substitution Bonds which fell due before July, 1875, were regularly paid at the places designated by the Mobile and Ohio Railroad Company, and in the accustomed manner of payment, and thereupon became cancelled as liens upon the property, and cannot be revived as incumbrances upon the estate.

Tenth. For that the bonds of the State of Tennessee which represented the former lien upon the Tennessee portion of the road bore interest for and only at the rate of six per cent. per annum in currency, and the so-called Substitution Bonds, if valid liens, are not entitled to any greater rate of interest than six per cent. per annum.

Eleventh. For that said Substitution Bonds have a longer time to run than the bonds issued by the State of Tennessee, and the said State Bonds would have become due and payable before the substitution became due.

Twelfth. For that the rights of the holders of the bonds issued in aid of the Mobile and Ohio Railroad Company by the State of Tennessee have not been relinquished.

Thirteenth. For that the State of Tennessee was constituted by law the trustee and holder of such lien as was created by the legislation of the State, and is still such trustee for any valid claim on said lien, and is the only party entitled to represent said lien before the court.

Fourteenth. For that the said Substitution Bonds do not hold or represent any valid mortgage or lien upon any part of the property of the Mobile and Ohio Railroad Company.

Wherefore, the said Charles Moran, Daniel C. Moran, Amedee D. Moran object to the reception of any proof of said bonds or coupons as liens upon said property or any part thereof and to their admission as said liens.

And to any Report of the Master herein in favor of the admission or validity of said bonds or liens aforesaid.

Such

coupons

And these objectors claim leave and direction of said Master for the introduction of proof of the facts set forth in the foregoing objections and for a hearing by counsel before said Master.

And for such other relief as may be just.

CHAS. MORAN,
D. COMYN MORAN,
A. D. MORAN.

Edward L. Andrews, Solicitor and of counsel
Chas., D. C., and A. C. Moran, Exceptants.

UNITED STATES CIRCUIT COURT.
Southern District of Alabama.

WM. BUTLER DUNCAN et el.
vs.
MOBIE AND OHIO RAILROAD COMPANY et al.
In Equity.

United States of America—ss:
Southern District of New York.

A. D. Moran being duly sworn, deposes and says:

That on or abont the 30th day of August, 1876, he served W. B. Duncan, one of the complainants herein, with a copy of the annexed paper, marked Exhibit A, by leaving the same with him.

That the said Duncan, on receiving the said paper, stated to deponent that it was all right; that the Second Mortgage were taking a ~~somewhat~~ similar objection.

That deponent presented a copy of the same paper to Master Gillette, who stated that the decree required service of the same on the complainants, and it was in pursuance of the said direction of the Master that deponent thereafter served Mr. Duncan as aforesaid. About the same time the Master requested deponent to leave a copy of the said paper with him, the Master, to use before the court in case it was necessary, and deponent did then leave a copy with the Master as requested.

That deponent is informed and verily believes that neither Mr. Duncan nor Mr. Elliott has yet taken any action before the Master adverse to the Tennessee Substitution claims referred to in said document, and from the action of complainants as shown by the records in this Court, deponent does not believe that complainants intend to enforce the objections brought to their knowledge as hereinbefore set forth.

That the questions involved in said claims require proof of facts before the Master in order that they may be properly laid before the court.

That for said purpose, and for the more effectual protection of the rights of deponent and his firm as First Mortgage Bondholders objections to said claims are necessary to be filed in their own behalf.

A. D. MORAN.

Sworn to before me, this 21st day of November, 1876.

GEO. DAVIDSON, [Seal.]
Notary Public, Kings Co., N. Y.
Acting for N. Y. Co.

Exhibit A.

NEW YORK, 30th August, 1876.

James Gillette, Esq.,
Special Master Commissioner appointed by the Honorable Circuit Court of the United States for the Fifth

Judicial Circuit and Southern District of Alabama, in the matter of Wm. Butler Duncan, A. Foster Elliot, Trustees, against the Mobile and Ohio Railroad Company:

Sir—

We hereby give you notice that we as holders of

368 First Mortgage Mobile and Ohio Railroad 6 per cent. Sterling Bonds of £225 each,

30 8 per cent. Interest Bonds, idem of $1,000 each, representing funded interest on above 1st Mortgage Bonds,

1 idem, $500,

7 8 per cent. Mobile and Ohio Railroad 2d Mortgage Bonds of $1,000 each,

do protest against the 7 per cent. Gold Bonds of the same company, amounting to $1,685,000 and known as the Tennessee Substitution Bonds, being proved as a First Mortgage on the Tennessee Division of the Mobile and Ohio Railroad Company, as we claim that the First Mortgage 6 per cent. Sterling Bonds and 8 per cent. Interest Bonds take precedence of the Tennessee Substitution Bonds, because the claims of the State of Tennessee had been fully liquidated prior to the execution of the Tennessee Substitution Bonds, and because the State of Tennessee could not legally confer the right of priority in favor of bonds created in 1870, different in nature and in amount from those advanced by the State.

And we further beg you to take notice that we reserve to ourselves all our legal and equitable rights in the premises.

Yours, Respectfully,

[Signed,] MORAN BROTHERS.

Received and filed Nov. 25, 1876.

JAMES GILLETTE, Special Master.

Notice.

CIRCUIT COURT OF THE UNITED STATES.

Southern District of Alabama.

W. B. DUNCAN and A. F. ELLIOT, Trustees,

vs.

MOBILE & OHIO RAILROAD COMPANY.

To *John A. Campbell, and P. and T. A. Hamilton*, Solicitors for Trustees of the First Mortgage.

To *R. H., R. I., and G. L. Smith*, Solicitors for certain Trustees of the Tennessee Mortgage.

To *Wm. Jones and E. H. Grandin*, Solicitors for Trustees of the Second Mortgage.

To *Geo. N. Stewart*, Solicitor for Mobile and Ohio Railroad Company.

To *Alexander Duncan*, or his Solicitor.

To *Geo. L. Ingraham* Solicitor for L. J. Belloni, and *E, L. Andrews*, of counsel for L. J. Belloni and Moran Brothers.

You will take notice, that on the 1st Monday in December, 1876, at the United States Court Room in the City of Mobile, I will proceed to hear the matters and things set forth in the notice of L. J. Belloni, jr., and of Duncan and Elliot, Trustees, copies of which notices are herewith furnished, together with the objections of Louis J. Belloni, jr., therein referred to and this day filed.

And at the same time and place I will proceed to hear the objections filed by Charles Moran, Daniel C. Moran and Amedee D. Moran, composing the firm of Moran Brothers, copy herewith.

And this is to notify you that you may take such course as you may b~~y~~e advised.

JAMES GILLETTE,
Special Master.

Mobile, Ala., Nov. 25th, 1876.

Answer of Alexander Duncan to the Objections and Contestations of Louis J. Belloni, Jr.

CIRCUIT COURT OF THE UNITED STATES.
Fifth Judicial Circuit Southern District of Alabama.

DUNCAN & ELLIOT, Trustees, *vs* THE MOBILE AND OHIO RAILROAD COMPANY, et al.	*In Equity.*

On reference before Special Master, James Gillette under the order of said court.

And now at this day comes Alexander Duncan, who has filed and proved before said Master his claim for coupons of the Mobile and Ohio Railroad Company, as is shown by the said proofs on file on the reference, and who defends against the contestation filed before said Master by Louis J. Belloni, jr., by E. L. Andrews, his counsel, as well on his own behalf as on that of other claimants, of coupons proved and on file with claims similar to his own, and for answer and defence against said contestation and objections, he answering says:

That he, the said Alexander Duncan was, at the time of the filing of said detached coupons, issued by the Mobile and Ohio Railroad Company, which he has laid before the said Special Master, and of which he has made due proof, as is shown by the record of this reference the true and legal owner and holder of said coupons, from thence has so continued, and still is the lawful holder and bearer of the same, and is lawfully entitled to payment thereof by said Railroad Company and of each of them, and that he is justly entitled, and insists that the same be reported on this reference as due to him with the mortgage liens of the bonds to which they respectively appertain and with which they were issued; and he further saith that he became the lawful holder of the same for full value paid by him for the same as his property; and he further says that said coupons have not been paid by the said Mobile and Ohio Railroad Company according to the tenor or effect of said coupons, nor either of them, nor any part of either of them, and he says that they and each of them stand in full force and effect as valid and lawful obligations of said company due to him, this respondent, with all the liens appertaining to the bonds of which they respectively formed part; and this defendant denies the obligations of the said contestant in this behalf to be true as alleged and set forth in the said petition; wherefore, he prays that if material, that said objector be required to make full proof of his said allegations before any such order be made as has prayed, and that the proof heretofore made by him, this respondent, of his said claim and right to the payment of said coupons and of the liens appertaining to the same shall stand in full force.

All which is respectfully submitted.

STEWART & PILLANS,
Solicitors for Alex. Duncan, Defendant.

Received and filed December, 6, 1876.

JAMES GILLETTE, Special Master.

CIRCUIT COURT OF THE UNITED STATES.

Fifth Judicial Circuit Southern District of Alabama.

WM. BUTLER DUNCAN et al., Trustees,

vs.

THE MOBILE AND OHIO RAILROAD CO. et al.

MINUTES OF A REFERENCE HELD UNDER THE DECRETAL ORDER OF MARCH 6, 1876, BEFORE JAMES GILLETTE, SPECIAL MASTER.

A reference before the Special Master in the above entitled cause, held pursuant to notice under paragraph 9 of the decree of March 6th, 1876, convened on Monday, December 4th, 1876, at 11 o'clock, A. M.

Present: the Special Master, James Gillette, and the following Solicitors of record:

P. Hamilton, of counsel representing trustees of the First Mortgage, who are complainants in the bill and receivers;

Wm. G. Jones and E. H. Grandin, representing trustees under the Second Mortgage;

George N. Stewart, counsel for the Mobile and Ohio Railroad Company, and E. L. Andrews, Esq., Solicitor for Messrs. Moran Brothers, of New York City, who have filed objections to "the allowance of the bonds known as Tennessee Substitution Bonds as entitled to priority of lien, or to any lien, on the railroad property described in the bill," and Solicitor also, for Louis J. Belloni, jr., who has filed objections to the "coupons of the First Mortgage Sterling Bonds of the M. & O. R. R. Co., which became due on the 1st days of May and December, 1874. as liens of equal rank with the said First Mortgage, and as liens upon the property of said company."

And by consent the reference was adjourned until to-morrow, Tuesday morning, at 11 o'clock.

JAMES GILLETTE,
Special Master.

TUESDAY, December 5th, 1876.

The reference convened pursuant to adjournment.

Present: the Special Master and the counsel for the several parties, as of the day previous.

Mr. E. L. Andrews, appearing for Messrs. Moran Brothers, of New York City, First Mortgage Bondholders, objecting to the allowance of the Tennessee Substitution Bonds, moved for the production of the books of the Mobile and Ohio Railroad Company recording the minutes of the Directors in 1870, 1871 and 1872, and also the correspondence of said company or any of its officers, of W. B. Duncan and R. T. Wilson, and particularly any of such minutes or correspondence relating to the Tennessee Substitution Bonds; and also, for a subpœna to issue to A. L. Willoughby, Treasurer, and C. A. Wetton, Auditor.

Mr. George N. Stewart entered his appearance for Mr. Alexander Duncan, and other holders of the First Mortgage coupons of 1874, whose rights are sought to be impaired by the objection filed by Louis J. Belloni, jr.

Mr. P. Hamilton, appearing for the trustees and receivers, who are complainants in the bill, suggested that parties who have filed claims as holders of the bonds known as Tennessee Substitution Bonds should be notified of the objections, as preliminary to all proceedings against them.

Mr. W. G. Jones, representing trustees of the Second Mortgage, stated that his clients contested both the liens claimed by the holders of the First Mortgage coupons of 1874 and the Tennessee Substitution Bonds. Mr. E. H. Grandin appearing with Judge Jones, and representing the same interests, made the same statement for his clients.

The point being raised by Judge Jones that certain of the trustees of the Tennessee Mortgage had appeared by counsel on the previous sessions of the Master, and had received notice of these proceedings, the Master stated Messrs. R. H. and R. I. Smith counsel for Messrs. Iselin and Wilson, trustees of the Tennessee Mortgage, had appeared up to a certain time in the proceedings before him, and had received notice in this matter; but in response to the last notice had notified him that they had been instructed by their clients not to appear or to recognize any of the proceedings of the Master in this cause; but to conduct their case before the court in Tennessee.

Mr. Jones argued that under such circumstances further notice was unnecessary.

Mr. Andrews, concurring, argued that the decree required the direct examination of all liens on the property from Mobile to Columbus, Ky., and resisted the suggestion that notice was required to each and every Tennessee bondholder.

Mr. Stewart requested until next day to file answer to the objections of L. J. Belloni, jr., to the coupons of 1874.

The Master stated that two sets of objections were before him, embracing separate matters, to which no answers had been filed, and ordered that the objections of L. J. Belloni to the First Mortgage coupons of 1874 be first considered, allowing until to-morrow morning to counsel to file answer.

Mr. Andrews objected to considering them first, and proposed to take up the objections of Moran Brothers to the Tennessee Bonds.

Mr. Hamilton renewed his suggestion that as the Tennessee trustees declined to appear, the parties who have presented claims have individual rights entitling them to notice.

The Special Master thereupon decided as follows:

Section 9 of the decree of March 6, 1875, governs the matter.

When a bondholder comes outside of his trustee and makes objection to the claim of another bondholder, equity, as well as the intent and spirit of the decree, requires that the bondholder whose claim is attacked should have notice. The trustees of the Tennessee Mortgage by their counsel, having informed the Master that they decline to appear in this court, the matter resolves itself into a contest between bondholders who are equally entitled to notice. It is, therefore, decided that the objections of Messrs. Moran Bros. be not taken up until notice is given in conformity with this decision.

Ordered, That notice issue to the creditors who have filed claims for Tennessee Substitution Bonds, of the contestation filed by Messrs. Moran Bros.

Ordered, That the objections of Louis J. Belloni, jr., to the First Mortgage coupons of 1874 be taken up to-morrow morning, with leave to the counsel for coupon-holders to file answer.

Thereupon, the reference adjourned until to-morrow, Wednesday morning, at 10 o'clock.

JAMES GILLETTE,
Special Master.

UNITED STATES CIRCUIT COURT.

For the Southern District of Alabama.

The President of the United States

To Nathan Whiting, A. DuMont, Jno. B. Hazard, Wm. H. Ross and Theodore Guesnard:

You are hereby commanded to appear before the undersigned, Special Master Commissioner of the Circuit Court of the United States for the Southern District of Alabama, at his office in the Customhouse building, in the city of Mobile, forthwith, and there to testify the truth according to your knowledge, in the matter of W. B. Duncan and A. F. Elliot, trustees, vs. The Mobile and Ohio Railroad Company.

Special Master Commissioner's Office, Mobile, Ala., Dec. 6th, 1876.

JAMES GILLETTE,
Special Master.

Marshal's Return.

Received, Marshal's office, December 6th, 1876, and executed same day by serving a copy of the within subpœna upon N. W. Whiting, A. DuMont, J. B. Hazard, T. Guesnard and W. H. Ross.

GEORGE TURNER,
U. S. Marshal.

By F. Y. ANDERSON, Deputy.

WEDNESDAY, December 6th, 1876.

The session of the Special Master commenced at 10 o'clock A. M., pursuant to adjournment.

Present: the Special Master and counsel as of the day previous.

Minutes of the previous day read.

On motion of Mr. Andrews, minutes amended so as to show for whom Messrs. R. H. and R. I. Smith had appeared on previous references, and for whom they now declined to appear. The Master stating that they had appeared for Mr. R. T. Wilson and A Iselin, trustees of the Tennessee Mortgage, and the minutes so amended.

Mr. George N. Stewart, as Solicitor for Mr. Alexander Duncan and others, holders of coupons of 1874, filed answer to the objections and contestation of Louis J. Belloni, jr.

The Solicitor (Mr. Andrews) for Moran Brothers, offered the following motion which was concurred in by Messrs. Jones and Grandin, representing the Second Mortgage:

"I move that the reference as to the Tennessee Substitution Bonds, proceed as against W. B. Duncan, one of the trustees thereof, notified of these proceedings, or that default of said Duncan as such trustee be taken."

Motion resisted by counsel for trustees complainant and receivers.

After argument, motion was overruled on the ground that Mr. Duncan was not a party to the record in the capacity of Trustee of the Tennessee Mortgage, but appeared as receiver or custodian of the whole property.

It has been decided already not to go on with the objections to the Tennessee bonds until notice is given to the bondholders themselves.

Ruling objected to by Mr. Andrews, solicitor for Moran Brothers.

Mr. Andrews then moved as follows:

"Motion to issue notice to Wm. Butler Duncan, as trustee of the Tennessee Substitution Bonds, to appear before the Master on this reference; and also, to Adrian Iselin and Richard T. Wilson, as trustees of the Tennessee Substitution Deed."

Motion of E. H. Grandin for Second Mortgage Bondholders, that Wm. Butler Duncan, as trustee, be notified to appear in his capacity of trustee of the Tennessee Mortgage, and as above.

After argument, the Special Master ruled, That Mr. Duncan, as receiver and complainant in the bill filed in this court, had already been notified of all motions, objections, questions and proceedings before the Master, and has chosen to appear as representing the whole of the trust property. It was ruled on yesterday that the Tennessee Substitution creditors whose claims are contested, are not represented here; therefore, and conformably with the spirit of the decree of reference, that notice should issue to them. The objections of Messrs. Moran were then passed to take up the Belloni objections.

Notice will issue to all the Tennessee Substitution Bondholders who have proved claims, and also, to Messrs. R. T. Wilson and A. Iselin, as trustees. Notice will be given to Mr. Duncan in his capacity of trustee and receiver, but not in his capacity of trustee of the Tennessee Mortgage.

Judge Grandin, on behalf of the Second Mortgage, and Mr. Andrews, for objectors, objected to the Master's ruling.

The objections of Louis J. Belloni, jr., of New York City, a holder of First Mortgage Sterling Bonds, who objects to the First Mortgage coupons of 1874, proved by Mr. Alexander Duncan and others, as a lien, on the Railroad property, were then taken up.

On motion of Mr. E. L. Andrews, subpœna was issued for the following witnesses:

Nathan Whiting, A. DuMont, Wm. H. Ross, J. B. Hazard and Theodore Guesnard, all of Mobile.

Theodore Guesnard being produced and sworn as a witness for objectors, testified as follows in answer to questions by Mr. Andrews, solicitor for L. J. Belloni, jr.:

Q..You were a First Mortgage Bondholder of Mobile and Ohio Railroad in 1874?

A..Yes.

Q..You recollect circumstances of payment the First Mortgage coupons due November 1, 1874? If so, please state them.

A..Those coupons I presented to the Treasurer, Mr. Willoughby; he told me to leave them and to call next day for them. Next day he handed me an envelope; on the back of it was stated the number of coupons, what they were, and the amount due; then he requested me to take the envelope of coupons enclosed to the Bank of Mobile and the teller would pay the same; the envelope was sealed; I handed the teller the same envelope, with my bank book, and he credited my bank account with the amount stated on the envelope.

Q..In regard to the coupons for May, 1874, did the same circumstances transpire, or what?

A..I handed the Treasurer my coupons; he had them examined by his clerk to see whether they were correct; he handed me a check, I think it was on the Bank of Mobile, signed by himself, and requested me to take it to Vice

President J. J. Walker and have him countersign the check, which he did, and I deposited the said check in the Bank of Mobile to my credit.

Cross-Examined by Mr. Stewart, counsel for Alexander Duncan.

Q..When you went to the office on either occasion, or both, did you see a notice put up there for the information of holders of coupons in respect to the payment?

A..I did not, and never heard of any notice.

Q..How many coupons did you present for payment? for the May payment, 1874?

Objection by Mr. Andrews to the portion of the question as to how many there were as immaterial, as also to the number. [Objection overruled.]

A..Not less than five; I do not know how many exactly, I am certain not less than five.

Q..What were the numbers?

A..I can't recollect the numbers, they appear on the file here.

Q..About what time were they presented; was it on the 1st of May, or after?

A..It was not on the 1st, but a few days after; don't recollect the exact date; my bank book will show.

Q..How many coupons did you present for payment for the November payment, 1874?

A..Not any less than for May.

Q..What were the numbers?

A..I don't remember; the same as the others.

Q..About what time were they presented; was it on the 1st November?

A..I think it was on the 4th of November.

Q..Who was the check payable to?

A..Payable to Theo. Guesnard, I think.

Q..Are you certain that Mr. Willoughby gave you a check for First Mortgage coupons, or if he ever gave you a check was it not for Second Mortgage coupons?

A..I think it was a check for First Mortgage for November, 1874; the only check he gave me for the Second Mortgage coupons was for the previous March.

Q..You do not say that you are certain that the November coupons were paid by check of Mr. Willoughby, but you believe so? can you state the fact with more certainty?

A..The November coupons were paid by different checks, one in gold and one in currency; I had both gold and greenback coupons.

Q..Are you certain of that for November?

A..That is my recollection.

Q..You cannot say that you are certain?

A..To the best of my belief.

Q..I take your answer to be that you cannot say you are certain?

A..To the best of my belief and recollection.

THEO. GUESNARD.

Subscribed and sworn to before me,
this 6th December, 1876.

JAMES GILLETTE, Special Master.

May coupons were paid 5th May, 1874; November coupons were paid 17th November, 1874.

THEO. GUESNARD.

Wm. H. Ross being produced and sworn, deposes as follows, in answer to questions propounded by Mr. Grandin:

Q..Were you holder of First Mortgage Bonds Mobile and Ohio Railroad Company in May, 1874?

A..I was.

Q..How were the coupons paid? What transpired?

A..I first took them to Mr. Willoughby, Treasurer; my recollection is that he put them in an envelope and sent me to the Bank of Mobile, where Mr. Gale gave me

Q..Was not the payment in May made the same way as in November?

A..The May coupons were paid by Mr. Willoughby in checks. Mr. Willoughby drew checks for the payment in May, 1874, or gave me the checks; I don't recollect whether he drew them or not, but I got the payment through him.

Q..You say the gold was paid by check on T. P. Miller, was it check of the Bank of Mobile or Mr. Willoughby?

A..I do not recollect.

Q..Are you certain that in May Mr. Willoughby gave you checks, or did he send you to the Bank of Mobile?

A..I am certain Mr. Willoughby settled with me at the office and gave me checks. The gold interest was paid by a check on T. P. Miller.

Q..Was that check drawn by Mr. Willoughby or the Bank of Mobile in May?

A..I could not say.

Q..Was the check for currency drawn by Mr. Willoughby or by the Bank of Mobile?

A..I can't say.

Q..To whom did you surrender the coupons? to Mr. Willoughby, in May?

A..Yes. They were left with Mr. Willoughby and I never saw anything more of them after he got them.

I don't recollect the amount. There were some sixteen bonds—sterling and interest bonds.

Q..Have you not confused the May payment with some previous one?

A..No sir.

Q..You are certain Mr. Willoughby gave you checks for May, 1874.

A..Yes sir.

NATHAN WHITING.

Subscribed and sworn to before me
this 6th December, 1876.
JAMES GILLETTE, Special Master.

J. B. Hazard produced and sworn, deposes and says: (Examined by Judge Grandin.)

Q. . Did you hold any First Mortgage Bonds in May, 1874?

A. . Yes sir, as trustee and agent. There were several years interest accumulated on them; I was negotiating with the road for the payment of this interest in September, October and November, 1874.

In addition to those bonds, I had $3,000 Mobile and Ohio Railroad Ten Year Bonds, payable, I think, in 1868, and no interest had been collected on them up to 1874, and consequently, considerable interest had accumulated; I had considerable trouble to arrange, and it run through the two months of September and October; they finally concluded they would pay me a part of the interest in cash, and part of it they would issue no bonds for, nor would they pay in cash.

The part they acknowledged they paid in October by giving me a check on some bank—I can't say on what bank it was; they also gave me an envelope, in which there were some coupons—I do not know what coupons they were, and I went to Mr. Gale, of the Bank of Mobile, and he paid me the money; the check I deposited with the Peoples' Bank; the coupons due in May, 1874, and the previous coupons were presented together.

After I had settled what they acknowledged, I arranged with Mr. Walker, Vice President and acting President, for the settlement of the bonds past due and the interest on the First Mortgage Bonds for the time during their suspension; they gave me a note; it was for bonds past due, some coupons on First Mortgage Bonds, and Interest Bonds, they paying me one year's interest on the amount.

That was the settlement up to May, inclusive, 1874. In November, 1874, I went to the office and presented the coupons for payment, and they were passed to Mr. Bull, and he gave me an envelope containing these coupons, and I sent my clerk to the Bank of Mobile with the envelope to collect the amount, and he brought it back some sixteen dollars short: I then took the money back and got my coupons from Mr. Gale and took them to Mr. Willoughby, who corrected the error, and he gave me another envelope with the coupons, and I went to the Bank of Mobile and got my money.

Cross-Examined by Counsel for Alexander Duncan.

Q..Was not the May interest paid in the same way by your coupons being sent to the Bank of Mobile in an envelope?

A..I don't know.

Q..How much did your May interest amount to?

A..There was six months' interest on 2,000 Sterling, $800 Arrearage Interest Bonds.

Q..Did you have the coupons for the May interest? Did you present them to Mr. Willoughby?

A..Yes; they were examined and verified; whatever was in the envelope was paid by the Bank of Mobile; I can't say what was in the envelope or what amount the bank paid me; the amount the bank paid me and the amount paid by the company made the total agreed on, but I can't tell what amount each paid me.

Q..Are you not in the habit of keeping accounts of all transactions?

A..Yes; but in this instance, as the bonds did not belong to the store or to me, they did not go on the books, and I am compelled to trust to recollection in this statement.

Q..Are you prepared to say that your May coupons were not paid by and surrendered to the Bank of Mobile?

A..I cannot say; it might have been those, or it might have been some previous ones.

Q..Did you transact that matter so carelessly as not to know?

A..If he had given me different checks it would be impossible for me to recollect what banks he gave them on.

Q..Were you so careless as not to know when you went to the Bank of Mobile what you were to receive?

A..I knew how much I was to receive; the total amount was right.

J. B. HAZARD.

Subscribed and sworn to before me.

JAMES GILLETTE, Special Master.

Thereupon, the session adjourned to Friday, December 29th, 1876, at 10 A. M.

JAMES GILLETTE,
Special Master.

CIRCUIT COURT OF THE UNITED STATES.
Southern District of Alabama.

WM. BUTLER DUNCAN AND A. FOSTER ELLIOT, Trustees,
vs.
MOBILE AND OHIO RAILROAD COMPANY, et al.

In Equity.

Notice.

To *R. T. Wilson and A. Iselin*, Trustees, and to the *Holders* of the Bonds of the Mobile and Ohio Railroad Company known as Tennessee Substitution Bonds:

You will take notice that under and in pursuance of the order of reference in this case made by the Honorable the Circuit Court of the United States for the Southern District of Alabama, I have appointed Monday, the 22d day of January, 1877, at the United States Court Room in the city of Mobile, to take up and consider certain objections which have been filed at the instance of certain of the holders of the bonds of said railroad company, known as the First-Mortgage Bonds, and the trustees of the Second Mortgage of said company, to the allowance of the bonds known as the Tennessee Substitution Bonds as entitled to priority of lien or to any lien, upon the said railroad and property described in the Bill of Complaint filed in this cause. This is to notify you and each of you to appear at the time and place named, then and there to defend against said objections as you may be advised. It is further ordered that this notice be published once a week in a newspaper published in the cities of New York, Mobile, Alabama, and Frankfort, Germany, until the day above named, and that a copy hereof be served personally or by mail upon said trustees and upon each of said holders of bonds, who have made presentation of their claims in this cause.

JAMES GILLETTE,
Special Master.

MOBILE, ALA., Dec. 7, 1876.

CIRCUIT COURT OF THE UNITED STATES, For the Fifth Judicial Circuit and Southern District of Alabama.

WM. BUTLER DUNCAN, et al.,
Trustees, &c.,

vs.

MOBILE AND OHIO RAILROAD COMPANY, et al.

On Bill, &c.

BEFORE JAMES GILLETTE, SPECIAL MASTER.

It is ordered by said Master that testimony relating to any matter referred to said Master and now pending before him, or which may hereafter be brought before him, embraced within the terms of the order of reference to him by said court, may be taken on interrogatories consistent with the rules of the Supreme Court of the U. S., in Equity; provided, that notice shall be given by the party proposing to take testimony to the other parties in the cause, or to the other party interested in the issue upon which it is proposed to take testimony; or to the counsel of such party, whether residing within the jurisdiction of said court or not: And it is further ordered, that, as to the matter of said coupons claimed to be owned by Alexander Duncan, and to be a lien upon the property of said the Mobile and Ohio Railroad Company, testimony may be taken in the City of New York or elsewhere, before any United States Commissioner, on notice given by the solicitor of L. J. Belloni to F. N. Bangs, Esq , of counsel for said Duncan, in the City of New York, either *viva voce*, or in any other manner that may be agreed upon between the counsel of the respective parties, Belloni and Duncan, expressed in writing.

And it is further ordered, that Alexander Duncan and others claiming to be the owners of the coupons referred to, and all others interested, who desire to take testimony, in New York or elsewhere, on any matters covered by said order of reference, may cause testimony to be taken in their behalf, by interrogatories upon notice to the solicitors of the other side. and on conforming to the conditions of this order, the same in all respects as is allowed to objecting parties.

And it is further ordered, that all testimony taken under this order be returned to the Master on or before the 22d day of January, 1877.

JAMES GILLETTE,
Special Master.

MOBILE, ALA., December 11th, 1876.

Please issue subpœnas for the following witnesses to appear before you on Friday next, the 29th December, to testify on behalf of Alexander Duncan in the contestation of Louis Belloni:

Wm. H. Pratt, President Bank of Mobile,
Edward B. Gale, Teller of do.
Owen McMahon, late Bookkeeper do.
Alonzo L. Willoughby, Railroad Office,
Wm. M. Bull, do.
Chas. A. Wetton, do.
John W. Miller, Miller's Bank.

G. N. STEWART.

December 20th, 1876.
To *James Gillette, Esq.*,

Subpœna.

CIRCUIT COURT OF THE UNITED STATES.
Fifth Judicial Circuit Southern District of Alabama.

WM. BUTLER DUNCAN et al., Trustees,
vs.
THE MOBILE AND OHIO RAILROAD CO. et al.

To *Wm. H. Pratt*, *Edward B. Gale*, *Owen McMahon*, *Alonzo L. Willoughby*, *Wm. M. Bull*, *Chas. A. Wetton*, and *John W. Miller*:

You are hereby summoned to appear before the undersigned, Special Master, at his office in the United States Courtroom, Mobile, on the 29th December inst., at 11 o'clock A. M., then and there to testify and the truth to say, according to your knowledge, in the matter of W. B. Duncan et al., trustees, vs. The Mobile andOhio Railroad Company et al., pending before said Master.

Herein fail not.

JAMES GILLETTE,
Special Master.

MOBILE, ALA., Dec. 26, 1876.

Marshal's Return.

Received, Marshal's office, December 27th, 1876, and executed same day by serving a copy of the within subpœna upon W. H. Pratt, E. B. Gale, A. L. Willoughby, Wm. M. Bull, Chas. A. Wetton, John W. Miller and Owen McMahon.

GEORGE TURNER,
U. S. Marshal.

By F. Y. ANDERSON, Deputy.

CIRCUIT COURT OF THE UNITED STATES.

Fifth Circuit and Southern District of Alabama.

W. B. DUNCAN and A. F. ELLIOT, Trustees,

vs.

THE MOBILE & OHIO RAILROAD COMPANY.

FRIDAY, December 29, 1876.

The reference proceeded at 11 o'clock, pursuant to adjournment of the 6th December and notice.

Present: Special Master, P. Hamilton, solicitor for trustees and receivers, Geo. N. Stewart for Alexander Duncan and others, holders of coupons of 1874, Wm. G. Jones for trustees of the Second Mortgage, and E. H. Grandin, of counsel for trustees of the Second Mortgage, and representing objectors, instead of E. L. Andrews, their solicitor.

John W. Miller being called and sworn, at the instance of Alexander Duncan, and examined by Geo. N. Stewart, solicitor, deposed as follows:

Q..Are you a partner of the firm of Thomas P. Miller & Company, bankers, of Mobile, and were you such in the year 1874?

A..Yes.

Q..Have you a knowledge of the business of that banking house in the year 1874?

A..Yes.

Q..Please state whether in May and November, 1874, or at either of these times, or at any time in the year 1874, whether or not any checks were drawn or presented to your bank drawn by A. L. Willoughby, Treasurer of the Mobile and Ohio Railroad Company, in favor of any one, payable in gold.

[Witness requests time to examine his books, so as to refresh his memory, and examination suspended for that purpose.]

A..There was one check of two thousand and fifty dollars, and one or two smaller amounts, payable in gold;

I do not know what they were for, nor who they were payable to; I think the deposit was made on the 27th of May and paid on the 30th; the smaller amounts were one check for about a thousand, and some few small checks in May and June or July. The books show about that time two deposits in gold—one for $2,050, which was checked out, and the other. I think, for eleven hundred and odd dollars.

Q..Please exhibit your books showing the deposits and checks for gold in account with said company for said year.

A..I now produce the book.

[COPY.]

Statement from the Ledger of T. P. Miller & Co.

MOBILE AND OHIO RAILROAD COMPANY.

		Dr.		
1874.				
April	3	Cash	163	$253 80
"	13	"	165	315 00
"	14	"	165	564 00
"	22	"	167	894 00
"	30	"	167	42 89
"	30	"	169	789 60
May	25	"	175	2050 00
June	4	"	179	1045 00
July	9	"	185	356 07
"	20	"	185	637 95
1875.				
March	27	Balance		4 69
May	17	Cash		4 69
		Cr.		
April	22	Cash	166	2100 00
May	30	"	174	2050 00
June	4	"	176	700 00
"	11	"	178	1100 00
July	8	"	182	1000 00
March	27	Balance		4 69

Statement from the book filed with J. W. Miller's testimony.

(Signed) JAMES GILLETTE,

Special Master.

[Statement herewith filed, showing entries in said book as they appear.]

Q..Please state whether any checks were drawn upon you by the Bank of Mobile, payable in gold, during May and November, 1874?

A..Yes: the teller of the bank drew checks on us, and gave the checks to parties for coupons; we cashed the checks; they were gold checks; it was a considerable amount; this was in 1874; my impression is it was for May coupons; we furnished the gold to the banks for that purpose.

Q..Did you have coupons yourselves for collection in that year, and how were they paid?

A..We received coupons for collection from the North in that year; Mr. Gale, the teller of the Bank of Mobile, to whom we presented them for payment, required us to take them to Mr. Willoughby, Treasurer of the Railroad; my recollection is that Mr. Willoughby had to say they were all right and give a memorandum to that effect, after which Mr. Gale paid them.

Q..Have you any knowledge of any payment made by Mr. Willoughby of any coupons for said interest of May and November?

A..I have not.

JOHN W. MILLER.

Subscribed and sworn to before me,
this 29th December, 1876.
JAMES GILLETTE, Special Master.

William H. Pratt, being duly sworn, deposes:

Q..Please state whether you are now and was in 1874 President of the Bank of Mobile.

A..Yes, I was and am.

Q..Please state also if you were at that time and are now a Director of the Mobile and Ohio Railroad Co.

A..Yes, I was and still am.

Q..Please state whether in the year 1874 the said company was able to pay and did pay any of its coupons for interest on First Mortgage Bonds of the company, say payable on the 1st days of May and November of that year.

A..They were not able to pay and did not pay of my knowledge any, either of the May or November coupons; and no funds were provided by the company for their payment.

Q..Please state if you have a knowledge of said coupons being presented for payment and what occurred in respect thereto.

A..In the latter part of April, I suppose April 30th, I received a despatch from Duncan, Sherman & Company of New York, which I can't find now. The despatch was to the effect instructing me, as President of the Bank of Mobile, to purchase for account of whom it may concern the coupons of interest of the Mobile and Ohio Railroad Company maturing 1st May at $32.50 gold or $36.50 currency, to which I replied by telegraph on same day:

[*Copy of Despatch.*]

"APRIL 30, 1874.—*Duncan, Sherman & Company, New York:* Dispatch received. Will purchase May coupons and forward as directed.

" WM. H. PRATT, President."

On the same day I addressed them the following letter:

" *Messrs. Duncan, Sherman & Company:*

"DEAR SIRS—Your dispatch of to-day, directing purchase for account of whom it may concern of the coupons Mobile and Ohio Railroad Company, maturing 1st May, at $32.50 gold or $36.50 currency, shall have attention, and will forward you the coupons uncancelled, valueing on your house for reimbursement in accordance with instructions. WM. H. PRATT, President."

Agreeable to said instructions I instructed the Cashier of the Bank to pay to parties who might present the coupons, after they had been presented at and verified at the railroad office, the amount for which they called, upon surrender of the coupons. Said amounts were charged to the account of Duncan, Sherman & Company, and the same reimbursed to the bank by drafts on their house in New York, drawn by the President of the bank.

In November, on November 2d, 1874, the Bank of Mobile received the following letter:

Office of DUNCAN, SHERMAN & CO., *Bankers*.
NEW YORK, October 22, 1874.

WM. H. PRATT, ESQ., President
Bank of Mobile, Mobile,

DEAR SIR:—The Mobile and Ohio Railroad not paying her coupons maturing November 1, you may purchase the same for account of whom it may concern, at their ~~full~~ face value, viz:

£6 : 15	$32.50 gold or	$35.50 currency.
£6	29.00 " "	32.00 "
£3	14.50 " "	16.00 "

and those of £6 : 15 from ctf. bonds 40.00 currency, and coupons on Interest Bonds, $40.00. drawing on us for the amount of your purchase, sending forward coupons uncancelled in packages of $5,000 or $10,000.

Please have lists of said coupons made; demand payment of Treasurer of Mobile and Ohio Railroad Company, and if he declines paying let him do so in writing.

We remain, your obedient servants,
DUNCAN, SHERMAN & CO.

I hope to be in Mobile on Friday or Saturday of next week.
W. B. D.

Also, another letter was received by the bank, said letter dated October 31st, written in Mobile, instructing the purchase of the coupons; a copy of this letter is also annexed:

Office of DUNCAN, SHERMAN & CO., *Bankers*,
MOBILE, October 31, 1874.

W. H. PRATT,
President of the Bank of Mobile,

Dear Sir:—You will please purchase Railroad coupons of the Mobile and Ohio Railroad, due November 1, in accordance with the instructions already sent to you from my house (D., S. & Co.) from New York, and for such amounts value on them as instructed. I will advise you on Monday from New Orleans whether I will send you currency for them. Please advise me by telegraph on Monday what amounts are offered on that day.

Yours, truly,
W. BUTLER DUNCAN.

Agreeable to said instructions the coupons for November interest were taken up by the bank as presented, after having been verified at the office of the Railroad Company, and the bank was reimbursed for the same by Messrs. Duncan, Sherman & Company. No portion of the coupons were paid by the Railroad Company.

Q..Please state whether any money or means were furnished by the Mobile and Ohio Railroad Company, directly or indirectly, for the satisfaction of said coupons or any part?

A..I know that no money was furnished to the bank by the Railroad Company to provide for the payment of these coupons, and I know of none being furnished to Duncan, Sherman and Company by it for that purpose.

The bank addressed Duncan, Sherman and Company the following letter:

NOVEMBER. 2d, 1874.

Messrs. DUNCAN, SHERMAN & CO., New York:

By direction of your Mr. Duncan, we are purchasing for account of whom it may concern, the coupons maturing November 1st, Mobile and Ohio Railroad, and in conformity with your instructions 22d October, will draw on your house in reimbursement after exhausting the amount now to your credit with this bank.

The coupons shall be sent you as directed, in packages of $5,000 or $10,000, uncancelled, and with the certificate of the Treasurer of the Mobile and Ohio Railroad, declining to pay same.

Yours, truly,

WM. H. PRATT, President.

Q..Please state if at any time, the Mobile and Ohio Railroad has claimed that said coupons were paid by it or for its account?

A..Never, to my knowledge.

Q..Was or was not the said transaction in respect to the taking up of said coupons approved and sanctioned by the company.

A..It was approved by the Board of Directors.

Q..Do not the said coupons so taken up appear on the books of the company as outstanding?

Objected to by E. H. Grandin, as there is better evidence—namely, the books themselves.

A..To the best of my knowledge there is no record in the books in relation to their payment.

Q..What disposition was made of the coupons taken up by the Bank of Mobile in May and November, 1874?

A..They were forwarded to Duncan, Sherman & Co., uncancelled.

Q..In the taking up said coupons by the Bank of Mobile, did you or the bank, in any manner, act as agents for the Mobile and Ohio Railroad Company?

A..No; only as agent of Duncan, Sherman & Co.

Q..Was any question made to you by any of the holders of said coupons as to the mode and manner of their being taken up?

A..I have no recollection of any questions; certainly no objections were made.

Q..Was there any concealment or withholding of any information by you as to the real nature of the transaction by which the coupons were taken up?

A..There was no concealment; if I had been asked I would have stated that I was purchasing for Duncan, Sherman & Co., or on account of whom it may concern, according to their instructions.

Q..Please state if any commissions were charged for the taking up of said coupons, and if so, by whom, to whom, and what amount?

Objected to, as immaterial and irrelevant.

A..The bank charged a quarter per cent. commission, which was debited to the account of Duncan, Sherman & Co.

Q..Can you state whether or not it was generally known that the company was not paying its interest in May and November?

A..That, I can't answer; it is impossible for me to tell how general the information was.

Cross-Examination by Solicitor for Trustees of the Second Mortgage.

Q..Were you a Director of the Mobile and Ohio Railroad Company during the whole of the year 1874?

A..I was. From the election in March or April, 1874.

Q..Was William Butler Duncan, of the firm of Duncan, Sherman & Company, a Director during the whole of that year?

A..Mr. Duncan was a Director and President after the election in March or April.

Q..When did it become known to the Directors that the company would be unable to pay its coupons?

A..Immediately after the installment of the new Board of Directors it was found that the company would be unable to pay the interest that fell due on the 1st of May.

Q..When was Mr. Duncan first elected President of the company?

A..At the first meeting of the new board.

Q..Was there or not any agreement or understanding that Mr. Duncan or his firm would supply money to meet the coupons? If so, what was it?

A..Of my own knowledge I can't say that any negotiations were going on prior to the meeting of the new board. Negotiations were sanctioned by the new board with Duncan, Sherman & Company or William Butler Duncan to meet the payment of coupons falling due on the 1st of May. I don't recollect any agreement. I know of no agreement made by the board, and I presume that it was understood that Duncan, Sherman & Company were to purchase the coupons falling due May, 1874, and hold the same uncancelled for their security. I presume the negotiations were carried on by the Vice President, Mr. Walker, in writing.

Q..What arrangement, if any, and with whom was it made to meet the coupons falling due in November, 1874?

A..Similar arrangements as those made in May with Duncan, Sherman & Company or Wm. Butler Duncan.

Q..[By E. H. Grandin.] What was the total amount of coupons, both for May and November, 1874, that were taken up by the Bank of Mobile?

A..I think about two hundred and twenty thousand dollars.

Q..Did the company make a report to the annual meeting of stockholders in the spring of 1875? If they did, did you, as a Director, assent to it?

A..I think a report was made; I don't recollect if I assented.

Q..Did you or not, as Director, concur in a notice issued just prior to the 1st March, 1875, if any such notice was issued, to the Second Mortgage Bondholders, stating that the company regretted to announce that it would have to default in the payment of its interest for the first time?

Question objected to, being theoretical, assuming a fact, and not relevant, and no such notice is produced.

A..When it was found that no provision could be made for the March interest, 1875, a notice was issued, with the consent of certain of the Directors, of whom I was one, stating that the interest would not be paid at maturity.

The answer is objected to; because there is better evidence of the fact, and is irrelevant.

WM. H. PRATT.

Subscribed and sworn to before me,
this 29th December, 1876.
JAMES GILLETTE, Special Master.

Owen McMahon, sworn and examined by solicitor for Alexander Duncan, testified:

Q..Please state whether you were bookkeeper in the Bank of Mobile in the year 1874?

A..Yes.

Q..Please state whether you knew of the transaction in said bank by which coupons of the Mobile and Ohio Railroad Company for interest, payable 1st May and 1st November in that year, were taken up from the holders?

A..Yes.

Q..Please state to whom payments were charged on the books of the bank?

A..Duncan, Sherman & Co.

Q..Were any coupons so taken up charged to the account of the Mobile and Ohio Railroad Company?

A..All charged to Duncan, Sherman & Co.

Q..Who was it provided the means to pay said coupons to the holders, and who reimbursed the bank for the amount paid for taking them up?

A..Duncan, Sherman & Co. provided the money; the Mobile and Ohio Railroad provided some; they deposited in 1874 some forty-five thousand eight hundred dollars to the credit of Duncan, Sherman & Company.

Q..Was any amount paid, or any coupons charged to the Mobile and Ohio Railroad Company?

A..No; they were charged to Duncan, Sherman and Company, and the coupons were forwarded by express, from time to time; they were not cancelled.

Q..Who paid the commissions to the bank for taking up the coupons?

A..I don't know that the commissions have been paid yet; they have been charged to Duncan, Sherman & Co., since their failure.

Q..How were the gold payments made?

A..By Mr. Gale's check on T. P. Miller & Co.

Q..Were not the coupons surrendered by the holders to the bank on receiving payment?

A..Yes—and they were sent by express to Duncan, Sherman & Co.

Q..Did you know at the time that they were being taken up for Messrs. Duncan, Sherman & Co?

A..Yes—they were purchased for Duncan, Sherman and Company.

OWEN McMAHON.

Subscribed and sworn to before me,
this 29th day of December, 1876.

JAMES GILLETTE, Special Master.

Motion by W. G. Jones and E. H. Grandin, Solicitors representing Second Mortgage Trustees for subpœna *duces tecum* to T. Haskins DuPuy. Motion in writing as follows:

Minutes of Board of Directors, 1874.

Correspondence between Mr. Walker, Vice President, and Mr. Duncan, or Duncan, Sherman & Company, either by letter or telegraph, in relation to the payment of the coupons of First Mortgage Bonds falling due in May and November, 1874.

Original of notice issued to Second Mortgage Bondholders just before 1st March, 1875.

We move for a subpœna for T. Haskins DuPuy, Receiver, etc., to appear before the Master, and to bring with him the above named records and correspondence, and telegrams and notice.

December 29th, 1876.

E. H. GRANDIN,
W. G. JONES,
Solicitors, etc.

Mr. George N. Stewart, for Alexander Duncan and other holders of the coupons of May and November, 1874, and P. Hamilton, representing Trustees Complainants, objected to the granting of the subpœna.

Ordered, That the subpœna issue as prayed for.

Thereupon, the hearing was adjourned until to-morrow morning at 10½ o'clock.

JAMES GILLETTE,
Special Master.

SATURDAY, December 30, 1876.

Reference had pursuant to adjournment.

Present: the Special Master and solicitors as before.

Edward B. Gale, a witness called by the solicitor of Alexander Duncan and other coupon holders, being sworn, deposed as follows:

Q.. Were you, in the year 1874, an officer of the Bank of Mobile, and if so, what officer?

A.. I was teller of the Bank of Mobile, am now, and have been since 1856.

Q.. Please state whether you know of the transactions in that bank by which the coupons of the First Mortgage of the Mobile and Ohio Railroad Company, payable on the 1st May and 1st November, 1874, were taken up from the holders?

A..I know nothing of any transactions or arrangements made; I only know that I paid the coupons for gold and currency for May and November, 1874, upon such certificates as these which came from Mr. Willoughby, of the Railroad office. [The certificates exhibited and two attached.]

The certificates were presented by the coupon holders. As I understand it, the coupons were presented to Mr. Willoughby, who enclosed them in the envelope, and the parties brought them to me, and I paid on the envelopes with the endorsement on them, by orders of the President.

Q..Were not the coupons surrendered to you by the persons whom you paid?

A..The coupons were enclosed in these envelopes, and were surrendered to me.

Q..In what manner were they paid—distinguishing those paid in currency and those paid in gold?

A..Those that called for gold were paid in gold, and those that called for currency were paid in United States currency; sometimes I gave checks on Miller; if I had the gold I paid in gold, when I had not I drew checks on Miller.

Q..Did you draw checks on T. P. Miller and Company for payment of gold on said coupons or any considerable portion of them?

A..For a considerable portion—I think about seventy-five per cent.

Q..What was done with the coupons after they were taken up?

A..They were charged to Duncan, Sherman & Company and sent to New York. That is my impression—almost certain of it.

Q..By whose instructions did you pay those coupons?

A..By instructions of Mr. Pratt, the President.

Q..To whose account were the payments charged?

A..They were charged to Duncan, Sherman & Company. But I do not know much about that; it was not in my line; the books will show.

Q..About what amount do you suppose was taken up this way?

A..I can't say; it was a large amount.

Q..Do you know who reimbursed the Bank of Mobile for these payments?

A..My impression is that they drew on Duncan, Sherman & Company for the money, but I don't state that with certainty; it was out of my line; the books will show.

Q..Was it made known to you at the time for whose account those coupons were taken up?

A..I am under the impression Mr. Pratt informed me for the account of Mr. Duncan; he read me a letter.

Answer objected to, on the ground that it is incompetect, as hearsay testimony.

Q..Did any of the holders make any inquiry of you as to why it was that these coupons were paid at the bank instead of the Railroad Company?

A..I can't say that they did, only in this way: they would bring their coupons to the bank to get their money on, and I would send them to the Railroad Company; they wanted to know why I would not pay, and I told them they had to take them to Mr. Willoughby to see if they were correct, and he would examine them and enclose them in an envelope, and on that envelope I would pay the money for them, just exactly as they are done here, [referring to the envelope.]

Q..Did you, on any occasion, ever state to any one of the holders that they were paid by the Railroad Company, instead of Duncan, Sherman & Co?

A..I have no recollection of saying any such thing.

Q..Were any of those coupons, within your knowledge, paid by the Railroad Company?

A..I know of none; if they were they must have been put in envelopes like the rest, and the Railroad Company's name marked on them, or the Railroad may have had some sent to them and they collected the money.

Q..Please state whether among the coupons paid in May and November there were any paid to Theodore Guesnard?

A..I think there were; I find two envelopes, but I can't say whether the coupons were paid in May or November. [Envelopes attached.]

Q..Please state whether they were paid in the same manner as the others?

A..All the same.

Q..Please state whether any of those coupons to Mr. Guesnard were paid by a check on the Bank of Mobile by the Treasurer of the Railroad Company?

A..Not at that time: nor were any other coupons paid by check of the Railroad Company.

Q..I understand you to say that no coupons whatever, during May and November, was paid by check of the Company on the Bank of Mobile.

A..Yes—that is my recollection.

Q..Please state whether the payments were made to John B. Hazard and Company by you at the bank for any of those coupons?

A..Yes; four were paid on the 6th May and four in November. [The envelopes herewith.]

Q..Do you recollect how the gold was paid?

A..Either by me in gold or by checks on Mr. Miller.

Q..Were those amounts paid by you or by the company—referring to the Hazard coupons?

A..They were paid by me as Teller of the Bank of Mobile, Q..Please state whether coupons were paid to Nathan Whiting as represented by these two envelopes in May and November?

A..Yes; I am almost certain I paid them in gold over the counter.

Q..Were they paid as the others, on account of Duncan, Sherman & Company?

A..Yes. They were paid and charged to the account of Duncan, Sherman & Company with the rest.

Q..I find six envelopes of payments of coupons to the Bank of Mobile as holder, were they paid the same as the others?

A..They were paid the same as the others. I presume they were sent to the bank for collection by parties from abroad. I am not positive—merely my supposition.

Cross-Examination on behalf of Trustees Second Mortgage by W. G. Jones.

Q..Had not the Mobile and Ohio Railroad Company then, and several years before and since, a current deposit account with the Bank of Mobile?

A..I can only say that on reference to the books the Mobile and Ohio Railroad had an account with us always until it was changed to the trustees.

Q..Were the coupons that fell due in 1873 paid at the bank?

A..My impression is they were. I can only tell by looking at the books. [Witness goes to refresh his memory.] I have looked back to 1872, and also from 1873, and find nothing on the book to show that we ever paid any coupons there, though my impression was very strong that we paid them. The Mobile and Ohio Railroad account was closed on the 12th March, 1875, and the Trustees and Receiver's account commenced on the 15th Septembe, 1875, which account is still open.

Q..In paying the coupons in May and November, 1874. did you in all cases make the payment in money, or did you sometimes pass it to the credit of the person presenting them for payment.

A..In some instances I passed it to the credit of the parties. My impression is that I passed the amount of Mr. Guesnard's coupons to his credit on his book.

E. B. GALE.

Subscribed and sworn to before me,

this 30th December, 1876.

JAMES GILLETTE, Special Master.

Exhibits to the Testimony of Edward B. Gale.

Exhibits No. 1.

COUPONS.

Paid to Nathan Whiting,

£ 3 at $32.50 gold......$97.50

Total gold...... 97.50

May.

COUPONS.

Paid to Nathan Whiting,

£ 3 at $32.50 gold......$97.50

Total gold...... 97.50

9 November.

Filed with the testimony of E. B. Gale, Dec. 30, 1876.

(Signed,) JAMES GILLETTE,

Special Master.

Exhibits No. 2.

COUPONS.

Paid to T. Guesnard, Jr.,

£ 3 at $40.00......$120

Total currency...... 120

COUPONS.

Paid to T. Guesnard, Jr.,

£1 at $32.50 gold......$32.50

Total gold...... 32.50

Filed with testimony of E. B. Gale, Dec. 30. 1876.
JAMES GILLETTE,
(Signed,) Special Master.

Exhibits No, 3.

COUPONS.

Paid to J. B. Hazard & Co.,

Q 4 at $8............$32

Total currency......$32

6 May.

COUPONS.

Paid to J. B. Hazard & Co.,

Q 4 at $8............$32

Total currency.......$32

Filed with the testimony of E. B. Gale, Dec. 30, 1876.
(Signed) JAMES GILLETTE,
Special Master.

Exhibits No. 4.

COUPONS.

Paid to Bank of Mobile,

£ 6 at $~~32.50 gold~~ 40. ......$240

O 1 " ~~32.50 "~~ 40 40

Total currency......$280

5 May.

COUPONS.

Paid to Bank of Mobile,

Q 1 at $8 currency......$ 8

F 5 " 40 " 200

F-1 7 " 20 " 140

Total currency......$348

5 May.

COUPONS.

Paid to Bank of Mobile,

C 5 £ 15 sterling,

Total currency......$81

5 May.

COUPONS.

Paid to the Bank of Mobile,

£ 4 at $40 currency......$160

Total currency......$160

5 May.

[Exhibit No. 4, Continued.

COUPONS.

Paid to Bank of Mobile,

O	145 at	$40	currency......	$5800
P	1 "	20	"	20
Q	3 "	8	"	24
F	2 "	40	"	80
F-1	4 "	20	"	80
			Total currency......	$6004

COUPONS.

Paid to the Bank of Mobile,

£ 54 at $40 currency......	$2160
Total currency......	2160

Filed with the testimony of E. B. Gale, Dec. 30, 1876.
(Signed,) JAMES GILLETTE,
Special Master.

Alonzo L. Willoughby, a witness called for Alexander Duncan, and sworn, deposes and says:

Q..Were you in 1874 an officer of the Mobile and Ohio Railroad Company, and if so, in what capacity did you act? Were you in that office before and since?

A..I was, Secretary and Treasurer, before and since.

Q..Please state whether you have been in the habit of paying the coupons of interest for that company for several years previous to 1874 as Treasurer.

A..I have.

Q..Please state, previous to 1874, where and in what manner the coupons were paid.

A..The coupons were paid at my office, also in New York and London.

Q..Were those paid in Mobile paid by you?

A..They were prior to 1874; the coupons were taken up by me and registered and paid.

Q..Were the coupons of 1874 on the First Mortgage Bonds due 1st May and 1st November, paid by said company or by you?

A..They were not.

Q..Please state what occurred in respect to those coupons in May and November, and if they were taken up how it was done, and by whom. In what manner?

A..The coupons due in May and November, 1874, were presented to me at my office for payment by parties claiming to be the owners or agents through the banks who held them for collection, also, through the Express Company. Some were sent direct to me by mail or express. I received the coupons, sorted them in envelopes, describing their contents, and told the parties to present them to the Bank of Mobile, who were paying them. To those parties who sent them by mail, I enclosed them in similar envelopes and sent them to the Bank of Mobile for collection, who invested the proceeds in their checks on New York, which I enclosed to the senders.

Q..Please state, if in any one instance you paid any of the coupons above mentioned at your office?

A..I did not.

Q..Did you ever, in any single instance, give a check, as Treasurer of the Company, to any of the holders of said coupons of May and November, 1874?

A..I did not.

Q..Did you ever, in any instance, give a check or order on T. P. Miller and Company for payment in gold of any of said coupons?

A..I did not.

Q..Are you very certain in respect to the answers to the last two questions, and have you examined your books to that effect?

A..I am certain, and I have examined my books.

Q..Please state, if in any instance, any of the said coupons of First Mortgage for May and November, 1874, were paid by the Mobile and Ohio Railroad Company, or any of its agents, with any of its funds, to your knowledge?

A..None were paid to my knowledge.

Q..Please state if you have made an examination as to any check given by you to Theodore Guesnard in payment of any of said coupons in May and November, 1874, either on T. P. Miller & Co., the Bank of Mobile, or any other bank or office, and please state whether or not you can positively state that you never gave such check?

A..I have made examination, and can state positively that I never gave to Guesnard any check referring to the above question?

Q..Please answer the same inquiries as in the last question in relation to any check said to have been given to Nathan Whiting?

A..My answer is the same.

Q..Please answer the same question in relation to any check to J. B. Hazard.

A..My answer is the same.

Q..Have you any recollection as to how the coupons which were presented by said last named parties, and each of them, were paid to them? If so, please state the particulars.

A..They were paid by the Bank of Mobile, like the others.

Q..Please state whether they were presented at your office for payment, and whether or not they were, after verification, returned into the possession of the parties?

A..They were presented like others, and returned to them in envelopes.

Q..Please state who assisted you at the time in the verification and enveloping said coupons?

A..Mr. Wm. M. Bull, who was clerk in my office, assisted me.

Q..Please state whether the parties were informed, and particularly when they inquired, that the company did not pay said coupons?

A..They were so informed.

Q..Please state if any notice in writing was put up in your office in respect to payment of said coupons?

A..There was.

Q..Was there such notice at both periods, May and November?

A..There was no written notice in May; there was in November.

Q..Where was said notice put up or fixed?

A..It was pasted on my counter, in full view of all.

Q..What was the purport of the notice?

The question objected to, on the ground that it is not competent to give the purport of a written notice. The notice must be produced.

A..That the coupons were being purchased by the Bank of Mobile, or at the Bank of Mobile.

Q..Have you said notice or a copy of it; is it in existence, or has it been destroyed?

A..I am not positive, but think it is destroyed. The notice was pasted on the counter and gradually wore out.

t think I
ve a copy

Q..Please state if any of said coupons are now in the possession of the company at Mobile or elsewhere, to your knowledge?

A..I have no knowledge of any coupons of 1874 being in possession of the company.

Q..Has the company been called on for payment of said coupons by holders since they were taken up at the Bank of Mobile?

A..They were presented to me as Treasurer, and payment demanded; I declined payment, as the company were not in funds. That is, the coupons taken up by the Bank of Mobile were presented to me by the Bank of Mobile for payment afterwards.

Q..Please state whether or not, by the records of your office, the said coupons stand as outstanding and unpaid coupons?

A..They stand as unpaid coupons.

Q..Has the Mobile and Ohio Railroad Company furnished any money of its funds for the payment of the said coupons?

A..Not to my knowledge.

Q..It has been stated that a deposit was made in April, 1874, by you, in the Bank of Mobile, to the credit of Duncan, Sherman & Co., of about $45,800. Please state if such were the facts, and explain why that deposit was made, and on what account?

A..I will have to look at my books.

Q..Was the company indebted, or not, to Duncan, Sherman & Co. at the time of such deposit, and was such indebtedness, if any, larger or smaller than the amount of said deposit?

A..My information is only derived from the Auditor as to the books.

Q..Do you know on what account, and why said deposit was made?

A..I remitted on general account.

Q..Was the said deposit made to meet the payment of coupons, and had it any connection with the payment of coupons?

A..No deposit was made to meet the payment of coupons. It was simply made on general account, as I understand it.

Q..Can you state whether, in the year 1874, the company was indebted to Duncan, Sherman & Co., and whether such indebtedness was to a large amount?

A..I don't keep the books, but I understand they were from the Auditor's books, which I had access to.

Cross-Examination, by Solicitor for Trustees of the Second Mortgage.

I have been Treasurer and Secretary of the Mobile and Ohio Railroad Company since 1865.

Q..Of what books and papers of the company did you officially have the custody?

A..I had possession of the Stock Books, Bond Books, and the General Ledger up to 1870, I believe, when said Ledgers were transferred to the Auditor's office, who was the General Book-keeper of the Company. Stock and Bond Books and my Cash Book have always remained with me.

Q..Were minutes kept of the proceedings of the Directors, and who made and kept them?

A..I did as Secretary.

Q..Are you now in the office or employment under the Trustees and Receivers, and if so, what?

A..I hold the office of Treasurer for the Trustees and Receivers.

Q..Who has now the custody and control of the books and papers of the Mobile and Ohio Railroad Company kept previously to the time it was taken in charge by the Trustees?

A..They are under the control of Mr. DuPuy as agent and attorney for the Trustees and Receivers.

Q..Who was President and who Vice President of the company in 1874?

A..Mr. Duncan (Wm. B.) was President from April, 1874. John J. Walker Vice President from same date. Elected in April, 1874, at the regular annual meeting of the stockholders fixed at third Wednesday in April of each year.

Q..Had the railroad company a current deposit account with the Bank of Mobile, and for what time?

A..Yes, for many years, and up to the neighborhood of the time the Trustees took charge.

Q..By whose direction did you send the holders of coupons in May and November, 1874, to the Bank of Mobile to get the money due on the coupons?

A..I think it was by the order of the Vice President.

Q..Do you not know by what arrangement or agreement it was arranged they should be sent to the Bank of Mobile for payment?

A..I think the arrangement was made by Mr. Duncan, the details of which I am not familiar with. I know that the company were not in funds to pay the coupons and I understood that funds were advanced through Duncan, Sherman & Co. by their friends to purchase the coupons.

Q..Was there or not an agreement or understanding between you, acting as agent or treasurer of the company, with the Bank of Mobile, or its officers, that they would pay the money to the bearers of envelopes inclosing coupons.

A..The Bank of Mobile could not have paid the coupons without a statement from me showing their value, as some sterling coupons were payable in gold, others payable in currency, and there was nothing on the coupons to show whether they were so payable in gold or currency, unless so stated by me. That was all the understanding I ever had with them to my knowledge.

Q..Was there, to your knowledge, any understanding or agreement between the railroad company or its officers, and the Bank of Mobile or its officers, that the bank morandum

would pay to the bearer of the envelopes inclosing coupons with your ~~recommendation~~ indorsed thereon the amount indicated by such memorandum?

A..My knowledge and understanding was that the Bank of Mobile would pay the coupons after having been verified by me. I simply used this envelope, having a quantity of them on hand, as a means of describing them. I don't recollect of any particular form or statement to be used, or of any understanding to that effect.

Q..By whom were these envelopes gotten up and prepared, and for what purpose?

A..They were prepared by me and originated with me for my own convenience, and for the purpose of securing coupons from loss after being paid. They were simply used between me and the Auditor to preserve the coupons from loss; similar ones were used by me prior to 1874; they were paid for by the company, like all other blanks.

Q..Were not the envelopes inclosing the coupons delivered by you, with your memoranda endorsed thereon, to the bearers of the coupons, to be by them presented to the bank in order to get the amount of money indicated by the memorandum?

A..They were.

Q..Look at these two envelopes of T. Guesnard. Whose handwriting is the endorsement?

A..In the handwriting of Mr. Wm. M. Bull, who made the figures also; also, making an erasure from $32.75 gold to $32.50, which the Bank of Mobile said they would give—buy them for. That is as far as the gold transaction was concerned.

Q..Did you deliver them to Mr. Guesnard to be carried to the bank?

A..I cannot state whether by myself or Mr. Bull; one of us delivered them, positively, to him.

Q..Were those envelopes retained by the bank or sent back to the company?

A..They were retained by the bank I presume; they were not sent back to me.

Examination by E. H. Grandin, for trustees of the Second Mortgage, and for Mr. Andrews, solicitor for L. J. Belloni, jr., objector:

Q..How were the coupons of years prior to 1874 paid by you as Treasurer?

A..By checks on different banks where I had my deposit.

Q..Was one of those banks the Bank of Mobile?

A..It was.

Q..Were any coupons in 1874 paid in the city of New York; if so, where?

A..I can't swear to the payment of any coupons, but I believe there was some paid by Duncan, Sherman & Co., in the city of New York; I know there was some paid by them as shown by their general account.

Q..Had the company an agency in the city of New York in the year 1874?

A..Not that I am aware of, strictly as an agent. We had a correspondent who attended to its business in New York. My correspondence was with Duncan, Sherman & Co. In a general sense they were agents or correspondents of the company. I am not aware of any power conferred on them.

Q..Had you not in years prior to 1874 given checks to Messrs. Guesnard, Whiting and Hazard & Co. for their coupons?

A..Yes; I believe I have.

Q..Did you as Treasurer of the Mobile and Ohio Railroad Company refuse payment of the May and November coupons of 1874 in any instance?

A..I told them when asked that the company were not paying them—that they could go to the Bank of Mobile and get their money, conveying the impression to all that the company was not in funds. That is the impression I intended to convey and believe I did so convey it, because parties went to the Bank of Mobile to collect their coupons instead of coming to me.

Q..Is that all the refusal of payment you made ?

A..It is, according to my recollection.

Q..Will you positively swear that you stated to all parties presenting coupons to you in May and November, 1874, that the company was not in funds ?

A..I cannot positively as to May, but I can as to November, or words to that effect, and referring, also, to the notice pasted up.

Q..Then you do positively swear that you stated to every party that presented coupons to you for November, 1874, that the company was not in funds ?

A..Verbally, I believe I did ; I can swear it to the best of my knowledge and belief, especially to those who asked information.

Q..Did you not, in all cases, tell parties presenting coupons to go to the Bank of Mobile with the envelope enclosing coupons and they would get their money ?

A..I did—with the remark that the Bank of Mobile was paying the coupons—endeavoring to leave the impression that the company was not in funds; I am positive that I told some of them, too.

Q..Did the Mobile and Ohio Railroad Company announce themselves insolvent in May, 1874, or November, 1874 ?

A..Not to my knowledge.

Q..Was any notice ever given by you, as Treasurer of the company, that the coupons of May and November, 1874, were being purchased by Duncan, Sherman & Co ?

A..No.

Q..Was the notice hereinbefore referred to as pasted up in the office in your handwriting?

A..I am not positive whether it was in my handwriting or Mr. Bull's; I think it was in Mr. Bull's.

Thereupon the session of the Special Master adjourned until Tuesday, January 2d, 1877, at 11 o'clock A. M.

JAMES GILLETTE,
Special Master.

Circuit Court of the United States, 390

Fifth Judicial Circuit

And Southern District of Alabama.

W. B. DUNCAN and A. F. ELLIOT,
Trustees.
vs.
THE MOBILE AND OHIO RAILROAD
COMPANY, et als.
In Equity.

TUESDAY, JANUARY 2nd, 1877.

The session was held pursuant to adjournment, commencing at eleven o'clock A. M. Present: JAMES GILLETTE, Special Master, and Counsel as of previous days.

Cross Examination of A. L. Willoughby resumed by E. H. Grandin, of Counsel for trustees of the second mortgage, and representing E. L. Andrews, Solicitor for L. J. Belloni.

Q. Please state on how large a piece of paper that notice was written.

A. It was written on quite a large piece of paper, as large as a good sized hand bill, about a foot or a foot and a half square.

Q. How much of the space was occupied by the writing thereon?

A. Pretty much all of the space, as the notice was written in blue pencil, I think, in order to make large letters and attract attention.

Q. Do you know and will you swear that any single holder of coupons saw and read that notice?

A. As long as I could not see with their eyes I can't swear it. If I had been there I could not help see it.

391 Q. Whereabouts was that notice pasted?

A. In the opening between the desks.

Q. Describe the desk.

A. It was an opening between two desks—a desk on the right and one on the left of the opening—similar to the openings on a teller's counter of a bank.

Q. Did you in any instance direct the attention of a holder or bearer of coupons to that notice?

A. I think perhaps I did; but as notice was so plain I did not consider it of much use to notify.

Q. The notice was pasted in the opening of the desk. Which side of the opening?

A. It was pasted near the outside of the opening nearest the public, near to the outer edge.

Q. Will you swear that any body saw and read that notice?

A. I cannot for same reason so given in former answer.

Q. Did not John J. Walker, Vice President Mobile and Ohio Railroad, at the time order you to take that notice down?

A. No sir, I do not recollect of receiving any such order.

Q. Do you not know that it was the object of the Board of Directors Mobile and Ohio Railroad, at that time—May, 1874—carefully to conceal the fact that the Company was unable to pay its coupons?

A. No, I have no knowledge—(Same question asked as to November, 1874, and same answer made).

Q. Did not the Mobile and Ohio Railroad Company float its promissory notes for money borrowed after May 1, 1874, between that date and 1st November, 1874, and after 1st November, 1874?

(Question objected to by George N. Stewart, Solicitor for Alexander Duncan, as being incompetent and irrelevant).

A. I cannot answer from memory.

Q. Have you any means of refreshing your memory and finding out the facts so as to state them precisely?

(Objected to as irrelevant and incompetent).

A. I think so.

Q. Please do so at your earliest convenience and answer the question at the next sitting of the Master.

(Request objected to as incompetent and irrelevant).

Q. Were not large remittances of money made by the Mobile and Ohio Railroad Company to Duncan, Sherman & Co., after May 1, 1874, during the year 1874?

A. I made some remittances but do not recollect the amount.

Q. Have you any means of refreshing your memory on this subject?

A. I think so, but wish to say that the Auditor's department has the books. I do not keep the books.

Q. Was it not understood and agreed between Mr. William Butler Duncan and the Mobile and Ohio Railroad Company, that he should protect the coupons and have the receipts of the road?

(Question objected to as incompetent),

A. I know of none.

Q. Did not Duncan, Sherman and Company or William Butler Duncan, buy up certain negotiable paper of the Mobile and Ohio Railroad Company and return it to the Company in 1874, in consideration of money remitted that firm or Mr. Duncan by the said Company?

(Objected to by Solicitor for Alexander Duncan, as incompetent and irrelevant).

A. I have no knowledge of any transaction of that kind.

Q. Was not Mr. Duncan or his firm expected to return the coupons to the Company when money was remitted by the Company, and was there not a disappointment felt when he returned the notes of the Company instead of the coupons?

(Objected to for vagueness, incompetency and irrelevancy).

A. I do not know.

Q. Do you not know that Mr. William Butler Duncan in 1874, after May 1, 1874, purchased promissory notes Mobile and Ohio Railroad Company from the First National Bank of Mobile, and paid them into the Company instead of coupons?

A. I do not.

Q. Was not the Mobile and Ohio Railroad Company in 1873 and 1874 continually a borrower of money from Duncan Sherman & Co., or William Butler Duncan?

A. I think so to some extent.

Q. Don't you know, Mr. Willoughby, that Duncan, Sherman & Co., or William Butler Duncan, virtually carried the Company from the time of the panic in 1873—down to the first public default of the Company in the payment of interest on any of its bonds?

(Objected to for looseness, vagueness, uncertainty and irrelevancy).

A. I do not.

Q. Was not the individual paper of some of the Directors of the Company given to Duncan, Sherman & Co., or William Butler Duncan, to secure them or him for advances made to take up the coupons of 1874?

A. None, to my recollection.

Q. Were you, as Secretary, present at the meetings of the board?

A. I was not present at all the meetings.

Q. Were you present at the meeting of the board just before the 1st May, 1874, when the subject of paying the forthcoming coupons was discussed?

A. I don't recollect whether I was present or not.

Q. Have you not a recollection, or remembrance, that there was a discussion in a meeting of the board on the subject of paying that coupon and the coupon of the first mortgage sterling bonds due May 1, 1874?

A. I recollect there were discussions on that subject.

Q. Were you present, or did you hear that discussion?

A. I was present and heard discussions in a general way, but paid but little attention to them without they came on the minutes.

Q. State what that discussion was; what was said, as nearly as you can recollect; by whom remarks were made in that discussion, and what conclusion was arrived at by the board.

(Objected to, for incompetency, irrelevancy, and because it was not the best evidence.)

A. As I said before, I do not recollect of discussions unless they go on the minutes. I cannot state what the discussion was. I cannot state who participated in it. I cannot state the conclusion arrived at by the board.

Q. Is there any record of that discussion, or of the conclusion that was arrived at by the board?

A. Yes. Minutes show the conclusions. There is no record of discussions. It would take a short-hand reporter to put down discussions.

Q. What directors were present at that meeting?

A. I do not recollect.

Q. Was it not understood among the directors of the Mobile and Ohio Railroad Company, in April, 1874, and in September, 1874, just before the maturity of the coupons in November, 1874, that the actual condition of the affairs of the Company should be kept from the public?

(Objected to, for uncertainty, irrelevancy and incompetency.)

A. I do not know what the directors understood.

Q. Why was not public notice given that the Company would not pay its coupons of May and November, 1874?

(Question objected to for incompetency, and because the witness is not competent to answer it.)

A. I don't know.

Q. Are all the books of the Mobile and Ohio Railroad Company, before the trustees took possession, extant?

A. As far as I know.

Q. Where are those books? in whose custody are they?

A. In the custody of the different departments, under control of T. H. DuPuy, agent and attorney of receivers.

Q. Then I understand that Mr. DuPuy has the power to produce all those books?

A. I take it so.

Q. You were Secretary and Treasurer when Mr. William Butler Duncan became President of the Mobile and Ohio Railroad Company, and have been ever since; state, from your best knowledge and belief, whether or not William Butler Duncan has not, since he became President of said Company, controlled entirely the affairs of the Company, just as much as if the railroad was his own property.

(Objected to, for uncertainty, irrelevancy, and because the opinion of the witness was not wanted, but facts only.)

A. I was. I have no such knowledge.

Q. Can you state what director or directors of the Mobile and Ohio Railroad Company has or have interfered with Mr. Duncan in the management of the Mobile and Ohio Railroad since he became President of the same?

(Objected to, for generality, irrelevancy, and because incompetent.)

A. I know of none.

Q. You have already stated that, in a general sense, Duncan, Sherman & Co. were the agents of the Mobile and Ohio Railroad Company in 1874. Now state whether or not, in your knowledge, William Butler Duncan did not absolutely control the affairs of the Company in the year 1874—whether all things were not done in that year, according to his directions, from New York, or, when he was in Mobile, personally given.

(Objected to, as being too general, for irrelevancy and incompetency.)

A. I have no such knowledge.

Q. Who, or what director or person, connected in anywise with the Mobile and Ohio Railroad in the year 1874, opposed anything that Mr. Duncan wished to be done?

(Objected to, for generality and irrelevancy.)

A. I do not know.

Q. Was there, or not, a committee, consisting of directors of the Company, called the Executive Committee, in the year 1874; and, if so, who composed that committee?

A. There was no such committee, I think.

Q. Was there not one or more directors of the Company charged with executive duty, so as to dispense with frequent meetings of the board?

(Objected to, as to the manner in which the question is propounded.)

A. I know of none, in that sense.

Q. Do you not know that one or more directors of the Mobile and Ohio Railroad Company, in 1874, was or were a committee, or agent, or anything you choose to call it, who, under authority of the board, did regulate and rule the affairs of the Company, without special resolution of the board?

(Objected to, as incompetent, and not the best evidence of the power or authority of any committee.)

A. There was the Vice President and Finance Committee, consisting of John J. Walker, the Vice President; Wm. H. Pratt, Moses Waring and Henry Hall. They were the Finance Committee.

Q. What was the duty of that committee?

(Objected to, as irrelevant, and as not the best evidence.)

A. To have charge of the finances, I take it, as the name indicated.

Q. Don't you know that that committee, either by special authority of the Board of Directors, or in pursuance of its general authority, made an arrangement with Mr. William Butler Duncan, in a hurry, to pay the coupon of May 1, 1874?

(Objected to, as irrelevant, uncertain and incompetent, and not the best evidence.)

A. I do not know.

Q. Do you, or not, know that John J. Walker, Vice President of the Mobile and Ohio Railroad Company, made such an arrangement with Mr. Duncan?

A. I do not.

(Same questions asked as to coupons of November 1, 1874, and same answers given.)

Q. Do you not know, or is it not your belief, that the coupon of May, 1874, and that of November, 1874, was paid by William Butler Duncan, or his firm, or through his or their instrumentality, on purpose to tide over temporary embarrassments of the Company, with the hope and belief that there would be returning prosperity, and that the Company would be able to reimburse Mr. Duncan, or his said firm, or his friends, for his or their advances in respect to said coupons?

(Objected to as involving questions which the witness is not competent to answer, for generality of opinions and incompetency.)

A. I believe that the Company hoped to be able with returning prosperity to redeem those coupons.

397 Q. The question is not as to redeeming coupons. You are asked as to reimbursing Mr. Duncan or his firm, or his friends, for advances. Answer this question?

A. I believe the coupons were purchased and the Company hoped to be able to redeem them when prosperity returned.

(Objected to as being an opinion of the witness.)

Q. Do you not know that Wm. Butler Duncan, or his firm, loaned money to the Mobile and Ohio Railroad Company for the purpose of paying the coupon of May, 1874, and the coupon of November, 1874?

(Objected to as incompetent evidence.)

A. I do not.

Q. Was not the idea sedulously inculcated by all concerned in the direction of the Compamy upon the public mind during the year 1874, that the Company was prosperous and would always be able to pay the interest on its bonded debt?

(Question objected to for vagueness, uncertainty, not specific and incompetent.)

A. I do not know.

Q. Did not you repeatedly say so yourself in the year 1874?

(Objected to for incompetency and irrelevancy.)

A. I cannot recollect.

Q. Did you not in 1874, and after May 1, 1874, tell a person or persons that the Company was prosperous and would always be able to pay the interest on its bonds?

(Objected to for irrelevancy.)

A. I don't recollect any particular case, or any case.

(Same question asked and same answers as to November, 1874, and same objections.)

Q. Do you not know that the public, up to the 1st March, 1875, believed the Mobile and Ohio Railroad Company to be solvent as far as its bonded debt was concerned?

(Objected to for generality and a question the witness could not answer, and incompetency.)

A. I do not know.

Q. Do you not know, or at least believe, that the bondholders of the Mobile and Ohio Railroad Company believed the Company to be solvent, as to them, until the issuance of the circular letter just before March 1st, 1875, announcing that the Company would make default on the second mortgage coupon due March 1st, 1875?

(Objected to on the ground that it is a question that the witness is not competent to answer. That it assumes a fact not in evidence, and for irrelevancy.)

A. I do not know what the bondholders believe.

Q. The question is not as to what the bondholders believe but what you know and believe yourself?

A. Not knowing what they believed I have no opinion at all.

Q. Was not that circular letter the first notice given to the public that the Mobile and Ohio Railroad Company could not pay its interest on its bonded indebtedness?

(Objected to on the ground that there is no such circular letter in evidence—the fact is assumed and evidence irrelevant.)

A. I think it was the first public notice.

Q. There was such a letter, was there not? Can you produce a copy of it?

A. Yes. I here produce the copy.

(Copy produced and marked Exhibit 1.)

Answer objected to by solicitor for Alex. Duncan, for incompetency.

Q. Do you not know that Mr. Moses Waring, by authority of the Board of Directors, or the Finance Committee, of which he was one, went around among the holders of the floating debt of the Mobile and Ohio Railroad Company in 1874, after May 1, 1874, and arranged for a renewal of notes held for that floating debt, paying a proportion of the same, or at least the interest due thereon, as an inducement for said renewal?

(Objected to for incompetency and irrelevancy.)

A. I know he made such arrangement to the best of my belief, as stated above.

(Copy.)

MOBILE AND OHIO RAILROAD COMPANY,
MOBILE, Ala., March 1st, 1875.

To the Holders of Second Mortgage Bonds:

The depression in business all over the country, and especially in the Southern portion of it, resulting, of necessity, in a great decrease of earnings, compels the Board of Directors reluctantly to ask your indulgence on coupons due this day. An increase of earnings from an improved condition of business, with an economical administration of affairs, combined with the assurance of the Board that all receipts will be faithfully applied to the payment of the liabilities of the Company, will, we trust, induce you to give us the indulgence and thereby enable us to protect second mortgage as well as first mortgage bondholders, who have the precedence over you.

The value of our property and its earning power is beyond question, and with the return of prosperity to the country, is ample for the protection of all if we are left free from the embarrassments of litigation.

By order of the Board:

A. L. WILLOUGHBY,
Treasurer.

Exhibit 1 to testimony of A. L. Willoughby.
Filed January 2, 1877.

JAMES GILLETTE,
Special Master.

Thereupon the reference was adjourned until to-morrow morning, January 3d, at eleven o'clock.

JAMES GILLETTE,
Special Master.

WEDNESDAY, JANUARY 3d, 1877.

The Session of the Special Master opened at eleven A. M. Present, as before, the Special Master and the solicitors, as herein before named.

Cross-examination of A. L. Willoughby resumed by E. H. Grandin, solicitor for second mortgage trustees, and representing E. L. Andrews, solicitor for Belloni.

Question. Where did Mr. Moses Waring get the money that was paid to the holders of the floating debt to effect this purpose?

(Objected to by Geo. N. Stewart, solicitor for Alexander Duncan, for irrelevancy and incompetency.)

Answer. I paid it, as Treasurer of the Company, to him.

Q. How much money did you pay to him for this purpose?

(Question objected to as incompetent and irrelevant.)

A. I cannot say from memory. I can ascertain from the books.

Q. Can you form a conjecture of the amount? If so, state your conjecture.

(Objected to as before.)

A. The interest was paid in advance on the notes. I can't tell the amount. It was done during 1874.

Q. Have you any means of ascertaining the precise time when it was done?

(Objected to as before.)

A. It can be ascertained from the books.

Q. By whose authority did you pay that money to Mr. Waring?

(Objected to as before.)

A. By authority of the Railroad Company, the President and the Vice President.

Q. Tell me from your best knowledge and belief whether or not the coupon of May 1, 1874, and that of November 1, 1874, were or were not arranged to be paid by Wm. Butler Duncan, in the hope that he would be able to reimburse himself or those who advanced the money to pay the coupon, out of the earnings of the Company?

401 (Objected to as a question which the witness is not competent to answer.)

A. I believe that the Company hoped to be able to make payment for any such arrangement that might have been made. I can't say what Mr. Duncan believed.

Q. Did not the Mobile and Ohio Company, in the year 1874, remit to Duncan, Sherman & Company, or to Wm. Butler Duncan, all of its net income?

(Objected to for incompetency and irrelevancy.)

A. I do not know.

Q. Have you any means of ascertaining the fact?

A. I have not. I do not keep the books.

Q. Who keeps the books. Who has the custody of the books kept in 1874?

A. The Auditor.

Q. Is it true or not that after the Trustees and present Receivers took possession, many of the books and papers of the Company were sold to a junk shop in this city, or anywhere else, or to any one else, whether a junk dealer or otherwise?

A. I have no knowledge of any such sale.

Q. Suppose that the net income of the road for the year 1874 was remitted to Duncan, Sherman & Company, or to Wm. Butler Duncan was it or not ample to cover all advances of Duncan, Sherman & Co. or Wm. Butler Duncan, with respect to the coupons of May and November, 1874.

(Question objected to, for irrelevancy, incompetency and generality.)

A. I am not able to say.

Q. Are you able to give a conjecture on the subject?

(Objected to, as before.)

A. I am not able to give a conjecture.

Q. Did you have any part in making up the annual report of the directors to the stockholders in 1875, in April?

A. I did not.

Q. Was that report printed? If so, can you produce a copy?

A. It was. I can.

Q. Do you believe, or have you any idea, that the Mobile and Ohio Railroad Company was generally believed to be insolvent as to its bonded debt, prior to the issuance of the circular just before 1st March, 1875?

(Objected to, for incompetency and irrelevancy.)

A. I did not believe so. I have no idea what the impression of the public was.

Q. Do you not positively know to the contrary?

A. I do not.

Q. Were you not enjoined in 1874, by the Vice President or some of the directors, or the Finance Committee, of the Mobile and Ohio Railroad Company, to proclaim to the public that the Company was solvent and would continue to pay its interest on its bonded debt; I refer now to a period of the year from the 15th of April to the close of the year?

(Objected to, for irrelevancy and incompetency.)

A. I was not.

Q. Will you say, on your oath, that you conveyed, or attempted to convey, the impression to any bondholder, in the year 1874, that the Company was unable to meet its interest on its bonded debt out of its net income?

(Objected to, for irrelevancy.)

A. I don't believe I ever did, as I never kept the books.

Q. Do you, or will you, say, on your oath, that any one of the directors of the Mobile and Ohio Railroad Company, in 1874, regarded the Company as insolvent as to its bonded debt, or contemplated the approximate bankruptcy of the Company?

(Objected to, as being irrelevant, and as a question which the witness is not competent to answer.)

A. I do not know the impressions of the directors.

Q. Do you not know that all the directors wished for and all that William Butler Duncan wished for, in 1874, was to tide over what they conceived to be a temporary embarrassment, and that the Company borrowed money for that purpose?

(Objected to, for incompetency, irrelevancy, and as a question which the witness is not competent to answer.)

A. I do not.

Q. Do you not know, or at least believe, that the paying of the coupons in 1874 was simply a contrivance of the Board of Directors, on the demand of William Butler Duncan, for the purpose of making things smooth in the public eye; it being understood all the while that William Butler Duncan, or his firm, was merely a lender of the money to take up the coupons?

A. I do not know.

A. L. WILLOUGHBY.

Subscribed and sworn to before me this 3rd day of January, 1877.

JAMES GILLETTE, Special Master.

Peter Hamilton, called as a witness for Alexander Duncan and other holders of the coupons of 1874, being duly sworn, says, in answer to questions propounded by George. N. Stewart:

Q. Please state whether or not, in the year 1874, you were connected with the Mobile and Ohio Railroad Company in any capacity.

A. I was not connected with the Railroad Company, except under a general retainer, at that time.

Q. Please state whether or not you were the holder of first mortgage bonds, or agent for others holding them, and did you present any coupons for payment in May or November of that year; if so, state all you may know in relation to the payment of said coupons, or the manner in which they were disposed of in that year.

A. In behalf of my wife and others I held nine sterling bonds and seven interest arrearage bonds. On or about the 1st May, 1874, I presented their then maturing coupons to the Treasurer of the Company. He requested me to leave them until he could examine them. I did so. I called, probably the next day, when Mr. Willoughby handed me the coupons back in an envelope, with some memorandum of numbers, and I think my name was written on the envelope, and told me to carry the coupons to the Bank of Mobile and I would get the money for them. This was different from the former mode of collecting the interest, and I enquired whether the railroad was paying its interest. The information I received was that the Bank of Mobile was buying the coupons for Mr. Duncan, or his firm, or associates. I carried the envelope with the coupons to the Bank of Mobile, and presented them to Mr. Gale, the teller, who gave me the money for them, giving me a check on T. P. Miller & Co. for the gold portion. The occurrence with regard to the November coupons was very much the same, the only difference that I remember being this: that, to my question whether the same thing was being done then as in May, Mr. Willoughby—my recollection is—raised my arm, which was on the counter, and directed my attention to a notice which was lying on the counter, stating that the Bank of Mobile was buying, or purchasing, or taking up, the coupons—I don't remember the precise language of it.

Q. Do you recollect of seeing, also, a written notice, pasted upon the glass door on entering the Treasurer's office, that the coupons were being paid by the Bank of Mobile, or being taken up by the bank?

A. It may have been so; I don't recollect.

Q. Do you know of any fact tending to establish that the coupons of the first mortgage bonds, during May or November, 1874, or any part of them, were paid by the Mobile and Ohio Railroad Company, or with funds furnished by said Company for that purpose? If so, please state your knowledge to that effect.

A. I know of no such fact.

Cross-examined, by E. H. Grandin, one of the solicitors of the trustees of the second mortgage, and also representing E. L. Andrews, solicitor for L. J. Belloni:

Q. Did you not know before you went to Mr. Willoughby with the coupons, all about the arrangement for paying, or purchasing them, as you may be pleased to call it?

A. I knew nothing of any arrangement on the subject, whatever.

Q. Why did you ask Mr. Willoughby whether or not the Company was paying its coupons?

A. Because in former collections, he always paid me by a check on one of the banks, as Treasurer of the Company.

Q. Are you employed or retained as solicitor for Mr. Alexander Duncan?

A. I represent the trustees of the first mortgage, and so

405 far as consistent with that employment, and only so far, I represent Alexander Duncan, or the first mortgage coupons—the detached coupons of 1874.

Q. Are you employed or retained as solicitor for Alexander Duncan?

A. (Answer repeated.)

Q. Have you not been assisting Colonel Stewart in this enquiry?

A. The questioner has seen what I have done.

Q. Is that all the answer you will make to the question?

A. Yes.

Q. Are you not anxious to have the coupons proved by Alexander Duncan declared a lien on the railroad or other property of the Mobile and Ohio Railroad Company?

(Objected to, as immaterial, irrelevant. and not proper to be answered.)

A. I have no particular anxiety on the subject.

Q. In your capacity as solicitor for Duncan and Elliot, have you not acknowledged that the coupons proved by Alexander Duncan are a lien on the railroad and other property of the Mobile and Ohio Railroad Company prior to the liens of encumbrances junior to the first mortgage?

(Question objected to, as irrelevant.)

A. My professional acknowledgments are expressed upon the record.

Q. Did you not frame or draft the Bill of Complaint in this cause for the foreclosure of the first mortgage?

A. The original draft was prepared by me.

Q. Does, or not, that Bill of Complaint embody your views as a lawyer in reference to the equities of this case?

(Question objected to, as being irrelevant and improper.)

A. The counsel has no right to put the question.

Q. He nevertheless puts it, and requests you to answer it.

(Objected to, as before.)

A. The witness will make no other answer.

Q. Please state whether or not Mr. William Butler Duncan, one of the complainants in this cause, and one of the receivers of the railroad property now in the custody of this Court, is not now upholding the claim of Mr. Alexander Duncan in these coupons.

(Objected to, as the record gives higher evidence on that question, and for irrelevancy, as to the rights of Alexander Duncan, and also for generality and indefiniteness.)

A. I believe Mr. William Butler Duncan thinks that the claim of Alexander Duncan upon these coupons is legitimate and should be sustained. I do not know of his doing anything to uphold them any more than other claims alleged by the holders to be secured by the first mortgage. So far as I know he is acting in good faith to all parties in interest.

Q. Is it your opinion as a lawyer that a trustee for bondholders is acting in good faith when he endeavors—supposing the case—to create a lien to the extent of nearly a million of dollars, the effect of which creation is, and must be, inevitably, to reduce the value of the bonds of his *cestui que trust* at least ten per cent.

(Objected to, as irrelevant, and as an improper question to be answered by the witness.)

A. My answer is, the counsel has no right to my opinion as a lawyer; that is not testimony. But I should think, if a trust were created in favor of bonds and interest, and any holders of interest coupons under such trust claimed they were due and unpaid by the debtor, that it were perfectly right for the trustee to do all he can that their respective rights might be judicially determined by the court having jurisdiction of the trust.

Q. Do you not know that Mr. William Butler Duncan is actually engaged in promoting the claim of his father upon the fund in this cause?

A. I believe Mr. Duncan is doing all he can that the claim of his father may be fully presented to the court, for its adjudication upon its merits, whatever they may be shown to be. I do not know of his doing anything more.

P. HAMILTON.

Subscribed and sworn to before me this
3rd day of January, 1877.
JAMES GILLETTE, Special Master.

Thereupon the reference was adjourned until to-morrow (Thursday) morning, at eleven o'clock.

JAMES GILLETTE, Special Master.

THURSDAY, JANUARY 4th, 1877.

The hearing before the Special Master was resumed at eleven o'clock A. M., pursuant to adjournment. Present, the Special Master and Counsel, as heretofore.

A. L. Willoughby, recalled by E. H. Grandin, of counsel for trustees of the second mortgage, and representing E. L. Andrews, solicitor for L. J. Belloni, objecting first mortgage bondholder; and the cross-examination of said witness resumed, he testified as follows in answer to questions propounded to him by said Grandin:

Q. Mr. Willoughby, you made affidavit on the 6th day of April, 1876, before N. W. Trimble, Clerk of the United States Circuit Court for the Southern District of Alabama, of course I won't ask you whether that affidavit is true. I have not the slightest doubt of it, since you swore to it.

(Objected to—The affidavit not being shown the relevancy cannot be seen.)

A. I made an affidavit on or about that time.

Q. Was or was not that affidavit made in a proceeding by Morris Ketchum against the Mobile and Ohio Railroad Company, and others, and does it not form a part of the record in that proceeding in this Court?

A. I think so.

Direct examination resumed by Mr. Stewart, solicitor for Alexander Duncan & Co.

Q. Mr. Willoughby, on pages 26 and 27 of your cross-examination, mention is made of your telling every one who presented coupons what is therein stated as to mode of payment, please state what is the meaning of your answer and whether you intend it to be that you gave the information to every one who presented coupons, literally speaking, or to those only with whom you did converse on the subject?

(Question objected to by counsel for Mr. Belloni and Trustees of the second mortgage, on the following grounds: that it is incompetent for a witness to state the meaning of an answer to a given question and to state what he intended the answer to be. The answer speaks for itself and the witness is bound by it.)

A. My answer is, that to those who asked for information I gave them the information that the Company were not paying their coupons. I believe that I intended to convey the impression to all that I saw or conversed with. I was not present all of the time. While I was absent to dinner or on business, Mr. Bull, my clerk, was in the office, who attended to those calling. I do not mean to be understood that I conversed with every person, literally, who presented coupons.

Q. Please state what was the reason for which you expressed the opinion on your cross-examination, that persons must have seen the notice in writing put up by you, and state also if there was not a notice in writing put up on the glass door through which every person had to pass who came to your desk, besides the notice on your desk.

(Objected to on the following grounds:

1. The question assumes a fact that is not in evidence, that Mr. Willoughby put up a notice.

2. The question refers to a new notice, in writing, and it is incompetent for the witness to give any evidence respecting that notice without producing the same or accounting for its non-production.)

A. For the simple reason that the notice was so conspicuous and plain and pasted in such a place, and in full view, that I do not see how it was possible not to be seen. There was a similar notice about the same size, conspicuously pasted on one of the glass doors to the entrance to the office.

(The answer objected to in that the witness uses the word "similar" characterizing the notice which he says was put up on the glass door.)

Q. On pages 38 and 39 you speak of the agency of Duncan, Sherman & Co., (in your cross-examination,) please state, if you know, what was the extent of such agency, if any, what were the terms of the authority granted, and whether it was by any written evidence?

A. I don't recollect of any written evidence or terms and I do not know the terms or extent of the authority. I consider them agents in a general sense.

Cross-examination resumed.

409 Q. With whom did you converse on the subject of the paying of the coupons by the Bank of Mobile? Name any party, holder of coupons, to whom you gave notice verbally that the Company was not in funds.

A. It is impossible for me to particularize after such a lapse of time. As I said before, to those who asked for information I gave it.

Q. Did you, in any instance, call the attention of any coupon bearer to either of the notices you swear were put up?

A. I believe I did.

Q. Name the instance; give the name of the party whose attention you called to either notice.

A. The same answer as before: lapse of time.

A. L. WILLOUGHBY.

Subscribed and sworn to before me this
4th day of January, 1877.
JAMES GILLETTE, Special Master.

Cross-examination of A. L. Willoughby resumed by E. H. Grandin, solicitor for trustees of the second mortgage, etc.

Q. Who wrote the affidavit you made on the 6th day of April, 1876, filed in this Court in the case of Morris Ketchum against the Mobile and Ohio Railroad Company, et al.

(Objected to for irrelevancy.)

A. I wrote it.

Q. Did you not have the assistance of a lawyer in writing it, and if so, what lawyer?

A. I was in Mr. Hamilton's office when I wrote it.

Q. Did not Mr. Peter Hamilton assist you in drawing up that affidavit.

A. Not directly.

Q. Did he do so indirectly.

A. He may have done so as far as the phraseology is concerned.

A. L. WILLOUGHBY.

Subscribed and sworn to before me, this
4th day of January, 1877.
JAMES GILLETTE, Special Master.

William M. Bull, a witness called by the solicitor of Alexander Duncan and other holders of the coupons of 1874, being sworn, says, in answer to questions propounded by Mr. Stewart:

Q. Please state whether you were in the employment of the Mobile and Ohio Railroad Company in the year 1874, and in what capacity.

A. I was a clerk in Mr. Willoughby, the Treasurer's office.

Q. Please state if you assisted Mr. Willoughby, and have a knowledge of what transpired in the Treasurer's office in respect to the coupons of first mortgage bonds falling due May and November, 1874; if so, please state in what manner they were disposed of, and whether you assisted in making up the records of the office at those times in respect to said coupons.

A. I assisted in verifying and recording the coupons. They were generally received by him at the counter, and were passed from there to me for examination and verification. After being verified they were placed in an envelope, their contents noted on the back of an envelope as per the printed description on the envelope. They were then either returned to the Treasurer, subject to his disposition, he being in authority, and in case of his absence they were returned by me to the parties interested. When I instructed the parties interested, it was to go to the Bank of Mobile, which would pay them, as the Mobile and Ohio Railroad Company could not, as it had no funds. If the instructions were not in that literal language, it was in words to that effect. I cannot say that I gave this instruction in all cases, as there were sometimes fifteen or twenty applicants at the office for examination of their coupons—upon the request of Mr. Pratt, of the Bank of Mobile, to Mr. Willoughby, the examination of the coupons was made by me—but I tried to convey the impression to these applicants surrounding me that the Mobile and Ohio Railroad Company could not meet the interest, and that the coupons were to be presented at the Bank of Mobile, and if the Bank of Mobile paid them, it was to retain them.

Q. Please state whether or not any notice or notices were put up to notify parties presenting coupons in that office.

411 A. Not to my knowledge, in May, 1874. In November there was.

Q. Was there more than one?

A. There was one notice, a large placard; if I recollect aright it was on one of the glass doors.

Q. Do you recollect of any at the desk of the Treasurer?

A. This same card may have fallen from the glass door and been placed upon the desk temporarily, or upon the platform between the desks. At any rate the placard was generally placed in a prominent place, so that most every one could see and read it if they wished.

Q. Do you know what became of said notice or notices, if now in existence, or if a copy exists?

A. I think it is not now in existence, and no copies.

Q. Please state what was the purport or substance of said notice.

A. I cannot recollect the exact phraseology, but it was such as to instruct or inform those interested in the coupons of the first mortgage that the Company could not pay them, but that there were others who would buy them, or words to that effect; and all letters written to parties outside of Mobile distinctly stated that the Company could not pay its interest, and that the coupons, at the time this notice was placed up, were purchased—that's the identical word—by the Bank of Mobile.

Q. Please state whether or not, in all cases, coupons presented were returned to the parties presenting them, and if in any single instance, any of those coupons were paid and taken up by the Company in the Treasurer's office.

A. The coupons were always returned to parties, and not one coupon was paid by the Company, or at least by Mr. Willoughby, the Treasurer, that I know of.

Q. Please state if any check whatever was given by the Treasurer to any coupon holder, due at those dates, for payment of the same.

A. Not one check was given, that I know of, and as shown by his check books, which I have examined.

Q. Please state if you have any recollection of the presentation of coupons of those descriptions by Mr. Theo. Guesnard, and as to how they were disposed of.

A. I have. They were disposed of just as before described, same as the others.

Q. (Same question as to the coupons presented by Nathan Whiting and J. B. Hazard & Co.)

A. I have of Mr. Whiting but in one payment; which payment it was I do not recollect. I have no recollection as to Mr. Hazard.

Q. Can you state that neither of those parties were paid by check?

A. Not to my knowledge; and in fact, to no one.

(Admission. Counsel for trustees of second mortgage and Mr. Belloni admits that no check, commonly so-called, was given by the Treasurer, Mr. Willoughby, on the Bank of Mobile for any coupons presented to him for payment either for May 1st, or November 1st, 1874.)

Q. Please state whether any of said coupons of May or November, 1874, have ever, to your knowledge, been surrendered to the Mobile and Ohio Railroad Company.

A. Not one, to my knowledge.

Cross-examined, by E. H. Grandin, of counsel for trustees of the second mortgage, and representing E. L. Andrews, solicitor for Mr. L. J. Belloni, objecting first mortgage bondholder;

Q. Did you not write the notice, that is alleged to have been put up, to holders of coupons?

A. Either Mr. Willoughby wrote it, or I did, which one I do not know. I can't rememember whether I wrote it.

Q. You have testified that the notice is lost and cannot be produced; state the contents of that notice very exactly, according to the best of your recollection.

A. The exact phraseology I do not recollect. I cannot give the contents exactly.

Q. You have stated that you tried to convey the impression that you stated in your examination in chief you tried to convey; name any party to whom you tried to convey that impression.

A. I can't particularize any one.

Q. Do you not know that Major Walker, the Vice President of the Company, ordered Mr. Willoughby to take down the notice, or placard?

A. No, sir.

Q. Did you not say, the other day, in the Master's office, that you wrote the notice, and that the notice stated that the coupons would be paid at the Bank of Mobile?

A. I do not recollect that I positively stated that I wrote the notice. I may have so stated. I did state that the coupons were paid at the Bank of Mobile, and they were.

Q. What is your age? Are you in the employ of Mr. DuPuy or Mr. Duncan? If so, what office do you fill in such employ?

A. Thirty-four. In the immediate employ of Mr. Wetton, Auditor of the Mobile and Ohio Railroad.

Q. You have stated that no coupons have been surrendered of May and November, 1874; do you not know that instead of coupons, promissory notes of the Company have been surrendered?

A. Not to my knowledge.

WILLAM M. BULL.

Subscribed and sworn to before me
this 4th day of January, 1877.
JAMES GILLETTE, Special Master.

C. A. Wetton, a witness, called by George N. Stewart, solicitor for Alexander Duncan and other coupon holders, being sworn, says:

Q. Please state whether in 1874 you filled the position of Auditor of the Mobile and Ohio Railroad Company, and during what portion of the year.

A. For no portion.

Q. When did you become Auditor?

A. January 11, 1875.

Q. Are you now Auditor, keeping the accounts of said Company, and of the trustees and receivers thereof?

A. Yes.

Q. Have you a full knowledge of the business affairs of said Company, and of the books now being kept, and of those of the Company before you came in said office?

A. I have a full knowledge of the business affairs of the Company, and of the trustees and receivers, as shown by the books.

Q. Have you full access to those books, and have you carefully examined them, so as to be fully acquainted with the business transactions appearing therein?

A. I have full access to the books, and have carefully examined them whenever occasion required.

Q. Please state whether the coupons, for interest on the first mortgage bonds of the Company, falling due in May and November, 1874, appear on the books of the Company to be outstanding and unpaid, or whether they have been paid.

(Objected to, on the ground that it is incompetent for the witness to state what appears on the books of the Company without producing the books, or accounting for their non-production.)

A. They are an outstanding liability on the books of the Mobile and Ohio Railroad Company.

Q. On the reports made by you to this Court, are said coupons embraced in the list of outstanding liabilities, and are they within the list reported of unpaid interest?

(Objection. There is better evidence of what the reports made by the witness to this Court contain than anything he can now state from recollection. That evidence is on the files of this Court, and it is in the power of the solicitor asking the question to produce it to the Master.)

A. They are.

Q. Please state, from your examination of the books, whether or not said reports are accurate and correct, as shown by the books.

(Objected to, on the ground that it is not competent for the witness to bolster up his reports. His reports speak for themselves, and are to be tried by the books, whenever we can get them in evidence.)

A. They are correct, according to the books.

Q. Please state if in those books, after full examination, there is any payment of said coupons, or of any part, by the Company.

(Objected to, on the ground that it is not competent for the witness to state the contents, or any part of the contents, or anything whatever that appears in those books, without producing them, or accounting for their non-production.)

A. There is no entry on the books showing the payment of any coupon interest on first mortgage bonds maturing May and November of 1874.

Q. Have you in your custody the vouchers for payments made by the Company from 1873 down?

A. All the vouchers found in the office on January 11, 1875, are in my custody.

Q. Please state whether among those vouchers are to be found any of said coupons as vouchers, or are any such coupons in any office of the Company, that you know of, or have they been, as coupons taken up by the Company?

(Objected to, on the grounds that it is involved, and calls by indirection for a fact that ought to be brought out from the witness by direct question. I allude to that part of the question which relates to the payment of the coupons. The objection goes to irregularity of the question.)

A. There are no coupons which matured May and November, 1874, to be found in my office, nor are any of them to be found in any office of the Company, so far as I know, nor have any of them ever been taken up, so far as I know.

Q. Please state whether from these books remittances appear to have been made to Duncan, Sherman & Co. in the year 1874, or since, having any connection with the said coupons, or the payment of them.

(Objected to, on the ground that it is incompetent for the witness to state what appears on the books. It is the duty of the counsel putting that question to produce the books, if he wants the contents thereof.)

A. According to the books and the records, no such remittances were made.

Q. Please state whether, in 1874 and since, Duncan, Sherman & Co. were indebted to the Company, or the Company indebted to them, as shown by said books.

(The same objection as before.)

A. The books show a considerable balance in favor of Duncan, Sherman & Co., during 1874 and since.

Q. Is not the indebtedness to Duncan, Sherman & Co. still unpaid?

A. It is.

Q. Has not the indebtedness of the Company to Duncan, Sherman & Co. been continual from 1874 to the present time?

A. It has.

Q. Did you make up the report of the affairs and accounts of the Company in April, 1875, which was published?

A. I did.

Q. Can you produce a copy of said report? If so, please do so.

A. I can, and here produce it.

(Report attached as Exhibit No. 1.)

Q. Please state whether said report is correct, so far as your knowledge and belief extends.

A. It is.

Q. Please state whether the statements now produced of the account current between the Company and Duncan, Sherman & Co., as taken from your books, are correct.

(Objected to, on the ground that the question calls for something that appears on the books. The books themselves must be produced.)

A. They are.

(Accounts attached, as Exhibits Nos. 2 and 3.)

Q. It appears from the evidence of Mr. McMahon that a deposit or deposits was or were made in the Bank of Mobile, amounting to $45,800, or thereabouts, in 1874, by the Company, to the credit of Duncan, Sherman & Company. Please state to what account said sums so deposited appear on the books, as charged, and whether on general account or otherwise, and does it appear in the statements filed.

(Objected to on the same ground as previously stated. The question calls for contents of books which ought to be produced.)

A. They were charged to Duncan, Sherman & Company. They were charged in general account and appear in the statements I have filed.

Q. Please state, if within your knowledge or information any sum or reimbursement has been made to Duncan, Sherman & Co., or any one else, by way of payment, satis-

417 faction or reimbursement by the Company on account of said coupons of May and November, 1874, from the books of your office or in any other manner.

A. None that I am aware of.

(Question and answer objected to on the same grounds as those previously expressed.)

Cross-examination, by E. H. Grandin, counsel for trustees of second mortgage, etc.

Q. State what railroads you were connected with before you were employed by the Mobile and Ohio Railroad Company, and state who employed you to come into the service of the Mobile and Ohio Railroad Company.

A. New York and Harlem Railroad; St. Louis, Alton and Terre Haute; Erie Railway, and I was elected by the Board of Directors of the Mobile and Ohio Railroad Company.

Q. Is there any record of your election by the Board of Directors, and is it usual for an Auditor of a railroad to be elected by the Board of Directors thereof. On the contrary, is not the auditor of a railroad generally appointed by the President thereof?

A. I am informed by the Secretary that such a record is on the minutes. It is not unusual. Auditors, however, are generally appointed by the President and the appointment confirmed by the Board of Directors.

Q. Were you not appointed and brought down to Mobile by Wm. Butler Duncan, President of the Mobile and Ohio Railroad Company?

(Objected to as irrelevant and does not go to prove whether Alexander Duncan is entitled to these coupons or not.)

A. I was notified by Mr. Duncan to meet Col. Rives and himself at his office in New York, and my appointment was then approved by the general manager.

Q. Who was general manager?

A. Col. Rives.

Q. You say your appointment was approved by the general manager—who made your appointment that was so approved?

(Objected to as irrelevant.)

A. Mr. Duncan.

Q. Where are the books of the Mobile and Ohio Railroad Company, and are all the books kept by said Company before the trustees of the first mortgage took possession, now existing. If so where are they—who has them and who can produce them?

A. All the books in the Auditor's department Mobile and Ohio Railroad Company on January 11, 1875, are still in existence and in my immediate care. The Receiver can produce them.

Q. You speak of books in the Auditor's department on January 11, 1875. That is not an answer to my question. Please answer it.

A. I can only answer as to the books found in the office when I took charge of it.

Q. Are you able to state whether or not all the books appertaining to the Auditor's department Mobile and Ohio Railroad Company, before the trustees took possession, were in the office when you took charge of it or are now there?

A. All the books from January 11, 1875, are there, and in my care, and prior to that date they are as far as I know.

Q. Do you not know that certain books and papers of the Mobile and Ohio Railroad Company, after the trustees took possession, were sold as waste paper, or junk, to the keeper of a junk shop in the city of Mobile, or elsewhere?

A. I do not. None were so sold to my knowledge.

Q Who kept the books of the Company before you became Auditor and who was your predecessor in that office?

A. I have the same book-keeper that was employed by my predecessor, Oliver S. Beers.

Q. Were not your reports to this Court made after consultation with the President of the Company and Mr. Wm. Butler Duncan, Receiver in this cause?

A. They were not. They were made from the books and trial balance of the general ledger.

Q. Do you know, or have you any means of stating, what promissory notes of the Mobile and Ohio Railroad Company were taken up by Mr. Wm. Butler Duncan, with funds of the Company, in the year 1874?

A. I cannot answer the question from memory. The statements filed as Exhibits show.

419 Q. What statements do you allude to?

A. The debit and credit statements of the general account Mobile and Ohio Railroad Company with Duncan, Sherman & Co.

Q. How does it happen that these statements or accounts of Duncan, Sherman & Co., New York, are made out on forms of Duncan and Elliot, trustees and receivers Mobile and Ohio Railroad Company?

A. Simply as a matter of convenience.

Q. Who made them out?

A. The account was stated by my book-keeper and copied by a clerk in my office.

Q. That is not an answer.

A. I am unable to give any other answer.

Q. Are you able to say where the person who made out these statements got his information?

A. From the books of the Mobile and Ohio Railroad Company.

Q. Then these statements are simply copies from the books?

A. They are copies substantially of the entries.

Q. Are these statements correct?

A. They are correct according to the books.

Q. I see by these statements that on the 30th day of April nearly one hundred thousand dollars, or perhaps quite that sum, was paid by Duncan, Sherman & Co. for account of the Mobile and Ohio Railroad, to sundry parties in the city of New York, on notes and drafts. State, if you can, why that money was not applied to the payment of the coupon due the very next day instead of being paid to holders of the floating debt of the Company.

A. I do not know.

Q. I see that on the 30th May, 1874, there was a payment to R. Sage, of New York, of $30,000, and on the same day there were sundry payments of notes, interest on notes, drafts, due bills, etc., amounting, in the aggregate, to something like one hundred thousand dollars—whose money was that?

A. I do not know. I do not think it was money, I think it was account.

Q. I see that on the 30th June, 1874, there were notes paid to Perkins, Livingston & Post; Russell Sage; G. A. Smith; Burnham, Parry & Williams, aggregating over $85,000, for account of the Mobile and Ohio Railroad, by Duncan, Sherman & Co. Whose money was that?

A. I do not know.

Q. Looking through this account or statement, as you call it, commencing 30th April, 1874, and running down to the 22d January, 1875, I find payments by Duncan, Sherman & Co., for account of Mobile and Ohio Railroad Co., amounting in the aggregate to $927,041. I do not find in the statement that any of that money was paid for interest on the bonded debt of the Company, except some small payments made November 26, but I do find the great bulk of this large sum was paid to floating creditors, and on sundry other accounts, and some of it was paid on the 14th day of September, 1874, for interest on convertible bonds. Are you able to explain why this is so?

A. I believe such payments or renewals were made to avoid the absorption of collaterals by the holders of the Company's paper.

Q. Please state the difference between these two statements, Nos. 2 and 3.

A. Exhibit No. 2 is Duncan, Sherman & Co.'s credits; Exhibit No. 3 is Duncan, Sherman & Co.'s debits.

Q. Then it appears by Exhibit No. 3 that Duncan, Sherman & Co. received from the Mobile and Ohio Railroad Company, from the 30th April, 1874, to the 5th January, 1875, the sum of $910,017 31, and it appears by Exhibit No. 2 that, including the balance stated to be due to them on the 30th April, 1874, down to the 22d day of January, 1875, they paid out the sum of $927,041. Do you believe these statements to be a correct showing of the accounts of the Company with Duncan, Sherman & Co?

A. I do.

Thereupon the reference was adjourned until to-morrow, Friday, morning, at ten o'clock.

JAMES GILLETTE,
Special Master.

FRIDAY, JANUARY 5th, 1877.

The Session of the Special Master convened pursuant to adjournment. Present: the Special Master, and Counsel as of the day previous.

Cross Examination of C. A. Wetton resumed by E. H. Grandin, of Counsel for trustees of the second mortgage, and representing E. L. Andrews, Solicitor for L. J. Belloni, objecting bondholder.

Q. Why do you not produce the books. Where is the custodian of the books. Are you the custodian?

A. I have no authority to produce the books. They are simply in my care. The attorney and agent of the Receivers is the custodian.

Q. State specifically what books and papers of the Mobile and Ohio Railroad Company were sold by you to the keeper of a junk shop, and by whose authority they were sold.

(Objected to as irrelevant and not specific as to time.)

A. No books or papers pertaining to the Auditor's department of the Mobile and Ohio Railroad Company have ever been sold by me to a junk dealer in Mobile or elsewhere.

Q. That is not an answer to my question; please answer it.

A. I have never sold any and have never been authorized to dispose of any.

Q. Did you not state yesterday, in the Master's office, that you had sold some waybills and papers of no value, to the keeper of a junk shop?

A. I may have done so.

Q. Are you not certain that you did so?

A. I believe I did.

Q. What waybills and papers were they that you sold to the keeper of a junk shop?

(Objected to as irrelevant.)

A. Refuse paper gathered from the waybill room and from the stations along the line of the road, usually disposed of yearly in every well regulated Auditor's department in the United States.

Q. You have not answered my question, please do so. I did not ask you the practice in well regulated Auditor's departments. When I ask you that question it will be time enough to answer it. Answer the question that I put to you.

(The defendant claims that the witness has the right to justify himself in his answers as to any act of his which he is required to disclose.)

A. Old waybills and refuse paper.

Q. Is that the only answer you are able to make to my question?

A. It is.

Q. Do you consider it good practice in well regulated Auditors' departments of railroads to sell or destroy any papers whatever having reference to the business of a railroad Company.

(Objected to as irrelevant to the issue now on trial.)

A. I do. All papers relating to line accounts, after a certain time has elapsed.

Q. Are you certain that among the papers running into line accounts that you sold to this junk dealer there were not some vouchers for claims against the railroad Company?

(Objected to as immaterial.)

A. I am almost certain there was not—under the general instructions given.

Q. Has not some claim been made against the railroad Company—a claim of old date—which was paid, according to the recollection of the Treasurer, Mr. Willoughby, and did you not look for the voucher, and if so, did you find it?

(Objected to as having no relation to the present controversy.)

A. There may have been. I don't know.

Q. Try and remember, and answer my question.

A. I cannot remember any particular instance.

Q. Who was the junk dealer to whom you sold those papers?

A. I can give the name by referring to the record.

Q. Can you not give the name without referring to the record? If so, give it.

A. I think it was Locke & Son.

423 Q. Do you not know that it was Locke & Son?

A. I do not know. I speak from memory.

Q. Whereabouts is their junk shop?

(Objected to, as immaterial.)

A. I don't know.

Q. Have you ever been there?

A. I have not.

Q. Did you ever have an interview with the keeper of that junk shop; if so, where?

A. I never had an interview with the keeper of the junk shop.

Q. Did you ever see Mr. Locke, or his son; and did you ever have any transaction of any kind with them, or either of them; if so, when or where?

A. I may have seen them on the street; but I should not have known them from anybody else with whom I had no acquaintance.

Q. That is not a full answer to my question; please answer it fully.

A. I can make that more full. I had business with them.

Q. State what business you have had with them; when, and where.

(Objected to, as immaterial to this controversy.)

A. Business relating to the sale of refuse paper. I think once in 1875 and once in 1876, but I am unable to give the exact dates without referring to the records of my office. In Mobile. The business was transacted through one of my clerks.

Q. Did you ever personally see Mr. Locke or his son?

A. I have no recollection of it.

Q. What clerk was it through whom you transacted your business with Locke & Son? State his name and residence.

(Objected to, as immaterial, and tending to useless prolixity of examination.)

A. I do not recollect.

Q. Are you able to state whether he is now living?

A. He is, so far as I know.

Q. Do you not know he is now living?

A. I believe he is, and in my office.

Q. Do you not know his name?

A. I can't remember the name of the clerk I appointed to perform that specific duty.

Q. Did you appoint a clerk to perform that specific duty?

A. I did; one of the clerks in my office.

Q. Then I understand you say that no one was expressly appointed to perform that specific duty, but the clerk who did perform it was one of the regular staff of your office?

A. He was one of the regular clerks in my office.

Q. How many clerks have you in your office?

A. Nine.

Q. Are they all men? If not, state how many women clerks you have.

(Objected to, as immaterial.)

A. They are all men, so far as I know.

Q. One of those clerks transacted that business with Locke & Son; which one was it?

A. Speaking from memory, it was C. M. Shepard.

Q. Where is C. M. Shepard at this present time?

A. I don't know.

Q. Is he not in your office in Mobile?

A. I don't know.

Q. Is he not in the employ of the Mobile and Ohio Railroad Company?

A. He is.

Q. Is he not in the Auditor's department of the Mobile and Ohie Railroad Company?

A. He is employed in the Auditor's department.

Q. Have you not sent him away from Mobile on duty connected with your office, or for any other reason?

A. I have not.

Q. Has anybody done it, to your knowledge?

(Objected to, as immaterial.)

A. No one.

Q. Then you positively swear that you do not know where Mr. Shepard is?

A. I stated that I did not know where he was at that precise moment; nor do I.

Q. Do you know where he is?

A. I believe him to be in my office, but I do not know.

Q. State the nature of the transaction you had with Locke & Son, through the agency of this clerk.

A. I directed him to find some paper dealer who would purchase the refuse paper which had accumulated, and to obtain for it the best possible price, which he did, and proper vouchers were made for the purchase money and the amount paid into the treasury. The transaction was the sale of refuse paper. Speaking from memory, one hundred and thirty or forty dollars worth. Can't state exact amount without reference to records.

Q. Refresh your memory and report to the Master.

Q. Did you not order all station agents along the line of the railroad to send to you all the papers in their respective offices, and did they not do so, and were not those the refuse papers that you have spoken of?

(Question objected to, as having no relation to this controversy.)

A. I did; the order was generally complied with; and they formed a part of the papers which were sold.

Q. You stated yesterday something about remittances made to Duncan, Sherman & Co., or William Butler Duncan, in 1874; who called your attention to that subject, and requested you to look at the books with reference to said remittances?

A. I don't remember who called attention to it, or that it was called.

Q. And yet you did look at the books, with special reference to said remittances?

A. I believe Mr. DuPuy requested me to make an abstract of Duncan, Sherman & Co.'s general account for 1874. I cannot state positively.

Q. Is that the only answer you will make to the proceeding?

A. I am unable to understand that I can make a more definite answer.

Q. What indebtedness of the Mobile and Ohio Railroad Company to Duncan, Sherman & Co., or William Butler Duncan, is still unpaid?

A. I am unable to state positively, as the interest on the balance has not been computed for some time. The books will show.

Q. Who assisted you in making up the report of the affairs of the Company in 1875?

A. The clerks in my office.

Q. Who wrote the Report of Directors for year ending December 31, 1874?

A. I made the draft of it, from the books and records.

Q. Do you mean to say that you wrote this report, marked Exhibit No. 1, filed January 4, 1877?

A. I wrote the first draft.

Q Who wrote the second draft?

A. I do not know that a second draft was written.

Q. I read in this report the following:

"The holders of the unpaid coupons have, however, thus far withheld from hostile proceedings against the Company, thus manifesting confidence in the management, as also confidence that, with renewed prosperity, the net results of the business would be appropriated to their payment. It is imperative that this policy should be rigidly adhered to."

Who wrote that?

A. I wrote the first draft of that paragraph—not in those exact words. It may have been amended somewhat by the President and Vice President.

Q. Is there any statement in that report, or, as far as you know, in any published report or statement made by authority of the Mobile and Ohio Railroad Company, that the coupons of 1st May and 1st November, 1874, were not paid by the Company?

A. There is. It has been produced.

(Referring to the report of December 31, 1874.)

Q. You refer to this line in small type: "Coupons matured and unpaid, $735,415.32"?

A. Yes; in connection with the report and the signatures of the directors.

Q. And you also refer to the language I have embodied (in a preceding question), taken from the report?

A. I do. The report shows.

Q. Is there a single word in this report, in your judgment as Auditor of a railroad company, which does convey, or is calculated to convey, to bondholders of the Mobile and Ohio Railroad Company, that the coupon of May 1, 1874, and that of November 1, 1874, had not been paid by the Company?

(Objected to, as opinion of witness is immaterial—the report showing for itself.)

A. Speaking from an Auditor's standpoint, I should say there was.

Q. Was this report printed in the usual form; and if not, why not?

(Objected to, as that is a question for the President and Directors to answer, and not the Auditor.)

A. It was not. The annual reports had previously cost much more than the President was willing should be incurred. They printed it in cheap form.

Q. Were you present at the annual meeting of the stockholders of the Mobile and Ohio Railroad Company in 1875?

A. I was not.

Q. Are you able to state whether Mr. William Butler Duncan was present; or Mr. John J. Walker, Vice President, was present?

A. I am not.

Q. It appears by the report of 1875, which is in evidence, that the net revenue of the Company, for the year ending 31 December, 1874, was $707,865.04; what was the amount of interest on the first mortgage bonds for that year, and why was not the net revenue appropriated for the payment of that interest; what was done with that net revenue?

A. According to the books it was applied to the payment of pressing liabilities, as the statement of "cash resources" and the disposition thereof shows. The interest was about $740,000.

Q. The report speaks of the investment of the proceeds of the sales of lands in bonds to a certain extent; state, if you can, why those proceeds were not paid to the bondholders for their coupons.

(Objected to, as not affecting the rights of Alexander Duncan.)

A. By the terms of the deed of trust the proceeds of sales of lands must be applied to the retirement of first mortgage bonds.

And thereupon the reference was adjourned until to-morrow (Saturday) morning, January 6, 1877, at ten o'clock.

JAMES GILLETTE,
Special Master.

SATURDAY, JANUARY 6th, 1877.

The session of the Special Master opened pursuant to adjournment. Present, the Special Master and Counsel, as heretofore.

Cross-examination of C. A. Wetton continued, (by E. H. Grandin):

Q. State who are the officers of the Mobile and Ohio Railroad Company; who are the employees of the Receivers of the property of said Company now in the custody of this Court; name each one of them—I mean the heads of departments in the office at Mobile.

A. The officers of the Mobile and Ohio Railroad Company are: Wm. Butler Duncan, President; T. H. DuPuy, Vice President; A. L. Rives, General Manager; A. L. Willoughby, Treasurer; C. A. Wetton, Auditor; C. L. Fitch, General Freight Agent. The same heads of departments are employed by the Receivers.

Q. State the aggregate of salaries paid to these officers.

(Objected to, as irrelevant.)

A. I cannot state from memory.

Q. What is your own salary?

(Objected to, as irrelevant.)

A. Three thousand dollars per annum.

Q. What is the salary of T. Haskins DuPuy, Manager for Receivers?

(Same objection.)

A. Six thousand dollars per annum.

Q. Who fixed that salary?

A. I do not know.

429 Q. You have named some of the employees of Receivers in this case; but it seems to me you have forgotten to name one. I will refresh your memory. Is Mr. Moses Waring employed by the Receivers; if so, in what capacity, for what purpose, and what is his salary?

A. You asked me as to the heads of departments employed by Receivers; Mr. Moses Waring is not the head of a department.

Q. You are right. My question was limited to heads of departments. I now ask you to state whether or not Mr. Moses Waring has been employed by Receivers in this case; and if so, when, for what purpose, and what salary is being paid to him or has been agreed to be paid to him for the service he is performing.

(Objected to, as irrelevant, and not specific as to time.)

A. He was employed some time in 1875. He has charge of tax matters. Salary, three thousand dollars per annum.

Q. Do you consider—I ask you as an expert and an experienced auditor of railroads—that such an officer for such a purpose has been needed during the receivership in this case?

A. I do.

Q. Give me your reasons for that opinion.

A. I believe he has saved to the trust property a large amount of money.

Q. Who appointed him?

(Objected to. The question has no relation to the issue before the Court.)

A. I do not know.

Q. Who has the power of appointment of officers of the Mobile and Ohio Railroad Company, under the present *regime?*

(Objected to as irrelevant.)

A. No officers of the Mobile and Ohio Railroad Company are appointed under the present regime.

Q. What is the present regime of the Mobile and Ohio Railroad Company?

A. The railroad is managed by the Receivers, acting as officers of the United States Court.

Q. Do you not know that Mr. T. Haskins Du Puy, as general agent for Receivers, appointed Mr. Waring to that office?

A. I have no knowledge on the subject.

Q. The organization of the Company is kept up, is it not. The Directors hold meetings and make reports, do they not?

A. I believe it is. I have no knowledge as to meetings as to the Board of Directors, or whether they made reports of such meetings.

Q. Do you know who sent to me this morning a copy of the "annual report of the Mobile and Ohio Railroad Company, for the year ending December 31, 1875, purporting to have been printed in New York—Evening Post Steam Press, 208 Broadway, corner Fulton street, 1876."

(Objected to as irrelevant.)

A. I do not.

Q. Do you, or not, know who made those pencil marks on either side of the names of the Directors who are there named?

A. I do not.

Q. State whether or not, as a matter of fact, the organization of the Mobile and Ohio Railroad Company is not kept up, and whether in despite of the road being in the custody of the law, the Company does not make reports to its Stockholders.

A. I believe it is, and I believe it does.

Thereupon the session adjourned until Monday, January 8, 1877, at half past ten A. M.

JAMES GILLETTE,
Special Master.

MONDAY, JANUARY 8th, 1877.

The Reference met pursuant to adjournment. Present, the Special Master and Counsel of the days previous.

Cross-examination of C. A. Wetton, resumed by E. H. Grandin.

Q. State what officers are employed by the Mobile and Ohio Railroad Company, irrespective of Receivers appointed by the United States Court.

A. None.

431 *Re-direct examination* by George N. Stewart.

Q. You have produced a statement of the account of Duncan, Sherman & Co. for the year 1874, in which large sums appear to be debited and credited. Please state whether all those debits and credits were for money actually passing between the parties or whether a large portion of the debits and credits were charges and credits of sums properly chargeable, but where no money actually passed, such as cases of renewals of notes or drafts, debited and credited where the amounts were not paid or received in money. Please explain their nature.

A. A large portion of the debits and credits of the general account of Duncan, Sherman & Co., as shown by Exhibits No. 2 and No. 3, is for renewal of notes of the Mobile and Ohio Railroad Company. The old notes were charged by Duncan, Sherman & Co. as paid, as well as the renewal interest, in cases where it was paid and not added to the face of the old note. The new note would then be shown on the credit side of the account. The account is princicipally made up of such items. At that time but little money passed.

Question by E. H. Grandin:

Q. When a note was renewed, was or was not the back interest paid in cash by Duncan, Sherman & Co. on account of the Mobile and Ohio Railroad Company.

A. In some cases it was; and in others back interest was added to the face of the old note and a new note made therefor: For instance, July 13, 1874, Gallatin National Bank. See entry in debit statment.

C. A. WETTON.

Subscribed and sworn to before me this
8th day of January, 1877.
JAMES GILLETTE, Special Master.

EXHIBIT NO. 1,

TO TESTIMONY OF C. A. WETTON.

MOBILE AND OHIO RAILROAD CO.

REPORT AND ACCOUNTS FOR THE YEAR ENDING DECEMBER 31st, 1874.

Presented at the Twenty-seventh Annual Meeting of the Stockholders, held in the City of Mobile, April 20, 1875.

REPORT OF THE DIRECTORS.

The following statements exhibit the operations of the Company, for the year ending 31st December, 1874.

Revenue from Freight	$1,838,923 52
" " Passengers	429,630 86
" " Mails	61,727 40
" " Express	60,737 50
	$2,391,019 28
Expenses	1,683,154 24
Net Revenue	$ 707,865 04

As per comparative statement hereunto attached, it will be seen that while the decrease in the revenue has been equal to 14.6 per centum the decrease in the working expenses has been equal to 16.8 per centum as against the preceding year.

The decrease in the business of the road as compared with the previous year, of $410,108 10, is in a measure the result of the general depression of business throughout the whole country, which has been particularly severe upon all Southern enterprises. Yet, notwithstanding all this, it is believed that, had the extension of your line from Columbus to Cairo been made in time to prevent the construction of a direct opposition line from the last named place to Jackson, your revenues for the year would have shown very favorably, as compared with any preceding year's results.

The road bed and equipment have been maintained in fair condition—(see statement of A. L. Rives, General Manager and Chief Engineer). The expenditures have been limited to the actual necessities, and the strictest economy enjoined in every department of the Company's service.

Since the 1st of January, 1875, the system of paying the employees of the Company in 30 day warrants, which the employee's wants compelled him to sell at a discount, has been abandoned, and your labor is now paid promptly in cash; the current supplies, also, are now purchased, as far as possible, for cash; both of which changes will result to the great advantage and economy of the service.

Further efforts are now being matured for diminishing the expenses and increasing the receipts.

The general balance sheet of the Company is submitted herewith. Owing to the complicated method of presenting the statements of former years, it is difficult to make a reliable comparison with that of 1873. Your attention is, however, called to the following changes:

The cost of road, etc., shows an increase of $823,703. This is caused by charging this account with the balances to the debit of the several branches, and also with the balance to the debit of the so called "Improvement Account." These branches are now virtually completed and their several construction accounts closed. All outlays on them are now charged to operating expenses.

The proceeds of the sales of lands having been invested in bonds, and the said bonds cancelled, in accordance with its trust, the Donated Lands' account shows a reduction of $93,266 09 in the estimated value.

This department is now under the control and management of Mr. Murdock, the late President of the Company, who reports that the prospect of sales in the future is most excellent: during 1874 there were no sales of any consequence. These lands represent 1,192,464 acres, exclusive of the other small parcels.

Materials on hand show a decrease in value of $176,745 41 as against the previous year, which is to be accounted for by the amount of old material sold as stated, the amount used in the construction of the Oktibbeha branch over and above the amount charged against the construction of the said branch, the purchase of new supplies at lower rates than formerly, and by the shrinkage in values since 1873.

The Funded Debt with the matured and unpaid coupons, and the Floating Debt, as per Exhibits herewith, represent every ascertained liability of the Company up to and including the interest which matured January 1, 1875. Your attention is called to the statement of the cash resources of the Company during 1874, and their disposition, as per Exhibit, also attached. Had it been possible to foresee the actual course of the Company's business, so different from the promise of the later months of 1874, the policy of your Directors would have been more strictly followed at an earlier date. The holders of the unpaid coupons, have, however, thus far withheld from hostile proceedings against the Company, thus manifesting confidence in the management as also confidence that with renewed prosperity the net results of the business would be appropriated to their payment. It is imperative that this policy should be rigidly adhered to.

The foregoing, with the accompanying exhibits, is believed to be a true and correct statement of the financial condition of the Company on the 1st day of January, 1875, and of its operations during the preceding year.

GENERAL BALANCE SHEET.

ASSETS.

Cost of road and equipment Main Line and Branches....		$18,126,865 37
Donated Lands....................................		1,702,887 02
Real Estate, Town Lots and General Office Building....		97,987 91
Company's 1st Mortgage Bonds................	$ 55,000	
" 2d " "	157,500	
" Convertible "	501,050	
Sundry Town and County Bonds................	153,500	
		867,050 00
Company's Stock....................................		351,700 00
U. S. Quartermaster's Department, Transportation Dues..		174,847 41
U. S. Postoffice Department....................................		16,356 49
Uncollected Earnings....................................		121,243 57
Materials on hand....................................		316,333 41
Individual Balances....................................		7,108 53
Railroad Balances....................................		18,372 03
Treasurer's Cash....................................		27,263 24
Total....................................		$21,827,509 98

LIABILITIES.

Capital Stock....................................		$ 5,320,600 00
1st Mortgage Stg. Bonds....................	$5,686 000 00	
" " 10 Yr. Int. Bonds............	842,100 00	
" " Int. Bonds....................	35,200 00	
" " Stg. Int. Bonds...	769,920 00	
" " Funded Int. Bonds............	647,000 00	
" " Tennessee Substitution Bonds.	1,668,000 00	
" " Coupons matured and unpaid.	735,415 32	
		10,383,635 32
Second Mortgage Bonds:		
Series L	$ 304,158 47	
" "R," "S," "T," "U,"............	893,500 00	
" "Rr," "Ss," "Uu,"............	256,200 00	
		1,453,858 47
Gainesville Branch Bonds....................................		53,000 00
Convertible Bonds....................................		977,550 00
Floating Debt....................................		1,166,492 19
Profit and Loss....................................		2,472,374 00
Total....................................		$21,827,509 98

By order of the Board:

A. L. WILLOUGHBY, Secretary.

Directors 1874–5.—Moses Waring, David Utley, A. Murdock, W. D. Dunn, W. H. Pratt, Henry Hall, A. J. Gillespie, R. K. Dow, W. H. Hays, W. P. Halliday, A. F. Elliot. W. B. Duncan, President; J. J. Walker, Vice President.

Officers of the Company, Mobile, Alabama.—A. L. Willoughby, Secretary and Treasurer; A. L. Rives, General Manager; C. A. Wetton, Auditor; A. Murdock, Commissioner of Lands and Emigration.

DETAILED STATEMENT OF THE FUNDED DEBT OF THE MOBILE AND OHIO RAILROAD COMPANY.

Date of Issue.	Class of Bonds.	Description of Bond	Value of Bond.	When Due.	Authorized Issue.	Issued.	Redeemed.	Outstanding.	Rate of Interest.	When Due.	Where Payable.
1 Nov. 1853.	1st Mortgage	Sterling 3132 non-Certificate	£225 Sterling each	1 Nov. 1883	$6,000,000	....	$278,000 00	$5,686,000 00	£13 10 or $65 gold	May & Nov.	London and New York.
1 " "	"	Sterling 2554 Certificate............	" " "	1 " "		$5,976,000 00	12,000 00		8 pr c cy	" "	Mobile.
1 " 1866	"	10 year interest O. P. Q............	1,000 500 200	1 " 1876	1,000,000	....	2,300 00	842,100 00	"	" "	"
1 " 1868	"	Interest arrearage F 1 to F 4.......	1,000 500 300 100	1 " 1883		1,532,200 00	100 00	35,200 00	"	" "	"
1 " "	"	Funded interest F and F 1.........	1,000 500	1 " "		....	5,500 00	647,000 00	"	" "	"
1 " 1867	"	Sterling Interest B and C...........	£200 Sterling each 100 " "	1 Nov. "	769,920	769,920 00	....	769,920 00	6 pr c. gd,	" "	London.
1 July, 1871.	"	Tennessee substitution	1,000 Gd. or £205 ea.	1 July, 1901	1,685,000	1,685,000 00	17,000 00	1,668,000 00	7 " "	Jan. & July.	London and New York.
		1st Mortgage......	....	....	$10,054,920	9,963.120 00	314,900 00	9,648,220 00			
1 Mar. 1872.	2d Mortgage.	Liquidation or 4th issue L..........	Irregular amounts.	1 Mar. 1882	1,500,000	62,204 42	....	304,158 47	8 per c.	March.	Mobile.
1 " 1873.	"	Liquidation or 4th issue L	do	1 " 1883		241,954 05			"	"	"
1 " 1867.	"	Series R, S, T and U	1,000 500 300 100	1 " 1877		909,400 00	15,900 00	893,500 00	"	"	"
1 " 1871.	"	Series Rr, Ss and Uu.............	1,000 500 100	1 " "		256,200 00	....	256 200 00	"	"	"
1 Dec. 1873.	"	Convertible 8 per cent....	1,000	1 Dec. 1883	1,000,000	1,000,000 00	22,450 00	977,550 00	"	Mar. & Ju Sep. & Dec.	New York. "
1 Nov. 1870.	"	Gainesville Branch	1,000	1 Nov. 1880	53,000	53,000 00	....	53,000 00	"	May & Nov.	"
		1st & 2d Mortgage.	....	....	$12,607,920	$12,485,878 47	$353,250 00	$12,132,628 47			

NOTE.—Of the above issues there are belonging to the Company $713,550, which are, however, pledged to secure other obligations.

A new consolidated mortgage for $15,000,000 was executed January 1st, 1874, authorizing the issue of 15,000 seven per cent. gold bonds, due 1904, with semi-annual coupons for $35, or £7, 3s, 6d each, payable 1st January and July, in New York or London, at option of holder. $12,500,000 is in the hands of the Trustees, and of the balance a small amount only have been pledged.

CASH RESOURCES

Of the Company, for the year 1874, and the disposition thereof, have been as follows—

Gross earnings	$2,391,019 28
Uncollected earnings, as per Statement for 1873	89,874 19
Realized from sale of County and Convertible Bonds	93,850 00
Interest received on account of Bonds, the property of the Company (charged in Interest paid)	69,994 10
Realized from sale of Old Material, during 1874	33,996 00
Cash in Bank, December 31st, 1873	25,500 22
	$2,704,233 79
Less uncollected Earnings, including Postal Service, as per Statement of 1874	137,600 06
	$2,566,633 73

Operating Expenses		$1,683,154 24
Interest Coupons, matured in 1872 and 1873, not charged or mentioned in Report of 1873		139,296 35
Interest Coupons, matured and paid in 1874		197,970 70
Interest Paid to secure Renewal of Floating Debt, and to prevent proceedings against the Company on the part of holders		118,346 97
Auditor's Warrants to Jan. 1, 1874	$156,080 15	
" " " 1875	172,447 96	
Increase	$ 16,367 81	
Pay Roll Warrants, Jan. 1, 1874	$129,272 77	
" " " 1875	62,302 65	
Decrease	$ 66,970 12	
Deduct increase in Auditor's Warrants	16,367 81	
		50,602 31
Paid St. Louis and I. M. RR. Co. old balance due them for advance charges		12,286 15
Sundry amounts paid in settlement of old Judgments, Cattle Claims, &c		10,764 92
Paid on account of Oktibbeha Branch		45,000 00
Paid on account of Floating Debt, to prevent sacrifice of Securities belonging to Company		281,948 85
Cash in Bank		27,263 24
		$2,566,633 73

COMPARATIVE STATEMENT

of Revenue and Expenses of the Mobile and Ohio Railroad, Including Aberdeen, Columbus, Oktibbeha and Gainesville Branch Roads.

REVENUE.

	Passengers.	Freight.	Mails.	Express.	TOTAL.
For 1873..	$596,605 14	$2,074,794 84	$61,727 40	$68,000 00	$2,801,127 38
For 1874..	429,630 86	1,838,923 52	61,727 40	60,737 50	2,391,019 28
Increase...	....	....	....	....	....
Decrease	$166,974 28	$ 235,871 32	......	$ 7,262 50	$ 410,108 10

EXPENSES.

	Repairs of Roadbed and Railway.	Conducting Transportation.	Repairs of Machinery	General Expenses	TOTAL.
For 1873..	$529,347 85	$865,378 47	$552,037 21	$77,207 04	$2,023,970 57
For 1874..	473,632 43	731,490 87	404,015 77	74,015 17	1,683,154 24
Increase..	....	....	....	....	....
Decrease	$55,715 42	$133,887 60	$148,021 44	$ 3,191 87	$ 340,816 33

DETAILED STATEMENT

of the Floating Debt of the Mobile and Ohio Railroad Company to December 31st, 1874.

Auditor's Warrants	$ 172,447 96
Pay Roll Warrants prior to December 1	62,303 65
" For December, 1874	67,791 15
Overdraft	29,072 88
*Bills Payable	834,876 55
Total	$1,166,492 19

*Note.—Consisting almost entirely of renewals of liablities which existed antecedent to the present administration.

REVENUE AND OPERATING EXPENSES FOR 1874.

	Freight.	Passengers	Mails.	Express.	TOTAL.
January	$ 230,145 78	$ 53,237 76	$ 5,143 95	$ 5,400 00	$ 293,927 49
February	161,937 76	41,466 19	5,143 95	4,800 00	213,347 90
March	123,712 04	40,712 18	5,143 95	5,400 00	174,968 17
April	86,885 54	37,724 85	5,143 95	5,200 00	134,954 34
May	105,199 71	30,923 55	5,143 95	5,400 00	146,667 21
June	81,420 35	28,642 23	5,143 95	5,200 00	120,406 53
July	77,615 99	31,087 43	5,143 95	5,200 00	119,047 37
August	78,857 56	27,437 02	5,143 95	5,200 00	116,638 53
September	117,315 12	27,543 05	5,143 95	5,200 00	155,202 12
October	197,928 56	34,134 50	5,143 95	5,400 00	242,607 01
November	244,891 80	32,608 95	5,143 95	5,200 00	287,844 70
December	333,013 31	44,113 15	5,143 95	3,137 50	385,407 91
Totals	$1,838,923 52	$429,630 86	$61,727 40	$60,737 50	$2,391,019 28

Expenses of Maintaining the Road—			
Repairs of roadbed and railway, excepting cost of iron	$266,738 41		
Cost of iron used in repairs	127,848 97		
Repairs of Buildings	11,231 13		
.. Wood and Water Stations	19,504 48		
.. Bridges	45,847 84		
.. Telegraph	2,401 60	$ 473,632 43	
Expenses of Repairs of Machinery—			
Repairs of Engines and Tenders	130,050 56		
.. Passenger and Baggage Cars	64,546 31		
.. Freight Cars	96,790 20		
.. Tools and Machinery in Shops	22,763 68		
Inspection and cleaning Engines	11,310 43		
Incidental Expenses, Fuel &c	28,977 59		
Master Mechanics, Clerks, Round Houses, &c.	49,577 00	401,015 77	
Expenses of Operating the Road—			
Agents, Clerks and Telegraph Operators	114,030 68		
Labor, loading and unloading Freight	50,021 17		
Office Expenses, Stationery, &c	3,779 22		
Engineers and Firemen	101,010 60		
Conductors, Baggagemen and Brakemen	94,345 70		
Fuel, cost and labor of preparing for use	178,923 60		
Oil and Waste for Engines	13,999 35		
.. .. Freight Cars	6,406 01		
.. .. Passenger Cars	720 46		
Porters, Watchmen and Switchmen	17,698 75		
Wood and Water Stations and Trains	19,258 05		
Stationery and Printing	4,078 35		
Advertising and Foreign Agencies	25,939 65		
Hire of Cars	8,812 30		
Superintendents and Clerks	18,800 54		
Lights and Fuel for Stations and Trains	8,834 62		
Contingencies	18,460 93		
Loss and Damage, Goods and Baggage	35,917 34		
Damage to Property, including damages by fire and cattle killed on road	9,579 90		
Damages for injuries to persons	873 65		
General Office incidental expenses	8,121 75		
Salaries General Office	30,571 82		
Legal Expenses	14,113 25		
Insurance	5,013 14		
Taxes	16,195 21		
		805,506 04	$1,683,154 24
			$ 707,865 04

WORKING STOCK OF SUPPLIES.

ROADWAY DEPARTMENT.

Wood and Coal—		
Alabama Division	$13,590 00	
Mississippi Division	25,317 69	
Tennessee and Kentucky Division	21,759 97—	$ 60,667 66
Material and Tools—		
Alabama Division	35,828 84	
•Mississippi Division	31,474 83	
Tennessee and Kentucky Division	9,600 42—	76,904 09
Material—Whistler Shops	138,376 24	
Macon Shops	12,340 50	
Jackson Shops	27,374 84—	178,091 58
Stationery		670 08
		$316,333 41

C. A. WETTON, Auditor.

REPORT OF GENERAL MANAGER.

The length of Road operated during the year is as follows—	Miles.
Main Stem—Mobile to Columbus, Ky	472
Gainesville Branch—Narkeeta to Gainesville	21
Columbus Branch—Artesia to Columbus, Miss	14
*Oktibbeha Branch—Artesia to Starkesville	11
Aberdeen Branch—Muldon to Aberdeen	9
Total length of Road operated (Miles)	527

EARNINGS PER MILE OF ROAD.

From Passengers	$ 815 23	
From Mails	117 13	
From Express	115 25	
From Freight	3,489 42	
Total earnings per Mile of Road		— $4,537 03
Passengers moved one mile South	4,702,721	
Passengers moved one mile North	4,867,565	
Total Passengers moved one mile		— 9,570,286
Freight—Tons moved one mile South	38,143,335	
Freight—Tons moved one mile North	13,957,123	
Total Tons of Freight moved one mile		— 52,100,458
Cost per mile Repairing—		
Roadway (exclusive of Bridges and Trestles)	$811 74	
Bridges and Trestles	86 96	
Total cost per mile repairing Roadway		— $898 70

The expense of repairing Roadway, as compared with the preceding year, has decreased $55,715.42, although 27½ miles of rails and 260,789 crossties were laid—both increased amounts.

The general condition of the track compares favorably with any antecedent period.

ROLLING STOCK.

Locomotives		93
Cars—Passenger, 1st Class	8	
Passenger, 2d Class	22	
Company's Special	1	
Baggage and Mail	11	
Express	6	
Total Cars for Passenger Trains		— 48
Cars—Freight, Box Cars	671	
Platform	242	
Stock	36	
Total Freight Cars		—949

The mileage made is as follows—

	S. Div.	Mid. Div.	N. Div.	Amounts.
Passenger Trains	164,871	73,200	181,367	419,438
Freight Trains	242,048¼	123,011	191,922	556,981¼
Switching Trains	54,683½	5,338	34,765	94,786½
Material Trains	57,532½	41,751	47,074	146,357½
Branch Trains	15,332	38,994		54,326
Special Trains	19,500¾	1,337		20,837¾
Totals	553,968	283,631	455,128	
Grand Total (miles)				1,292,727

Cost of Motive Power per mile run of Engines, is—

	S. Div.	Mid. Div.	N. Div.
Repairs of Engines	0.111	0.077	0.103
Fuel	0.103	0.095	0.131
Oil, Tallow, Waste	0.008	0.010	0.010
Engineers and Firemen	0.070	0.084	0.079
Cleaning	0.005	0.010	0.010
Totals	0.297	0.276	0.333

The condition of the Rolling Stock has not depreciated, although there has been a decrease in maintenance of $148,021.44.

The expenses of conducting Transportation have been reduced $133,887.60.

IMPROVEMENTS.

An eighteen-stall Round House at Whistler, and the Oktibbeha Branch, eleven miles in length, have been completed.

A. L. RIVES, General Manager.

APRIL 15, 1875.

Filed as Exhibit No. 1 to testimony of C. A. Wetton, January 4th, 1877.

JAMES GILLETTE, Special Master.

EXHIBIT NO. 2,
TO TESTIMONY OF C. A. WETTON.

MOBILE AND OHIO RAILROAD,
To DUNCAN, SHERMAN & CO., Dr.
Post-office Address, New York.

1874.		To Balance, April 30, 1874	$ 41,104 80
April	30	Paid Note Tanner, Walker & McAnemey	1,638 15
		·· ·· Gallatin Nat. Bank	6,400 00
		·· ·· Walsh, Smith & Co	6,400 00
		·· Dft. Merchants' Nat. Bank	16,800 00
		·· ·· Russell Sage	12,800 00
		·· Note G. T. Bonner & Co	10,000 00
		·· ·· W. H. Hays & Co	40,000 00
		·· ·· G. T. Bonner& Co	133 33
		·· ·· W. H. Hays & Co	542 27
		·· ·· R. Sage	210 56
May	2	·· Dft. Bank of Mobile	10,000 00
	7	·· ·· Bank of Mobile	5,000 00
	30	·· Note R. Sage	30,000 00
		·· Interest on note	1,230 00
		·· Interest on note	488 25
		·· Note Barnham, Parry & Williams	7,500 00
		·· Protest fees	1 34
		·· Charges on New Stock	150 00
		·· Expenses, April and May	370 12
		·· Note Central Nat. Bank	960 00
		·· Note	9,500 00
		·· Drafts—Sundry	24,300 00
		·· Due Bill	700 00
		·· Diff. on 10 £ Coupons, charged Dec 3, 1873	25 30
		·· 6 Coupons of May, 1873, @ $40 00	240 00
		·· 8 Coupons of Nov., 1873, @ 40 00	320 00
		·· 3 Coupons of Nov., 1873, @ 8 00	24 00
		·· 1 Coupon of Nov., 1873, @ 8 00	8 00
		·· 16 Coupons of May and November, 1867-1873 @ $20 00	280 00
		·· 14 Coupons of May and November, 1868-1873 @ $32 00 Gold (112½)	468 00
		·· Drafts	650 00
		·· Interest	294 70
June	1	·· Interest on Conver. Bonds	19,293 50
	2	·· Dft. Bank of Mobile	5,500 00
	30	·· Interest on Notes	860 09
		·· Discount on Notes	777 99
		·· Express, charges	8 50
		·· Interest on Notes	139 92
		·· Notes Perkins, L. W. and Post	25,477 08
		·· · R. Sage	20,000 00
		·· ·· G. A. Smith	34,926 33
		·· ·· Barnham, Parry & Williams	7,500 00
		·· Interest on Notes	725 00
		·· ·· on Renewal Notes	3,178 63
		·· Gold Payments on Notes	1,253 37
		Amount carried forward	$348,179 24

[EXHIBIT No. 2, &c.—Continued.]

MOBILE AND OHIO RAILROAD,

To DUNCAN, SHERMAN & CO., Dr.

Post-office Address, New York.

1874.				
			Amount brought forward	$348,179 24
June	30	Paid	Commissions on General Account	836 23
		..	Interest	672 77
		..	Express charges, Telegrams, &c	42 56
		..	May and November, 1873, Coupons	365 00
		..	Sundry Coupons, due November, 1873	5,000 00
July	2	..	Draft Bank of Mobile	6,000 00
	13	..	Note Gallatin Nat. Bank	38.000 00
		..	Interest on same	981 66
	25	..	Note Barnham, Parry & Williams	8,000 00
		..	Interest on same	482 00
		..	Express charges	2 75
		..	Travelling expenses A. Murdock	132 00
		..	Acct. Salary S. R. Hamill	500 00
		..	Notes held by Barnham, Parry & Williams	28,778 28
		..	Interest on Renewals	819 24
		..	Cost of Gold on above	611 54
	31	..	Expenses of July, Telegrams, Stationery, Cl'k Hire, Express, Postage, &c	151 77
Aug.	3	..	Note Grant & Son	1,000 00
		..	.. Russell Sage	11,520 00
		..	Interest on Renewal	127 00
	17	..	Note Grant & Son	1,000 00
	18	..	Russell Sage Note	18,000 00
		..	Interest	198 45
		..	Interest	194 85
	29	..	Note R. Sage	27,000 00
		..	Interest	297 67
Sept.	14	..	Note Grant & Son	876 32
		..	Interest on Convertible Bonds	19,502 50
	26	..	Note M. Taylor	7,680 00
		..	Interest	94 80
	30	..	Expenses, Consul, Postage, Express	29 10
		..	A. Murdock, Sundry amounts	491 03
		..	Interest on General Account	1,449 44
		..	Commissions on General Account	1,242 38
		..	Interest	680 77
		..	Commissions on Bal. Accts	583 51
Oct.	10	..	Note R. Sage	10,368 00
		..	Interest	114 32
		..	Cablegrams	1,310 67
	19	..	A. Murdock, Sterling Bill	536 50
		..	G. N. Stewart	250 00
		..	Gold Note R. Sage	16,200 00
		..	Interest	358 47
	31	..	Note R. Sage	24,300 00
		..	.. Gallatin Nat. Bank	38,000 00
			Amount carried forward	$622,960 82

[EXHIBIT No. 2 &c.—Continued.]

MOBILE AND OHIO RAILROAD,

To DUNCAN, SHERMAN & CO., Dr.

Post-office Address, New York.

1874.			Amount brought forward	$622,960	82
Oct.	31	Paid	Note A. Iselin & Co.	47,700	00
		··	Interest on Notes above	2,189	52
Nov.	26	··	Interest on Account	117	06
		··	Commissions	218	39
		··	Cablegram	38	00
		··	Commissions	54	65
		··	Cablegram	13	20
		··	Cost of Gold	231	50
		··	Cablegram	56	30
		··	A. Murdock	54	75
		··	Cablegram	53	95
		··	Coupons Nov., 1873, First Mortgage Bonds, {£352.10.4 224.19.9} Income tax @ 488½—111½	3,128	61
		··	Int. on Coupons from London, £1.5.1, charges £1.3.3@109¾	10	32
		··	Bal. Coupon Acc't Jan. 1874, £115.9.4@490½ and 109¾	627	81
		··	Chgs on 411 Cou Lon. to N.Y. £2.1.5, ins 5.7.6	40	03
		··	Bal. of Acc't £87.15 paid in London for Coupons Nov., 1873, -438.65—113	495	67
		··	1 Nov., 1869, Coupons, $32.50@113	36	72
		··	3 July, 1873, ·· 35.00@112½	118	12
		··	1 ·· ·· 35.00@111½	39	02
		··	1 ·· ·· 35.00@109¾	38	41
		··	Coup's p'd Condon Bros., due 1868-'69-'70-'73.	2,256	00
		··	Mailing Coupons	4	44
Dec.	9	··	Note R. Sage	9,331	20
		··	Interest	746	50
		··	Union Bank—Salary	500	00
		··	Note Moses Taylor	7,680	00
		··	Interest	619	43
	14	··	Interest	5	12
		··	Note John Reynolds	2,400	00
		··	Interest	193	60
	19	··	Nat. Bank Note Co.—Printing Bonds	1,750	89
		··	Travelling Expenses	291	50
		··	Interest	218	66
		··	Interest	1,314	31
	31	··	S. R. Hamill—Salary and Expenses	700	00
		··	Cablegrams	80	37
		··	Sundry payments A. Murdock	294	06
		··	Telegrams and Postage	16	17
		··	1 Coupon, 1st July, 1873, 35.00, Gold 110	38	50
		··	1 ·· ·· ·· 35.00, Gold 110½	38	67
		··	Interest on 3 Demand Notes	10,000	00
		··	Springfield Iron Co.—Interest	485	76
		··	Interest on General Acc't	1,182	52
		··	Transfer of Acceptances	32,837	63
		··	·· to Gen. Acc't 3 Dem. Notes@$50,000	150,000	00
			Amount carried forward	$901,208	18

[EXHIBIT No. 2, &c.—Concluded.]

MOBILE AND OHIO RAILROAD,

To DUNCAN, SHERMAN & CO., Dr.

Post-office Address, New York.

1874.			
		Amount brought forward	$901,208 18
Dec. 31	Paid	Commissions on General Acc't	846 51
	··	Int. on Convertible Bonds—Adv. Dec. 31	19,535 50
1875.			
Jan. 22	··	Int. on Renewal Note Gallatin Nat. Bank	1,366 66
	··	Int. on Renewal Note Perkins Land Post	4,079 15
	··	Protest Fees	5 00
			$ 927,041 00

I Certify that the Above is Correct:

A. T. SHEPHERD, Accountant.

ACCOUNTING DEP'T M. AND O. R. R.,
December 30, 1876.

C. A. WETTON, Auditor.

Filed as Exhibit No. 2 to testimony of C. A. Wetton.

JAMES GILLETTE,

Special Master.

EXHIBIT NO. 3,

TO TESTIMONY OF C. A. WETTON.

DUNCAN, SHERMAN & CO.,

To the MOBILE AND OHIO RAILROAD, Dr.

Postoffice Address, New York.

1874.

April 30	Paid acceptance of Walsh, Smith, Crawford & Co., used by D. Sand & Co., in part settlement of note R. Sage	$11,520 00
	Sales 15,000 Convertible Bonds to G. T. Bonner & Co.-80 per cent	12,000 00
	" 50,000 " " W. H. Hays & Co.-80 per cent	40,000 00
	" 15,000 " " Dutley & Co.-80 per cent	12,000 00
	" 2,000 " " S. T. Phelps-80 per cent	1,600 00
	Interest on Convertible Bonds sold Bonner & Co	200 00
	" " " " W. H. Hays & Co	677 77
	" " " " Dutley & Co	200 00
	" " " " S. T. Phelps	26 66
	" Collected and applied to part payment note Merchants' Bank, New York	2,960 00
	" " on $2,960 due the Company	29 35
May 30	Renewal note with Russell Sage	27,000 00
	Amount handed them by J. J. Walker	10,000 00
	Balance on 50 shares forfeited stock (in name of J. J. Walker) to M. F. Van Vranhous	600 00
	Sale of 750 Convertible Bonds—G. W. Bard	750 00
	" 25,000 " " —Halliday-80 per cent	20,000 00
	Amount of int. reported by D. S. & Co., and placed to cr. of Co.	12,226 00
	Interest on 750 Convertible Bonds sold G. W. Bard	7 48
June 30	Notes remitted them in favor Barnham, Parry & Williams—No. 1211 for $8,000, No. 1212 for $8,000, and No. 1213 for $8,500	24,500 00
	Notes issued in place of three retired notes held by Perkins, Livingston & Post—1144 $5,062, 1145 $16,044 67 gold	21,106 67
	Note issued in place of note held by Russell Sage, new note, No. 1117, due August 15, 1874	18,000 00
	Note issued and due December 16, 1874, new note, No. 1118, to Giliad A. Smith	10,850 73
	Note issued and due January 16, 1875, new note, No. 1119, to Giliad A. Smith	10,911 86
	Note issued and due February 16, 1875, new note, No. 1120, to Giliad A. Smith	10,972 98
	Interest on Company's 8 per cent Convertible Bonds, account rendered, J. J. Walker	10,161 00
	Interest on Company's 8 per cent Convertible Bonds, account rendered, R. Handcock	360 00
July 13	Renewal note in place of note held by Gallatin National Bank	38,000 00
16	Amount collected of S. R. Hamill	13,001 53
29	Renewal of note to Barnham, Parry & Williams	8,000 00
31	Rent notes issued by them, No. 1209 and No. 1210, $11,920 93 each	23,841 86
Aug. 3	Renewal to Russell Sage	10,368 00
18	" " " gold note	16,200 00
29	" " "	24,300 00
Sept. 26	" Moses Taylor	7,680 00
30	Interest on Company's Convertible Bonds, $10,521, less interest etc., etc., $500	10,021 72
Oct. 10	Renewal note issued Russell Sage	9,331 20
12-19	Warrants—Nos. 4307, 4311, 4314, 4315, 4335, 4339, 4341 for $2,500 each, remitted	17,500 00
19	Amount received from S. R. Hamill—Postal Service	12,860 92
20-26	Warrants—Nos. 4346, 4347, 4349, 4350, 4363, 4374 for $2,500 each, remitted	15,000 00
26	Renewal note issued Russell Sage	14,580 00
27-30	Warrants—No. 4377 for $2,500, No. 4380 for $4,000, No. 4382 for $6,000, No. 4383 for $5,000, remitted	17,500 00
	Amount carried forward	$496,845 73

[EXHIBIT No. 3, &c.—Continued.]

DUNCAN, SHERMAN & CO.,

To MOBILE AND OHIO RAILROAD, Dr.

Postoffice Address, New York.

1874.		
	Amount brought forward	$496,845 73
Oct. 31	Renewal note Gallatin National Bank, No. 1129	50,000 00
	" " A. Iselin & Co., No. 1130	47,700 00
	Interest note Russell Sage	18 90
Oct. 31 to Nov. 23	Warrants deposited Bank of Mobile—	
	No. 4394 for 2,000, No. 4404 for 1,620 20	3,620 20
	No. 4408 for 1,004, No. 4418 for 16,257 44	17,261 94
	No. 4440 for 25,003 31, 4482 for 2,550 85	27,554 16
	Warrants deposited Bank of Mobile	13,152 53
	" " " "	19,395 00
Nov. 26	Interest on Tennessee Substitution Bonds	10,832 33
26–30	Warrants deposited Bank of Mobile—No. 4495, 13,026 36, No. 4503, 5,238 79, 4511, 6,873 87	25,144 02
Dec. 1–8	Warrants deposited Bank of Mobile— No. 4518, 3,000, 4569, 7,916 84	10,916 84
9	Note Russell Sage, renewed	9,331 20
	" Moses Taylor, "	7,680 00
10–12	Warrants—Cr. No. 4578, 12,460 48, No. 4584, 9,036 43, 4593, 5,035 89	26,532 80
14	Note issued John Reynolds	2,400 00
16–28	Warrants deposited to credit—	
	No. 4625 11,000, No. 4638 7,500, No. 4651 10,600	29,100 00
	No, 4658 5,000, No. 4666 3,000 No. 4669 2,500	10,500 00
	No. 4675 12,852 51, No. 4677 3,970, No. 4682 10,000	26,822 51
30-31	Warrants deposited to credit— No. 4691 20,000, 4703 7,000	27,000 00
	Proceeds of Note favor G. A. Leete 20,000 00—less discount 543 56	19,456 44
31	Interest collected on Company's Bonds	10,021 00
	Part payment Second Mortgage interest	568 00
	Exchange on sundry drafts	663 71
1875.		
Jan. 2	Cash deposited Bank of Moblie	10,000 00
4	" " " "	3,000 00
5	" " " "	4,500 00
		$910,017 31

I certify that the above is correct;

A. T. SHEPHERD, Accountant.

Accounting Dept. M. and O. R. R.
December 30, 1876.

C. A. WETTON, Auditor.

Filed as Exhibit No. 3, to testimony of C. A. Wetton, January 4, 1877.

JAMES GILLETTE,
Special Master.

TESTIMONY OF MOSES WARING.

Moses Waring, a witness called by George N. Stewart, Solicitor for Alexander Duncan, and sworn and examined, says:

Q. Please state whether you are a Director of the Mobile and Ohio Railroad Company, and were so in 1874.

A. I was elected a Director to fill a vacancy occasioned by the resignation of Mr. Humphries, of Mississippi, January 27, 1874, and was appointed on the Finance Committee February 10, 1874.

Q. Please state whether you have full knowledge of the financial transactions of the Company from the time of your election and appointment on said Finance Committee.

A. I have a general knowledge of the finances, being a Director and every day in consultation.

Q. Have you not, yourself, as a member of the Finance Committee, transacted a great part of the financial business of the Company ?

A. I have transacted a good deal of the business of that kind.

Q. Please state whether the Company paid the coupons for interest on the first mortgage bonds falling due in May and November, 1874, or any part of them ?

A. They did not pay any interest 1st May, 1874—the Company did not—on the sterling bonds. They did not pay in November either.

Q. Has the Company paid any of said Coupons since ?

A. They have not paid any since. They stopped payment in May 1874.

Q. Was any money borrowed by the Company from any one to pay them with ?

A. No money was borrowed that I know anything about. They were paid, but not by the Company. There was no arrangement made or any security given for any money.

Q. Were any of said coupons paid or any money furnished by the Company to any one for that purpose?

A. No.

Q. Please state whether or not in May and November, 1874, or at either time, the Company had moneys sufficient or were able to pay said coupons?

A. They did not have the money and were unable to pay.

Q. The subject of renewing the floating debt of the Company by you has been mentioned; please state what transactions were had by you in that respect.

A. I took charge of the floating debt paper after I was elected; that is, all that was payable in Mobile. All that was maturing here in Mobile I attended to and arranged for.

Q. Was there a large amount of floating debt paper falling due in 1874?

A. Yes; there was a large amount.

Q. Please state what was done with it; was it paid or renewed?

A. It was renewed, at short intervals, by payment of a small portion of the principal and the interest from January on to the spring of 1874; in the spring of 1874 the paper was then renewed until the following fall, by payment of interest, and, in some cases, a curtailment; in the fall of 1874 the paper was then renewed again, from its maturity, for twelve months, by payment of interest, which the Company paid.

Q. Why was this floating debt renewed; did the Company have means to pay it?

A. It was renewed because they did not have the means to pay it, and keep the road running.

Q. Were suits threatened by the holders unless they were so arranged?

A. There were, I think, two suits brought: that paper was not renewed at all. I did not hear of any person threatening the Company. The people generally acquiesced, as the best they could do, to get their interest, with the prospect of getting their principal in twelve months, on my explaining to them that the Company was out of funds, and

449 that litigation would not bring the money. There was one other piece of paper not renewed, but it was not sued on; I think it was for about twelve hundred dollars.

Q. Enquiry has been made in this examination as to your salary as member of the Finance Committee, and as to the duties devolving on you as such; please state what those duties were.

A. I had all the paper to renew; to see all the different parties in relation to it, and it took pretty much all my time. And then matters of different kinds have been placed in my hands for settlement and compromise.

Q. Were those duties arduous; and did they present many difficulties to be overcome; did they involve large transactions?

A. Yes; they were very difficult to arrange, and very large in amount. I think there were six or seven hundred thousand dollars of floating paper; I don't know the exact amount. I do not think they could have been renewed at all, except by my personal exertions, and they would have involved the Company in a great deal of litigation, had they not been renewed.

Cross-examination, by E. H. Grandin, of counsel for trustees second mortgage, &c.

Q. Was not money paid by the Mobile and Ohio Railroad Company, in the year 1874, to some of the Directors for endorsing the Company's notes?

A. No, sir: not after I went there. There was nobody paid for putting their name on paper.

Q. Please state the amount of reduction in the Company's taxes that you have obtained in the last few years.

A. A saving by settlement and compromise of taxes of about twelve or thirteen thousand dollars—it may go as high as fourteen thousand; I can't recollect the exact figures. Previous to my going there there was no one to render any detailed statement of the taxes, or value the property in a proper manner. The city taxes for 1875, on the property of the Company in the city, were assessed without my knowledge, on $300,000, which I got reduced to $80,000, and the taxes were paid by compromise at $1,200 for 1875. For the year 1876 I rendered the valuation of the property at $80,000. It had been assessed for years at $300,000.

In answer to question by Special Master:

I have also effected a reduction in the State and County taxes, for the years 1874 and 1875, on all the property in Mobile county, except as to the lands donated by Congress, which is in dispute.

M. WARING.

Subscribed and sworn to before me, this
8th day of January, 1877.
JAMES GILLETTE, Special Master.

Thereupon the reference was adjourned, to meet at a time to be fixed, on notice to be given from one solicitor to the other.

JAMES GILLETTE,
Special Master.

In the Circuit Court of the United States Southern District of Alabama, at Mobile.

WM. BUTLER DUNCAN AND A. FOSTER ELLIOT,

vs. } *In Equity.*

THE MOBILE AND OHIO RAILROAD CO., ET ALS.

On Reference to James Gillette, Special Master.

In the matter of the claim filed by Alexander Duncan, for allowance of certain coupons proved before the Master.

Contestation of said claim by Louis Belloni, of New York, by E. L. Andrews, his attorney.

The Special Master, James Gillette, to whom authority has been given to issue this commission.

To Joseph Gutman, Jr., or to any other United States Commissioner authorized to take depositions in the City of New York—Greeting:

Know ye that we, confiding in your prudence and fidelity, have appointed you a Commissioner, and by these presents do give to you, or to any Commissioner of the United States residing in the city of New York, State of New York, full power and authority diligently to examine on oath before you and to take and certify the evidence which may be given before you of such witnesses as may be produced before you and those whom you shall summon to appear before you at the instance of Alexander Duncan, claimant of coupons on the said reference, on such interrogatories and cross-interrogatories as may be presented to you on behalf of said Alexander Duncan, and such as may be presented to you on behalf of said Louis Belloni, by way of cross-examination in the said matter of reference, which said examination and evidence sworn by such witnesses before you, you will carefully reduce to writing in the language of said witnesses as near as may be, and you will close the same under your hand and seal, with the said interrogatories under your hand and seal duly certified, and make return thereof to me, the said James Gillette, Special Master, as aforesaid, at my office in the Court House of the United States at Mobile, on or before the 20th day of January, in the year 1877. The said examinations to be taken at such times and at such places as you may designate in the city of New York, provided it shall appear to you that, ten days previous to such examination, copies of all interrogatories to be presented on behalf of said Alexander Duncan shall have been furnished to the said Louis Belloni, or his counsel, E. L. Andrews, of the city of New York.

Witness James Gillette, Special Commissioner appointed by said Court, to whom has been referred the said subject of contestation on this fifteenth day of December, in the year eighteen hundred and seventy-six.

JAMES GILLETTE,
Special Master.

Interrogatories.

In the Circuit Court of the United States for the Southern District of Alabama.

WM. BUTLER DUNCAN AND ANDREW F. ELLIOT,
TRUSTEES, &c.,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY.

Interrogatories to be propounded to such witnesses as shall be produced before a United States Commissioner authorized to take depositions in the city of New York, on the part of Alexander Duncan and his assigns, under and by virtue of a commission issued by James Gillette, Special Master in the above entitled cause, bearing date the fifteenth day of December, 1876.

FIRST INTERROGATORY.

What was your business employment or connection in the year 1874? Were you in business on your own account, or were you acting for some other, and what house, and in what relation to such house?

SECOND INTERROGATORY.

Had you anything to do at any time in the year 1874 with receiving, or getting in, or getting together, coupons of the Mobile and Ohio Railroad Company maturing May 1, 1874, or November 1, 1874, or July 1, 1874, or January 1, 1875; and if so, state the particulars of your connection in that respect, and by whose directions, and for whose account you were acting; and state also from your recollection, and with the aid of such memoranda or entries as will refresh your memory, the extent of your connection and dealings in that respect?

THIRD INTERROATORY.

Was any, and what equivalent given by you, or by the firm or persons for whom you were acting, for the coupons so received by you; and if yea, state what such equivalent was, and how the same was paid or furnished, and by whom and under what circumstances, and what notice was given by you to, and what conversation was had, if any, by you with the persons from whom such coupons were received?

FOURTH INTERROGATORY.

Was any account of the coupons so received by you kept; and if so, where; and if you can annex a copy thereof to your deposition?

FIFTH INTERROGATORY.

Did you, or any other person or firm for which you were acting, receive from any source coupons of the Mobile and Ohio Railroad Company maturing May 1, 1874, or July 1, 1874, or November 1, 1874, or January 1, 1875, for which you did not furnish an equivalent: that is, were any received from abroad, and if so, specify under what circumstances, and upon what consideration, the same came to you, or to the person or firm for which you were acting?

F. N. BANGS,
Of Counsel for Alexander Duncan and others,
holders of coupons.

Sir: You are herewith furnished with copies of the interrogatories to be presented on behalf of Alexander Duncan and his assigns to the witnesses to be examined under and by virtue of a commission issued by James Gillette, Special Master in the above entitled cause, dated December 15, 1876, and addressed to
or to any other United States Commissioner authorized to take depositions in the city of New York, and you will further please to take notice that the witnesses to whom

said interrogatories are to be propounded will be in attendance before Joseph Gutman, Jr., Esq., a United States Commissioner authorized to take depositions in the city of New York, at his office, No. 39 Nassau street, in the city of New York, on the day of January, 1876, at o'clock, in the noon of that day.

Yours, &c.,

F. N. BANGS,

Solicitor of Counsel for Alexander Duncan and others, coupon holders.

To E. L. Andrews, Esq., of Counsel for Louis Belloni.

UNITED STATES OF AMERICA,

Southern District of New York, S.S.

Samuel Davis, being duly sworn, deposes and says, that on the 20th day of December, 1876, he served the within interrogatories on E. L. Andrews, counsel for Louis Belloni, by delivering a copy of the same to, and leaving a copy of the same with, said Andrews, at his office, No. 52 Broadway, in the city of New York.

Sworn to before me this 21st day of December, 1876. } SAMUEL DAVIS.

JOSEPH GUTMAN, JR.,

United States Commissioner, S. D. N. Y.

Cross-Interrogatories.

In the Circuit Court of the United States for the Southern District of Alabama.

WM. BUTLER DUNCAN AND ANDREW F. ELLIOT,
TRUSTEES, &c.,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY.

Cross-interrogatories to be propounded to such witnesses as shall be produced before a United States Commissioner authorized to take depositions in the city of New York, on the part of Alexander Duncan and his assigns.

First Cross-Interrogatory.

If, in answer to the second interrogatory, you refer to any memoranda or entries, state if they are in your handwriting. If your handwriting or not, state when such memoranda or entries were made, and state whether you do not testify entirely from those memoranda or entries.

Second Cross-Interrogatory.

If you state, in answer to the third interrogatory, that you gave any notice to the persons from whom you received the coupons, state in what manner such notice was given. Was it not merely a notice in writing or point posted in some place of business? If you relate any conversations with the persons aforesaid, state what those persons from whom you received the coupons said.

Third Cross-Interrogatory.

If, in answer to the third interrogatory, you state what equivalent you gave for the coupons, or by whom and under what circumstances the money was furnished, state also what rate of exchange in New York and Mobile there was, or its average rate during the time you received the coupons. If not without, then state if you could answer the question by reference to any memorandum or entry, or any document giving the rates of foreign exchange.

Fourth Cross-Interrogatory.

Also state whether any difference between the face of the coupons and the amount paid to the parties from whom they were received was not charged for commission for payment at a place other than where they were due, and for interest during time required to remit coupons to Mobile, and for expenses for remittance, or for any of above items.

Fifth Cross-Interrogatory.

If, in answer to the fifth interrogatory, you state that any of the coupons of May and November, 1874, were so received from abroad, state if such coupons are now claimed to be owned by Alexander Duncan, and if not by him, by whom?

EDWARD L. ANDREWS,
Solicitor of Counsel for Objector.

Sir : Take notice that the foregoing are cross-interrogatories to be propounded to such witnesses as shall be produced before a United States Commissioner authorized to take depositions in the city of New York, under and by virtue of a commission issued by James Gillette, Special Master in the above entitled cause, dated December 15th, 1876. Yours, &c.,

EDWARD L. ANDREWS,
Solicitor of Counsel for Objector.

New York, December 24th, 1876.

To F. N. Bangs, Esq., Solicitor for Alexander Duncan and others.

Deposition of George Boyd.

In the Circuit Court of the United States, Southern District of Alabama, at Mobile.

WM. B. DUNCAN AND ANDREW F. ELLIOT,
vs. } *In Equity.*
THE MOBILE AND OHIO RAILROAD CO., ET ALS.

On Reference to James Gillette, Special Master.

In the matter of the claim filed by Alexander Duncan for allowance of certain coupons proved before the Master.

DEPOSITION OF WITNESSES.

NEW YORK, December 30, 1876, 2:30 P. M.

George Boyd, a witness of lawful age, a witness produced before me on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, in answer to the interrogatories and cross-interrogatories hereto annexed, and by me propounded to him, deposeth and saith—

1. In answer to the first interrogatory he saith:

A. I was in the employ of Duncan, Sherman & Co. during the whole of that year.

2. In answer to the second interrogatory he saith:

A. I had to do in the year 1874 with buying coupons of the Mobile and Ohio Railroad Company, maturing at each of the dates inquired of. I was instructed by the firm of Duncan, Sherman & Co. to purchase these coupons maturing at those dates, and to hold them uncancelled as my vouchers for such checques. I was instructed to pay these as they were presented and give checques. I told the parties presenting them that we were not paying them, but were purchasing them; then I counted the coupons, entered the number of the coupons and their value on an envelope, showing the total value of what the party brought me, and then on the cover of the envelope I put the number of the checque that was given for these coupons and entered the same, and made a copy of that on the stub of my checque, so that one had to correspond with the other. I was the coupon clerk and transfer clerk of Duncan, Sherman & Co., having the entire charge of the entire payment and transfer of these coupons, and as such clerk I gave my checque on Duncan, Sherman & Co. for the amount, which I paid for these coupons. I was acting in this matter for Duncan, Sherman & Co., and by their directions. I cannot state the extent of those purchases.

3. In answer to the third interrogatory he saith:

A. The equivalent that was given was in every instance a checque for the amount of the coupons. My invariable rule was to state to all the persons that we were not paying them, but purchasing them, such being my instructions. The checques were my checques.

4. In answer to the fourth interrogatory he saith:

A. There was no account kept with me. None came to me but what I paid for.

And in answer to the cross-interrogatories he says:

1. In answer to the first cross-interrogatory he says:

A. I have not referred to any memoranda or entries.

2. In answer to the second cross-interrogatory he saith:

A. The notice was given by me verbally to the persons from whom I purchased the coupons. The persons from whom I received the coupons would come in and ask, "are you paying these coupons?" I would say, "I am not. I am purchasing them." There was no general conversation. They would pass them in and say, "pay them," or "give us a checque for them."

3. In answer to the third cross-interrogatory he saith:

A. I cannot answer that question.

4. In answer to the fourth cross-interrogatory he saith:

A. It appears to me that there was some discount made later on the time of payment. I had nothing to do with it. What I mean is, that I think there was a small charge for the January coupons. There was none for the May, July or November, and I am not positive as to the other.

5. In answer to the fifth cross-interrogatory he saith:

A. I have not said that there were any received from abroad, and I know nothing about that.

GEORGE BOYD.

By me reduced to writing in the presence of the witness, and from his statements, and after having been to him carefully read, by him subscribed and sworn to, this 30th day of December, 1876, before me.

JOSEPH GUTMAN, Jr.,
United States Commissioner
Southern District of New York.

Adjourned to January 2, 1877, at 2:30 p. m.

Deposition of Wm. Butler Duncan.

New York, January 2, 1877, 2:30 p. m.

William Butler Duncan, a witness of lawful age produced on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the matter of controversy herein, and being by me duly examined on the interrogatories and cross-interrogatories hereto annexed, deposes and says as follows:

1. In answer to the first interrogatory he says:

A. I was the senior member of the firm of Duncan, Sherman & Co., and was acting as the senior member of that firm.

2. In answer to the second interrogatory he says:

A. The firm of Duncan, Sherman & Co. had to do, in the years 1874 and 1875, with the getting together and acquiring the ownership of the coupons maturing at the dates mentioned in the inquiry. Previous to and at May, 1874, my firm was largely interested in the securities of the Mobile and Ohio Railroad Company. I was applied to to take the Presidency of the Road at that time. The directors also applied to my firm to advance large sums of money to meet the indebtedness of that company, and also to meet the interest which was about to mature on the 1st of May, 1874. My firm was at that time in considerable advance to the company, and agreed in the latter part of April, 1874, that they would purchase the coupons about to mature on the 1st of May, and not press the company for payment then. The company offered and did assign to me, for the protection of my firm for past and future indebtedness, the claim they had upon the United States Government. I produce a copy of that assignment, to be made part of annexed to my deposition. (It is marked Exhibit A.) Accordingly my firm instructed the clerk in whose charge the matter was put, to purchase such coupons from those presenting them at their face value, at the same time instructing such clerk to notify parties inquiring that Duncan, Sherman & Co. were purchasing such coupons, and that the company had not the means at that time with which to meet them. The conclusion my firm arrived at to purchase these coupons had only been reached a day or so previous to the 1st of May, and much anxiety had been evinced by holders of the coupons to know whether they would do so. In the same manner we telegraphed to our correspondents in London, the Union Bank, requesting them to purchase the coupons maturing at that date, to reimburse themselves by charging our account with the cost of the same, and to transmit the coupons so purchased to us uncancelled. These instructions were sent them by telegraph, as up to the last moment it was hoped that the company might in some manner provide the means themselves. At the same time we notified our correspondent, the Bank of Mobile, at Mobile, that they might purchase the coupons maturing May 1, 1874, at their face value, transmitting same to us uncancelled, and drawing on us in reimbursement of the cost. The same course was pursued with reference to the coupons which matured on the 1st of July, 1874.

The facts I have mentioned were of course known to the directors of the company, and, I believe, to the trustees of the mortgage bonds. I am certain they were known to one of the trustees at least.

In November, 1874, my firm made arrangements with the Credit Foncier of London, to obtain advances from them for the purpose of purchasing the coupons maturing at that date. The Credit Foncier were instructed to purchase such coupons and forward the same to my firm uncancelled, on receiving reimbursement from my firm for the cost thereof. The coupons were purchased in New York also and in Mobile by the Bank of Mobile.

The same course was pursued also with the coupons which matured on the 1st of January, 1875.

No commission was or has been charged by us to the company, and no moneys have been received by Duncan, Sherman & Co. from the company on account of such coupons. All the coupons maturing at the dates before mentioned were subsequently transferred to Alexander Duncan in consideration of receiving from him the cost thereof, which he paid to said firm.

The foregoing facts in relation to the purchase of the coupons were stated to any inquirers, and were well known to all those who were conversant with the affairs of the company. The directions given were by me as senior member of the firm of Duncan, Sherman & Co.

In reference to the extent, I have procured copies of the accounts from the books of Duncan, Sherman & Co., which I produce, to be annexed and made part of my deposition, and which give the details thereof and indicate that they were in regard to the purchase of those coupons at the respective dates. The copies produced are correct copies of the accounts in the books.

(They are marked Exhibit B.)

3. In answer to the third interrogatory, he says:

A. The equivalent given appears in the accounts, copies of which I have submitted, partly by payments of sterling in London through the Union Bank and the Credit Foncier, and partly by payments by Duncan, Sherman & Co. here, and by the Bank of Mobile at Mobile, at a rate per coupon given by Duncan, Sherman & Co. We reimbursed the Union Bank by directing them to charge their outlay in purchasing these coupons to the account of Duncan, Sherman & Co. We remitted to the Credit Foncier the amount which they had advanced for our account in the acquisition of such coupons, and we paid the drafts of the Bank of Mobile drawn by them in reimbursement for the purchase of such coupons; and for such coupons as were purchased over our own counter, we cashed the drafts of the clerk who, under our instructions, purchased the same. All these payments were respectively charged to the Mobile and Ohio Railroad Company coupon purchasing accounts, of which I have handed in a copy. As I have before stated, I had frequent conversations with the holders both before I determined to purchase and at the time of purchasing such coupons, stating generally the condition of the company; its inability to meet its interest; its cash. I endeavored to obtain advances for account of the company from several parties. I would name Mr. William H. Hayes who was at that time interested in the securities, and through Mr. William W. Clark and George T. Bonner.

Messrs. Clark and Bonner were brokers who knew many of the holders of the securities, but was unsuccessful in obtaining assistance through them for account of the company. There was no concealment with reference to the affairs of the company; its financial condition was well known to all those who cared to inquire; the non-payment of the coupons for the year 1874, and January, 1875, was well known and was distinctly referred to and mentioned in the report of 1874, a copy of which is produced to be mailed and annexed as part of my deposition.

(It is marked Exhibit C.)

I have reason to believe that the parties who purchased the coupons in London and Mobile, notified inquirers that they were purchasing the coupons for Duncan, Sherman & Co

I instructed my clerks to give this notice to the parties, and I gave the notice to the parties who spoke with me personally.

4. In answer to the fourth interrogatory, he says:

A. An accurate account was kept of the payments made on account of such purchase, a copy of which I have produced and annexed, marked B. A list of the coupons so acquired was also made and given to Mr. Alexander Duncan on transferring the coupons to him. The correctness of such list has been certified to by the Special Master, before whom the coupons have been proved by Mr. Alexander Duncan.

5. In answer to the fifth interrogatory, he says:

A. The firm of Duncan, Sherman & Co. did not receive any coupons maturing at the dates mentioned, for which they did not give an equivalent in cash. Those that were received from abroad and from Mobile were paid for as stated in my answer to the previous interrogatories, and the details of such payments are mentioned in the accounts submitted and the considerations for them. In further answer to the inquiry contained in the fifth interrogatory, I state that my firm did receive such coupons from abroad upon the considerations already stated, and which also appear in part and are referred to in certain telegraphic dispatches sent at the times they respectively bear date, and of which the following are copies: No. 1 was sent by Duncan, Sherman & Co., April 28, 1874, to A. L. Willoughby who was then the Treasurer of the Mobile and Ohio Railroad Company; No. 2 was sent on the same date by Duncan, Sherman & Co., to Col. Walker, the Vice President of the Mobile and Ohio Railroad Company; No. 3 was sent April 30, 1874, to William H. Pratt, then the President of the Bank of Mobile, by Duncan, Sherman & Co.; No. 4 was sent by Duncan, Sherman & Co., October 21, 1874, to A. Murdock, then a Director of the Mobile and Ohio Railroad Company and Land Commissioner of that company at London where he then was; No. 5 was sent on the same date to the Union Bank of London by Duncan, Sherman & Co. The following are copies of these dispatches:

No. 1. Duncan to Willoughby, Treasurer, April 28, 1874. Will telegraph you on thirtieth if interest can be arranged. Sterling coupons payable on face in London only, therefore will be purchased by us here or at Mobile for our account at 31.50 gold and collected. Otherwise parties can present in London as agreed on coupon. Certificate and interest forty dollar coupons are payable Mobile when we telegraph funds are provided; would ask Bank of Mobile to buy them for our account and draw on us for amount, sending coupons forward uncancelled. Does this meet approval.

No. 2. Duncan to Col. Walker. Ask Pratt if his bank will, if instructed, arrange to purchase for our account coupons presented in Mobile value on us, forwarding coupons uncancelled.

No. 3. Duncan, Sherman & Co. to Pratt, April 30, 1874. Please purchase for account of whom it may concern coupons maturing May 1st, paying sterling coupons not exceeding $32.50 gold, or $36.50 currency. Do better if you can, sending coupons uncancelled to us. Your drafts against same shall meet due honor.

No. 4. Duncan to Murdock, cable, October 21, 1874. Ask Union Bank to refer November coupons to Credit Foncier who will purchase them at face value. See Credit Foncier, explain coupons, report if understood.

No. 5. Duncan to Union Bank, cable, same date. Refer holders November coupons Mobile and Ohio to Credit Foncier who have arranged to purchase same. The firm of Duncan, Sherman & Co. had previously, in November, 1873, advanced to the Mobile and Ohio Railroad Company to enable them to meet the interest maturing November 1, 1873, and January 1, 1874, the company agreeing to remit the same out of earnings and from any other sources at their disposition. Duncan, Sherman & Co. made during the whole of the period extending from 1873 to May, 1875, frequent and large advances to the company for the general purposes of their business. The remittances made by the company during 1874 to Duncan, Sherman & Co. and deposited by the company with the Bank of Mobile to the credit of Duncan, Sherman & Co., were in payment to Duncan, Sherman & Co. of the moneys advanced by them to meet the coupons of November, 1873, and January, 1874, in accordance with the agreement made by the company with Duncan, Sherman & Co. at the time of taking up said coupons, and somewhat for the purpose of transmitting funds to Duncan, Sherman & Co. for the general purposes of the company; and any such remittances on deposits as were not applied to redeeming the coupons of 1873, we appropriated under the explicit direction of the company at Mobile. Notwithstanding such remittances and deposits, Duncan, Sherman & Co. were in advance to the Mobile and Ohio Railroad Company in large amounts, ranging from twenty thousand dollars to one hundred and fifty thousand during the whole period of 1874, and even in May, 1875, when the company's property passed into the hands of the Receiver, the company owed and still owes Duncan, Sherman & Co. the sum of twenty thousand dollars without any reference to any claim under the coupons maturing in and since May, 1874, which have never been paid or pretended to be paid by the company.

And in answer to the cross-interrogatories, he says:

1. In answer to the first cross-interrogatory.

A. The memoranda and accounts submitted in answer to the second interrogatory were made at the times at which they respectively bear date, and are not in my handwriting, though made by my instructions. I do not testify entirely from these memoranda. Independently of them I know the fact that Duncan, Sherman & Co. purchased the coupons as stated; that the Bank of Mobile, the Union Bank and the Credit Foncier, purchased the coupons at the request of for account of Duncan, Sherman & Co., and were reimbursed by Duncan, Sherman & Co. for the purchases in the manner before stated.

2. In answer to the second cross-interrogatory.

A. The notice given by me to holders of the coupons was oral. Holders who applied before the date of maturity expressed great anxiety with reference to whether they could get the money for the coupons, many of them urging upon me to purchase the same, and many holders on presentation were told by me the fact that the company was not paying the coupons, but that Duncan, Sherman & Co. were purchasing them. They urged on me the safety of doing it, inasmuch as the company were a security beyond any peradventure; that the business of the country would undoubtedly enable the company to meet them before long, and whereas the inability on the part of many small holders to obtain the value of their coupons would cause much distress, being secure we could advance the amount to them without risk.

3. In answer to the third cross-interrogatory, he saith:

A. The rates of exchange between Mobile and New York varies at different seasons from a quarter discount to a half premium, but it is usual in buying in New York small amounts payable in Mobile to deduct about half per cent. to cover expenses of collection, without reference to the rates of exchange ruling. In the accounts submitted there appear deductions at several places of such per centage, but such deductions were not received by Duncan, Sherman & Co. from the company, nor has it been paid by the company. Duncan, Sherman & Co. have not charged the railroad company any commission on the coupons, concerning which the inquiry is now made, but on the contrary, have paid the Credit Foncier and the Union Bank the commissions they charged Duncan, Sherman & Co. for purchasing the said coupons for their account.

4. In answer to the fourth cross-interrogatory he says:

A. Any difference between the face of the coupons and the amount given to the person from whom they were purchased, was not charged for a commission for payment at a place other than where they were due, but was charged for the expenses of transmission and collection, which the purchaser would have to incur in remitting and collecting the same.

5. In answer to the fifth cross-interrogatory he says:

A. The coupons referred to in the fifth interrogatory have heretofore been claimed to belong to Alexander Duncan, but it is now claimed that William H. Hayes, W. S. Pierson and T. Haskins Du Puy have acquired an interest therein under a printed agreement of readjustment of the said securities, a copy of which I produce, to be annexed and made part of my deposition.

(It is marked Exhibit D.)

W. BUTLER DUNCAN.

By me reduced to writing in the presence of the witness, and from his statements, and after having been read to him, by him subscribed and sworn to this 2d day of January, 1877, before me.

JOSEPH GUTMAN, Jr.,
United States Commissioner
Southern District of New York.

Deposition of Angus Mackintosh.

New York, January 9, 1877, 9 a. m.

Angus Mackintosh, a witness of lawful age, produced before me on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the matter of controversy herein in answer to the interrogatories and cross-interrogatories hereto annexed, and by me propounded to him, deposeth and saith:

1. In answer to the first interrogatory, he saith:

A. I was principal correspondent and confidential clerk in the house of Duncan, Sherman & Co.

2. In answer to the second interrogatory, he saith:

A. Acting under instructions of Duncan, Sherman & Co. in 1874, I wrote various letters having relation to their getting together and acquiring the coupons of the Mobile and Ohio Railroad Company maturing on the dates mentioned in the interrogatory, and gave at various times directions and instructions to the clerks having in charge the taking up of the coupons and the keeping of the accounts relative thereto.

3. In answer to the third interrogatory, he saith:

A. An equivalent in cash was in every case paid by checque to the parties presenting and surrendering the coupons approximating to their face value, less in some cases, where the coupons were due and payable in Mobile, a small charge to cover actual cost of collection and transmission of proceeds to New York. It was well understood in the office that the coupons were purchased by Duncan, Sherman & Co. and to be held uncancelled, and that they were not paid so as virtually to cancel and extinguish them. I myself by direction of my principals the said Duncan, Sherman & Co. so instructed their coupon clerk, and directed the book-keeper in whose ledger the accounts were kept, to open the same as "Mobile and Ohio Railroad Coupon Purchase Account," of the several dates or words to that effect. I have at various times during the year mentioned, 1874, had conversation with parties presenting these coupons wherein I informed them that Duncan, Sherman & Co. were purchasing the coupons and were not paying them. I am unable at this distance of time to recall the dates on which such conversations were held, or the persons with whom I conversed, but believe they were in most cases strangers to me. The instructions to the Union Bank of London, the Credit Foncier and the Bank of Mobile, were to the same effect, namely: that they were to purchase the said coupons for account of and transmit them uncancelled to Duncan, Sherman & Co., which was done. The Union Bank of London and the Credit Foncier were reimbursed for their outlay on account of these coupons by remittances of bills of exchange and other valuables made to them by Duncan, Sherman & Co. The Bank of Mobile drew on Duncan, Sherman & Co. at sight for the equivalent of the coupons purchased by them at the time of transmitting the uncancelled coupons, and the drafts accompanied by the uncancelled coupons were duly paid by the drawers on presentation.

4. In answer to the fourth interrogatory, he saith:

A. Full accounts of such purchases of coupons were kept in the regular office ledgers of Duncan, Sherman & Co., in the form indicated in the preceding reply. I am unable to annex any copies of the accounts, not having access to the books of the firm.

5. In answer to the fifth interrogatory, he saith:

A. No coupons of the Mobile and Ohio Railroad Company of the maturities mentioned were received by Duncan, Sherman & Co. or myself, from any source whatever, without the payment of a full equivalent therefor as stated in my third answer. Various parcels were received from abroad, from the Union Bank of London and the Credit Foncier, to whom remittances were made as stated in the third answer. Others may have reached the house from other foreign correspondents, but all such were undoubtedly remitted for in like manner.

1. In answer to the first cross-interrogatory, he saith:

A. My answer to all the interrogatories are of necessity somewhat general, being made entirely from memory. I having had no late opportunity to refer to the books of Duncan, Sherman & Co. But my recollection is quite clear that the coupons mentioned were purchased by Duncan, Sherman & Co. directly and through the agency of the Union Bank of London, the Credit Foncier and the Bank of Mobile, all of whom were reimbursed by Duncan, Sherman & Co. as aforesaid.

2. In answer to the second cross-interrogatory, he saith;

A. I have no recollection of any special printed or written notice being given as to the purchase of the coupons. Several persons were notified by me orally that the firm of Duncan, Sherman & Co. were purchasing the coupons. I do not recall any special reply or remark made by the persons I so informed.

3. In answer to the third cross-interrogatory, he saith:

A. I do not recall the rate of exchange between New York and Mobile at the time the coupons were purchased. This usually varies from half discount to half to three-quarters premium, according to the season of the year. But I know that the precise equivalent paid was charged in the several "Coupon Purchase Accounts," no more, no less.

4. In answer to the fourth cross-interrogatory, he saith:

A. The difference between the face of certain of the coupons and the amount paid for them to the seller, was as before stated a bare margin to cover the cost of collection in Mobile and the transmission of funds to New York when they should be collected finally.

5. In answer to the fifth cross-interrogatory:

A. I have no information on which to base a reply.

A. MACKINTOSH.

By me reduced to writing from the statements of the witness, and having been read to him, by him subscribed and sworn to, this 9th January, 1877, before me.

JOSEPH GUTMAN, Jr.,
United States Commissioner
Southern District of New York.

Deposition of John J. Walker.

New York, January 12th, 1877, 1 p. m.

John J. Walker, a witness of lawful age, produced before me on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, in answer to the interrogatories and cross-interrogatories hereto annexed, and by me propounded to him, deposes and says:

1. In answer to the first interrogatory he saith:

A. I was Vice President of the Mobile and Ohio Railroad Company during 1874, and was not in any other business.

2. In answer to the second interrogatory he saith:

A. My only connection with the coupons referred to was as Director and Vice President of the Company, and my agency in relation to them was confined to efforts in my official capacity to effect some arrangement through Mr. Duncan in New York by which the credit of the company could be protected against the default of payment of interest coupons from resources outside of the resources of the company, which were inadequate to that end.

3. In answer to the third interrogatory he saith:

A. I received no coupons either individually or officially, and therefore gave no equivalent for any.

4. In answer to the fourth interrogatory he saith:

A. I kept no account of any coupons, as I received none.

5. In answer to the fifth interrogatory he saith:

A. I received none of such coupons either officially or individually; I did not do as stated in this interrogatory.

And in answer to the cross-interrogatories he says:

1. In answer to the first cross-interrogatory he saith:

A. My testimony is from recollection merely, as I have no access to papers and records here, and my belief is that I made no memoranda or entries relating to payment of said coupons, having, as before stated, received none.

2. In answer to the second cross-interrogatory he saith:

A. My only recollection of any notice of the kind mentioned is a present impression that, under instructions from the Board, the Treasurer of the Company was directed by me to put up a notice at his desk, that the coupons would be purchased at the Bank of Mobile, of Mobile, and that he was merely to verify the coupons when presented at his counter, and refer the holders to the Bank of Mobile. I do not, however, remember the precise language of such notice, but only that the intention of the Board was that the Treasurer should notify holders of coupons that they would be purchased at the Bank of Mobile in accordance with an arrangement made by Mr. Duncan with the President of the Bank—the Company being unable to meet the interest in May, 1874, owing to the great shrinkage of business owing to the commercial paralysis following the panic of 1873, effected an arrangement with Duncan, Sherman & Co., who agreed to raise the means to purchase the coupons with their lien rights as an existing mortgage security, with the understanding that, for a reasonable length of time, no step would be taken to enforce payment in order to allow the company time to redeem. Duncan, Sherman & Co. carried this out through the Bank of Mobile, and I believe their correspondents in London, and my information and belief was, that the whole amount used for the purchase of the coupons was furnished by Mr. Alexander Duncan. All of which was done with the full assent of the company, and the belief of myself and the directors was, that the coupons so purchased were of themselves a sufficient security to Mr. Duncan for the amount furnished by him for the protection of the credit of the company.

3. In answer to the third cross-interrogatory he saith:

A. As before stated, I gave no equivalent, and cannot answer the question in regard to the rate of exchange in New York and Mobile.

4. In answer to the fourth cross-interrogatory he saith:

A. The arrangement with reference thereto was made by Duncan, Sherman & Co. with the Bank of Mobile, and I had no personal knowledge of the details, nor any present recollection of the terms.

5. In answer to the fifth cross-interrogatory he saith:

A. I received no coupons from abroad, nor did the company, that I am aware of. I desire to add, that the foregoing testimony is given from recollection merely, and that I do not feel confident in the accuracy of my memory, unaided by any reference to official papers and records on file at the office of the company in Mobile. On one point, however, my memory is very distinct, namely, that whatever irregular technicalities if any (which I do not believe) may have attached to the mode of purchasing the coupons, it was the clear desire and intention of the Board of Directors that the existing lien rights of the coupons as a mortgage security, should enure to the party who furnished the money to save the credit of the company.

JOHN J. WALKER.

By me reduced to writing from the statements of the witness, and having been by me read to him, by him subscribed and sworn to, the 12th day of January, 1877, before me,

JOSEPH GUTMAN, Jr.,
United States Commissioner,
Southern District of New York.

Exhibit A to Testimony of W. B. Duncan.

Know all men by these presents, that whereas the Mobile and Ohio Railroad Company are justly entitled to divers large sums of money to it due from the Government of the United States, on various demands which are under adjustment and settlement before the proper departments of said Government, the amounts due on said demands not yet being fully ascertained, nor the same audited;

And whereas, William Butler Duncan, of the city of New York, has made advances of monies on account of, and for the use and benefit of, said Mobile and Ohio Railroad Company, and at its special instance and request, and has furthermore agreed to make further large advances of monies for the use and benefit of said company, and at its special instance and request:

476 *Now therefore*, for and in consideration of the premises, and for the purpose of repayment to said Duncan of the sums so advanced, and of the reimbursement of all sums which he, the said Duncan, may hereafter pay in advance on account of said company, and of all disbursements and expenses made, and to be made, by him on account of said company, and for its use and benefit, and at its request; the said Mobile and Ohio Railroad Company has assigned, transferred and set over to the said William B. Duncan, all the said debts, dues, claims and demands which it has, and all sums of money values and things which it may lawfully claim of and from said Government of the United States, and all which on adjustment may be found due from said Government, and payable to said Mobile and Ohio Railroad Company, on any, all, and every account whatsoever; and the said company does hereby assign and transfer the same by these presents. And the said company does hereby give and grant to said William B. Duncan full power and authority to receive, demand, settle, release, compromise, receipt for, discharge, close and adjust all accounts in respect to said demands of every description whatever above stated or intended to be, and to return all proceeds thereof to his own use.

In witness whereof, the said Mobile and Ohio Railroad Company has caused the corporate seal of said company to be hereto affixed, and this instrument to be countersigned by its Vice President, acting as President, and by its Secretary, at Mobile, on this 28th day of April, 1874.

(Signed)
{L. S.} J. J. WALKER,
Vice President and acting President.

Attest:
(Signed) A. L. WILLOUGHBY,
Secretary.

Exhibit B to Testimony of W. B. Duncan.

CURRENCY ACCOUNT.

PURCHASE ACCOUNT MOBILE AND OHIO RAILROAD—COUPONS DUE MAY 1, 1874.

1874.				Dr.
April 28—	Purchased this day—			
	9 Coupons @40		360 00	
	54 " 40		2,160 00	
	1 " 20		20 00	
			2,540 00	
	Less ½ pr. ct.		12 70—	2,527 30
30—	Paid Wm. Denison 25@40, less ½ pr. ct.			995 00
	" H. L. Jacquess			39 80
May 1—	" C. T. Stewart, Attorney			119 40
	" H. Geissler			39 80
	" C. Robinson			39 80
	" D. D. Withers			79 60
	" W. B. D., in trust			437 80
	" P. Corbin			199 00
	" L. H. Le Clerc			119 40
	" H. Sansome			39 80
2—	" 46@8	368 00		
	" 92@20	1,840 00		
	" 572@40	22,880 00—	25,088 00	
	Less ½ pr. ct.		125 44—	24,962 56
4—	" 149@40	5,960 00		
	" 42@20	840 00		
	" 29@8	232 00		
	" 3@4	12 00, less ½ pr. ct.		7,008 78
	" 1@	40 00, less ½ pr. ct.		39 80
5—	" 236@40	9,440 00		
	" 96@20	1,920 00		
	" 73@8	584 00—	11,944 00	
	Less ½ pr. ct.		59 72—	11,884 28
7—	" 67@40	2,680 00		
	" 3@20	60 00		
	" 2@8	16 00—	2,756 00	
	Less ½ pr. ct.		13 78—	2,742 22
	" Express charges from Mobile			95 70
			Forward	51,370 04

	Brought forward....	51,370	04
May 9—	Paid Express, 1,396 Coupons........................	42	00
11—	" Coupons purchased........................	42,544	00
	" 1 Coupon purchased........................	40	00
13—	" Express Coupons........................	95	10
14—	" Coupons $40........................	1,719	36
	" Express charges from Mobile.................	23	45
	" by Bank of Mobile, 518@40.....................	20,720	00
	" 22@20....................................	440	00
	" 2@20....................................	40	00
	" 8@4....................................	32	00
	" 4@12....................................	48	00
	" 5, £3—£15@5.40..............................	81	00
	" Express charges from Mobile.................	47	80
	" by Bank of Mobile, 70 certificates @40.....	2,800	00
	" " " 58 " 40.....	2,320	00
	" " " 21 " 40.....	840	00
	" " " 24 " 20.....	480	00
	" 32 Coupons @8............................	256	00
	" 25 Gainesville Bch. @40.....................	1,000	00
	" 79 " 8.....................	632	00
	" 71 O. 40.....................	2,840	00
	" 60 F. 40.....................	2,400	00
	" 4 F-1 40.....................	160	00
	" 75 F-1 20.....................	1,500	00
17—	Coupons paid in Mobile........................	13,780	00
	" 9@32 50 Gold 292 50.....................	328	50
	Paid Express charges from Mobile...............	10	85
	" " " "	32	70
23—	" in Mobile, 16@40........................	040	00
	" " 8@8........................	64	00
	" " 2@40........................	80	00
	Forward....	147,406	80

1874.		Brought Forward....	147,406 80
May 23	—Paid in Mobile 6@40...........................		240 00
	" " " 15@20		300 00
	" " " 2@ 4...........................		8 00
	" Coupons @35 and 20, less ½ pr. ct...........		1,512 40
	" Express charges from Mobile.................		5 95
27	— " " " " "		5 60
	Coupons paid by Bank of Mobile.................		1,628 00
29	—Paid 23 Coupons @40...... ....920 00		
	" 4 " " 20........... 80 00		
	" 3 " " 8........... 24 00—1,024 00		
	Less ½ pr. ct....	5 12—	1,018 88
June 1	—Paid Express charges from Mobile.................		5 95
	" by Bank of Mobile....................		1,408 00
2	—Paid 1 Coupon 40, less ½ pr. ct..........................		39 80
3	—Transf'd Gold account, $118,186.27@12⅛ and ⅛..		132,664 07
5	—Paid 1@40, less ½ pr. ct..........................		39 80
12	—Paid Express charges from Mobile.......		25 05
16	—3 Coupons charged May 11 as Gold were certificate charges..................................		10 50
	Coupons advised as Gold May 12 should be Currency; difference..................................		24 50
17	—2 Coupons @40.00, less ½ pr. ct....................		79 60
19	—Cost of $3,803 Gold @111⅛ to pay for Coupons purchased by Bank of Mobile.................		4,226 08
23	—Paid Express charges from Mobile.................		10 15
	Coupons paid by Bank of Mobile.................		2,760 00
30	—Paid 6@40..240 00		
	" 6@20..120 00		
	" 1@ 8.. 8 00—368 00, less ½ pr. ct...	1 84—	366 16
July 2	— " 9@40.. 360 "	1 80—	358 20
6	— " 1@40.. "	20—	39 80
13	— " Coupons......................................		19 90
22	— " sundry Coupons by Bank of Mobile.........		1,100 00
		Forward....	295,303 19

480

1874. Brought Forward....	295,303 19	
July 31—Paid 24@40, less ½ pr. ct..................	955 20	
Sept. 11—Paid 1 Coupon...........................	36 50	
30— " 12 Coupons @40, less ½ pr. ct.....	477 56	
" 1 " 8...................	8 00	
Oct. 5—Paid 2 Coupons at 4— 8 00 " 7 " 8—56 00 " 1 " 20 00—84 00, less ½ pr. ct. 42c............................	83 58	
8—Balance of Gold transferred @109¾.....	8,757 96	
Nov'r 18—Income Tax Coupons from London £140.2-6, 491 and 11½ (765.50).........	765 50	
Dec'r 16—2 Coupons £13.10, less tax ⅔ £13.7.9 1 Coupon £6.15, chgs 6-8 490 and 11½	113 28	
1875.		
Jan'y 6—Paid German Bank in adjustment of £6.15 Coupons bought them as 32.50, not as certificates; difference.........	16 60	
Feb. 23—Erroneous deduction on lot 488 Coupons September 26..........................	4 44	
	306,521 81	
1874. **Credits.**		
May 19—By..		328 50
1875.		
April 1—By transf'd to Supplementary Ledger..		306,193 31
		306,521 81
1875.		
April 1—To amount from old Ledger...........	$306,193 31	
1875.		
June 17—By balance of account in London £11.6-8@4.88 and 117..................		$64 69

CURRENCY.

MOBILE AND OHIO RAILROAD COMPANY PURCHASE ACCOUNT—COUPONS DUE JULY, 1874.

1874.				
Oct. 7.	Coupons paid in London (Aug. 17)— £3,549 8-3@4 89 and 10¼		19,135 67	
	9—462 Coupons @35 $ Gold— 16,170 Gold @109¾		17,746 57	
	15—2 Coupons @35—Gold @1 10		77 00	
Nov.	18—Inc. Tax Coupons pd. in London, £3.2-3		17 00	
Dec.	16—Ins. chges on 20 Coupons per City of London—Not'l charges, &c.		3 18	
1875.				
Jan.	2—Cost of $24,814 13, Gold 112¾, for 685 Coupons due July 1, 1874, received from A. Sedan & Co.		27,977 93	
Feb.	15—4 Coupons less Tax,	£28. 9-3		
	Int. to Sept. 30,	34. 0-6		
	Com'n	35.15-1		
	1 Coupon, less Tax,	7. 2-4		
	Int. to Dec. 31,	9. 5-2		
	@4 87½ and 14¾		641 10	
			65,598 45	
1875.	CREDITS.			
April	1—Transfer to Supplementary Ledger			65,598 45
1875.			DR.	
April	1—To Transfer from Country Ledger		65,598 45	
June	2—6 Coupons chg'd by Union Bank London, Jan'y 13, 1875, £43.1-1 11 Coupons chg'd by Union Bk, London, March 8, '75, £78.18-6 Not'l & Ins. Apl. 8, 12-4@4 90&116¼		698 30	

CURRENCY.

Mobile and Ohio Railroad Company Purchase Account—Coupons Due January 1, 1875.

1875.
July 27—Coupons bo't by Credit Foncier as per list, April 16, £3,487.1-1@4 90 and 15 Value May 3,.......................... 19,649 51

CURRENCY.

Purchase Account Mobile and Ohio Railroad Company Coupons Due November 1st, 1874.

1874.		Dr.
Oct. 26	—Per W. H. Harbeck 42 Coupons @$40 and 1@$20, less ½ pr. ct.	1,691 50
Nov. 4	— 64 Coupons @ 8............$ 512 00 142 " 20............ 2,840 00 1158 " 40............46,320 00—49,672 00 Less ½ pr. ct. collection..... 248 36—	49,423 64
5	—From Gold account balance Nov. 4, 1874: 300 Coupons @32 50, less ½ pr. ct. coll. $9,701 27 @110	10,671 40
	99 Coupons @8....$ 792 00 104 " 20.... 2,080 00 458 " 40.... 18,320 00—21,192 00 ½ pr. ct. 105 96	21,086 04
6	—Transferred to Currency account 121 Coupons @32 50 Gold, less ½ pr. ct. @115	4,304 14
9	— 3 Coupons @4....$ 12 00 14 " 8.... 112 00 26 " 20.... 520 00 99 " 40.... 3,960 00—4,604 00, ½ pr. ct., 23 02	4,580 98
10	—From Gold account 29 Coupons @32 50, less ½ pr. ct. collection, 937 78@110	1,031 56
12	—21 Coupons 20....$420 00 24 " 40.... 960 00—1,380 00, ½ pr.ct., 6 90	1,373 10
13	—From Gold account 29 Coupons @32 50, less ½ pr. ct. collection, 937 79@110½	1,036 26
23	—From Gold account 10@32 50, less ½ pr. ct., 323 39 @111½	359 77
30	— 7 Coupons @ 8....$ 56 00 6 " 20.... 120 00 52 " 40....2,080 00—2,256 00, ½ pr. ct., 11 28	2,244 72
Dec'r 1	—From Gold account 5@33 50, 166 69, less ½ pr. ct. collection	181 48
7	—11 Coupons @40, less ½ pr. ct.	437 80
	Forward....	98,422 39

484

1874.	Brought Forward....	98,422 39
Dec. 19—	1 Coupon 8....$ 8 00 6 " 20.... 120 00 26 " 40....1,040 00—1,168 00, ½ pr. ct., 5 84..	1,162 16
21—	From Gold account 3@32 50, less ½ pr. ct. collection, 97 02 gold @111½..........................	108 17
23—	Bought by Bank of Mobile balance Nov. 4 Gold Coupons, paid $4,127 50@110..........................	4,540 25
	Old Coupons Savings Bank..........................	7,000 00
	154 " @40..........................	6,160 00
	160 " 40..........................	6,400 00
	Value Nov. 11 Coupons paid to Saturday night, Nov. 7..........................	39,527 75
	Value Coupons paid to Nov. 9th..........................	8,833 00
	" " " " 10th..........................	4,555 00
	Nov. 12th Gold Coupons paid 3,607 50@110¼.....	3,977 27
	14 Coupons..........................	1,956 00
	17 "	1,648 00
	18 Gold Coupons @111..........................	1,875 90
	24 " "	1,436 00
	Dec. 3 Gold Coupons..........................	1,608 50
31—	2 Gold Coupons @4....$ 8 00 9 " " 8.... 72 00 4 " " 20.... 80 00 96 " " 40.... 3,840 00—4,000 00, ½ pr. ct., 20 00..........................	3,980 00
1875.		
Jan'y 2—	From Gold account 55@32 50, less ½ pr. ct., 1,778 56@111½..........................	1,983 00
8—	3 Coupons, less ½ pr. ct.	199 00
	53 " Gainesville Branch Bonds, bought by Bank of Mobile @$40 each..........................	2,120 00
12—	Bought by Bank of Mobile Dec. 28..........................	1,015 50
	Do. Gold 292 50@110..........................	327 60
	January 4th, Coupons..........................	1,000 00
	Forward....	199,835 49

1875.	Brought forward....	199,885 49
Jan'y 12	—Bk. of Mobile, Jan'y 8, coupons......	288 00
"	" Gold $65 00@112½...	73 13
18	—1 Coupon, 8, 8 00 1 " 20, 20 00 2 " 40, 80 00—108 00, ½ pr. ct. 54	107 46
26	—Express of Conaldn. ctf. No. 5698 to prove it a ctf., $2@112½............	2 25
30	—1 Coupon 40, less ½ pr. ct.............	39 80
Feb'y 5	—2 Coupons @40, less ½ pr ct.........	79 60
24	—Coupons bought by Bank of Mobile.	550 58
M'ch 15	—Bo't by Bk. of Mobile, letter Mc'h 10.	967 50
19	—1 Coupon 40, less ½ pr. ct.............	39 80
27	—Cost of $94,956 55 @116⅛ and ⅛ bro. Coupons bo't in London by Credit Foncier,............................	110,386 96
		$312,390 56

1875.	CREDITS.	
April 1	—Transferred to Supplementary Ledger...........	312,390 56

CURRENCY.

Coupon Purchase Account Mobile and Ohio Railroad—Due November, 1874.

1875.		
April 1	—Transferred from Country Ledger	$12,390 56
May 11	—1 Certificate Coupon, short charged	40 00
June 28	—Not'l fees and certificate on 3 parcels coupons, sent from Mobile @ $5	15 00
29	—Not'l fees Ctf. on 1 parcel, from Mobile.	5 00
July 20	—3 Coupons per letter July 6	56 00
27	—Income Tax as per list, Dec. 12, £142 8-7 @4 90 and 15, value May 3	802 58
	From list April 16, 20@£6.15, 6@3, 4 90 and 15	862 15

Credits.

1875.		
April 7	—A. L. Willoughby on D. S. & Co	7,210 97
May 19	—Coupon 4157 charged twice by Bank of Mobile per letter April 4	82 50

GOLD ACCOUNT.

MOBILE AND OHIO RAILROAD—COUPONS PURCHASED MAY 1874.

1874.			Dr.
April 30	—To paid Lewis Switzer—		
	M. & O. Coupons, 5@32 50	162 50	
	Wm. Dennistoun, 1 "	32 50	
	A. Iselin & Co., 23 "	747 50	
	H. L. Jacques, 2 "	65 00—	1,007 50
May 1	—Geo. B. McClellan, 10 "	325 00	
	Bank of Mobile, 7 "	227 50—	552 50
2	—Cashed to Date, 162 "		5,265 00
4	—Bo't of Stocks and Bonds—		
	Coupons, 3@32 50..................	97 50	
	" 3 "	97 50	
	" 83 "	2,697 50—	2,892 50
5	— " 1 "		32 50
7	– " 24 "		780 00
	6 M. & O. Coupons,................		195 00
12	—251 6 pr. ct. Sterling Coupons,........	8.157 50	
	7 " " "	227 50	
	59 " " "	1,917 50—	10,302 50
14	— 9 " " "	292 50	
	30 " " "	975 00	
	49 " per Bank of Mobile,.......	1,592 50—	2,860 00
19	— 9 " paid in Mobile,...........		292 50
23	— 12 " " @32 50........	390 00	
	6 (May) " "	195 00	
	Purchased 3, "	97 50	
	" 1, "	32 00—	714 50
28	—Coupons paid in London per U. B. L.		
	to May 12, ’74, 2898 £18,744.15 @4 93, 92,411 61		
	Notarial Charges,............12.14-11		
	Insurance,..................34.10-00	230 66—	92,642 27
	Forward..........		117,536 77

1874.	Brought Forward....	117,536 77	
May	29—10 May, @32 50..........	325 00	
June	1—Mobile, 10 Coupons@32 50..........	325 00	
	2—Coupons due May '74, 2 @32 50.......	65 00	
	12—115 " " " " Mobile,	3,737 50	
	17— 1 "	32 50	
	18—Notarial charges sending 133 Mobile and Ohio Coupons to New York, 16.1—4 91	3 94	
	23—2 Coupons paid per Bank Mobile,....	65 00	
July	1—7 per ct. Interest to date............	255 94	
	2—25 Coupons @32 50..................	812 50	
	3—Insurance on Mobile Coupons sent per City of Chester £1.12-3@4 91	7 91	
	24—Bal. of Coupons paid in London to July 3d, £1,351.11-9@4 90½......	6,629 53	
	31—2 May @32 50..................	65 00	
Sept.	30—7 per ct. Int. on account to date.....	107 60	
		129,969 19	
1874.	CREDITS.		
June	3—Coin bot. ch'ged to Currency account,		118,186 27
	19—Ch'gd M. & O. Gen'l acc't to bal.....		3,803 00
Oct.	8—Bal. transferred to Cy. acc't @9¾...		7,979 92
			129,969 19

GOLD ACCOUNT.

MOBILE AND OHIO RAILROAD COUPONS PURCHASED NOV. 1874.

			Dr.
1874.			
Nov. 4—	300 Nov. Coupons @32 50..	9,750 00	
	Less ½ pr. ct. collection.	48 73—	9,701 27
5—	121 Nov. Coupons @32 50..	3,932 50	
	Less ½ pr. ct. collection.	19 65—	3,912 85
9—	29 Nov. Coupons @32 50...	942 50	
	Less ½ pr. ct. collection.	4 72—	937 78
12—	29 Nov. Coupons @32 50....	942 50	
	Less ½ pr. ct. collection.	4 71—	937 79
21—	10 Nov. Coupons @32 50..	325 00	
	Less ½ pr. ct. collection.	1 61—	323 39
30—	5 Nov. Coupons @32 50...	162 50	
	Less ½ pr. ct. collection.	81—	161 69
Dec. 19—	3 Nov. Coupons @32 50...	97 50	
	Less ½ pr. ct. collection.	48—	97 02
31—	55 Nov. Coupons @32 50...	1,787 50	
	Less ½ pr. ct. collection.	8 94—	1,778 56
1875.			
Jan'y 7—	£19,446 1-5 of Nov. '74 Coupon, bo't per Credit Foncier, £15,000 @4 88¼..	$73,237 50	
	4,446 1-5 " ½..	21,719 05—	94,956 55
			112,806 90

1874.	CREDITS.	
Nov. 5—	Per value transferred to Currency Purchase Account..................................	9,701 27
6—	Val. of 5th inst. to Currency Account @1 10..	3,912 85
10—	" to Currency Purchase Account...........	937 78
13—	" " " "	937 79
23—	" " " " 111¼	323 39
Dec. 1—	" " " " 112¼	161 69
21—	" " " " 111 50....	97 02
1875.		
Jan'y 2—	" " " " 111 50....	1,778 56
Mch. 27—	Coin bo't to bal. 116⅛—⅛ brokg. charged to Currency Account........................., ...	94,956 55
		112,806 90

GOLD ACCOUNT.

Mobile and Ohio Railroad Company.

1874.			Dr.
July	2—48 Coupons @35 00		1,680 00
	6—24 " "		840 00
	8—14 " "		490 00
	13—51 " "		1,785 00
	17—61 " "		2,135 00
	24—Income Tax to March 31, £1.3-1, Bal. Coupon acct., Jan'y, '74, 115-9-5 } @4.90½		572 04
	31—Chgs. on 411 Coupons from London to New York, £2.1-5, Insurance on do., 5.7-6, @4 90		36 48
	136, July, @$35		4,760 00
Aug.	4—1, January "	35 00	
	24, July "	840 00	875 00
	7—Insurance on Coupons from London, £1.5-1; chgs. on 93 Coupons, 13.3, @4 91		9 41
	11—53, July, @$35		1,855 00
	18—11, " "		385 00
	31—21, " "		735 00
Sept.	8—1, " "		35 00
	14—11, " "		385 00
	18—1, " "		35 00
	30—6, " "		210 00
Oct.	10—		9,870 00
	14—2 July Coupons @$35		70 00
	20—6 coupons "		210 00
	29—Cable to Credit Foncier		25 09
Nov.	4—1 July Coupon		35 00
	12—1 July		35 00
Dec.	18—Cable to Credit Foncier		17 00
			27,084 93

1874.	Credits.	
June 30	—Balance	6,406 28
Oct. 9	—Per purchase account Coupons due July 1, 1874	16,170 00
10	—Transferred to Mobile and Ohio Railroad currency account	4,116 65
15	—Per purchase account July 1, 1874	70 00
21	—Gold bought	210 00
Nov. 5	—Per value transferred to Currency account	60 00
13	" " "	35 00
Dec. 19	—Per Currency account, Cable 18th	17 00
		27,084 93

Exhibit C to testimony of W. B. Duncan is the Report of the Directors of the Mobile and Ohio Railroad Company for the year 1874, printed in Part 2 of this Record.

Exhibit D to the Testimony of W. B. Duncan.

Agreement for the Readjustment, &c., of the Securities of the Mobile and Ohio Railroad Co., dated Oct. 1, 1876. *Wm. H. Hays, Chairman, Wm. S. Pierson, T. Haskins DuPuy, Committee of Reorganization: Office, No.* 11 *Pine Street, New York.*

Memorandum of Agreement and Transfer, made the first day of October, 1876, by and between the Mobile and Ohio Railroad Company, a corporation by that name existing under the laws of Alabama, and operating also under the laws of the States of Mississippi, Tennessee and Kentucky respectively, party of the first part, and the various other parties whose names are subscribed hereto, being creditors of said company, some holding security as hereinafter specified and others unsecured, each subscriber for himself and neither for the other, parties of the second part, and William H. Hays, of the city of New York, William S. Pierson, of Windsor, in the State of Connecticut, and T. Haskins Du Puy, of Philadelphia, in the State of Pennsylvania, parties of the third part:—

Whereas, The said railroad company, originally incorporated by the State of Alabama, and operating under the laws of that State, has, by the legislation of the several States of Mississippi, Tennessee and Kentucky respectively, obtained valuable corporate rights and privileges, as well as important exemptions, in those respective States:

And whereas, Owing to a succession of misfortunes, the said corporation has fallen into arrear in the payment of its bonded and other indebtedness, to such an extent that proceedings for the foreclosure of mortgages executed by it are now pending, which proceedings have gone to an advanced stage, and are still being pushed, and, in addition, the day of payment named in some of its mortgages is near at hand:—

And whereas, Differences and disputes have arisen between the different classes of holders of the securities and evidences of debt issued by said company, which differences and disputes, if persisted in, are likely to lead to protracted litigation, and to the sacrifice or deterioration of the property of the said company, and to great delay in the resumption of regular and legitimate operations on its road; and it is therefore deemed expedient that a scheme should be devised, to be assented to by the various classes of claimants upon the said company, for the harmonizing and compromise of their respective claims, without ending the corporate existence or corporate powers of said company, and without putting an end to or limit upon its corporate privileges:—

And whereas, The secured indebtedness of the said company now exists in the form of bonds and coupons secured by mortgage liens, as specified in the schedule hereto annexed, and as appears by the books of the company, exclusive of interest on said coupons:—

And whereas, In addition to said mortgage indebtedness, judgments have been recovered against said company, which are claimed to constitute liens upon some of its property, subject to its mortgage indebtedness, but a large part of which judgment indebtedness is presumed by lapse of time and otherwise to have been in fact satisfied; and in addition thereto, the said company owes a considerable amount of floating or unsecured indebtedness; and the undersigned, holders of claims of the various classes against said company, as well those specified in the said schedule hereto annexed, as judgment creditors and unsecured creditors, have agreed to compromise and compound with said company upon the said company's issuing new securities for all the said indebtedness in the manner hereinafter agreed upon, to the end that if practicable said foreclosure suits may be discontinued and the property affected thereby restored to the custody and control of the said company under the conditions of this agreement, and the stipulations accompanying the same:—

But whereas, It is understood by said creditors that if such scheme shall be found to be impracticable because not assented to by a sufficient number of creditors, or for other reasons, that then the said foreclosure proceedings shall be prosecuted to either a sale or a strict foreclosure, and a purchase or acquisition of the property of the said company consummated for the benefit of the subscribers hereto, who are such creditors as aforesaid, and that a new corporation or corporations shall be created, and new securities issued for the benefit of such creditors.

Now this memorandum witnesseth, that the said parties hereto have covenanted, agreed and transferred, and do hereby covenant, agree and transfer to and with each other in manner and form following, that is to say:—

First.—The said William H. Hays, William S. Pierson, and T. Haskins Du Puy, are hereby constituted assignees in trust, agents, managers and attorneys of the said parties hereto, who are creditors of the Mobile and Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing and controlling the same, for the purposes, in the manner, and with the powers hereinafter specified.

Second.—Each of the parties hereto, being a creditor of the said Mobile and Ohio Railroad Company at the time of the execution of this instrument, assigns, transfers, delivers, and makes over to the said William H. Hays, William S. Pierson, and T. Haskins Du Puy, all the evidences of debt issued by said company, and claims against said company, now held by such subscriber hereto, whether in the shape of bond, coupon, note, judgment, open account, unliquidated demand, unpaid voucher or otherwise, to be held by the said Hays, Pierson and Du Puy, as such assignees, agents, managers and attorneys, in the manner and for the purposes and upon the trusts so hereinafter declared concerning the same. Upon this instrument being subscribed by all the creditors of said corporation, holders of evidence of debt issued by said corporation, or of other claims against the same, the said assignees, agents and attorneys shall have and hold the claims and evidences of debt of such creditors with full power and authority to cancel, surrender, release and discharge all such evidences of debt, claims, and demands, so transferred to them, upon receiving from said Mobile and Ohio Railroad Company new evidences of debt and securities to the extent and in the manner hereinafter provided.

Third.—Upon the request of the said Hays, Pierson and Du Puy, or their successors, the said corporation hereby agrees to execute and deliver, or cause to be executed and delivered, to the said William H. Hays, William S. Pierson and T. Haskins Du Puy, or their successors or appointees, new bonds and obligations or acknowledgments of indebtedness secured respectively by a new mortgage and trust deed to be made by said corporation as hereinafter provided, and containing such stipulations and clauses for the security of the creditors of said company as the said assignees and attorneys shall advise and require, not in conflict with the provisions of this agreement.

Fourth.—The said new mortgage shall be called the first mortgage, and shall constitute a first and primary lien on all of the main line of the said Mobile and Ohio Railroad, lying at and between the city of Mobile and the city of Columbus, in the State of Kentucky (exclusive, however, of the several branches now possessed or to be acquired or constructed, those now possessed being known as Aberdeen branch, Columbus branch, Starkville branch, and the Gainesville branch), covering all and singular the chartered rights, railways, sidings, turnouts and all connected therewith, bridges, fences, warehouses, depot and office buildings, machine shops, tools, iron, timber, and all materials necessary in the repair of the road, rolling stock or machinery, and all wood and coal and other materials necessary in running said road, and all fixtures, privileges, rights, real estate, and all other property owned, and which may be hereafter owned by said company, and which shall be necessary to the business of said company, or for the purpose of carrying freight and passengers upon said main line; but not including any lands granted to said company by any State, or by the United States, nor lands which may be situated apart from the line of the road, and not actually required for the use or running of the road. The said trust deed shall be in the form, and shall have the effect and operation of a conveyance in trust to trustees, of the lands granted to said company by any State or the United States, as well as all lands belonging to the company and not necessary for the operation of the railroad of said company, and also so much of the net income of said company as shall remain after payment of current expenses, cost of maintenance, improvement and repairs, and interest on said new first mortgage, and on the debentures, as hereafter more particularly specified.

Fifth.—The first mortgage mentioned in the last preceding paragraph shall be made for the security of the holders of the present outstanding issue of first mortgage bonds of said corporation, and of the coupons issued with said first mortgage bonds, whether such coupons are now detached from such bonds or are now attached thereto, and for the benefit and security of the holders of the issues known as the sterling arrearage interest bonds, the funded arrearage interest bonds, and the coupons detached from or attached to such bonds, matured and unpaid, and also for the benefit and security of the holders of the issue known as the Tennessee Substitution Bonds, and coupons detached therefrom or attached thereto, matured and unpaid, all upon an equal footing as to grade of new security, (provided such holders become parties to this agreement, and transfer the securities held by them respectively pursuant hereto,) and for the purpose of providing funds for necessary expenses and outlay under this agreement. The total amount of principal money secured by bonds issued under the new first mortgage is to be seven millions of dollars, payable in the City of New York, in gold coin of the United States, on the first day of December, in the year 1927, bearing interest payable in lawful money of the United States, in the following manner: Two per cent. on the first day of December, 1877; two per cent. on the first day of June, 1878; three per cent. on each first day of December and June thereafter; and the bonds to be issued under said first mortgage may be in sums of either $1,000, $500, $300 or $100 each, and shall have negotiable interest warrants or coupons attached thereto payable in New York. But the holders of the present first mortgage securities are to be interested in the new securities issued under the new first mortgage, as next hereafter stated; that is to say:—

Sixth.—Each subscriber hereto, who shall have transferred to the said assignees, agents and attorneys a first mortgage bond of said company, shall be entitled to receive an amount equal to four hundred and forty dollars for each one thousand dollars, or each £225, of the principal sum payable upon such bond so transferred, in a bond or bonds, to be issued under the said new first mortgage hereinabove provided for, to be taken at par; and every subscriber hereto, who shall have so transferred first mortgage coupons of said company heretofore issued (provided the due date originally mentioned therein shall not have been later than the first day of November, 1877,) shall receive an amount equal to the value of such coupons, as below estimated, in a bond or bonds, to be issued under said new first mortgage hereinabove provided for, each such coupon to be estimated for this purpose as being worth, and as securing the payment of, thirty-six dollars, except coupons maturing November 1, 1877, which shall each be estimated as worth only six dollars; and each holder of sterling interest bonds who shall have become a subscriber to this agreement, and shall have transferred his bonds in pursuance hereof, shall be entitled in lieu of each bond so transferred, to a bond or bonds, for the principal sum of four hundred and forty dollars each, to be issued under said new first mortgage for each £200 of the principal amount of the bonds so transferred by him under this agreement; and each holder of coupons heretofore issued with any such sterling interest bond, (provided the original due date named in such coupon shall not be later than the first day of November, 1877,) shall be entitled in lieu thereof to a bond or bonds to be issued under such new first mortgage for the amount of the coupons so transferred, valuing each such coupon at the sum of thirty-six dollars, except coupons maturing November 1, 1877, which shall be valued at only six dollars; and each holder of bonds generally known as arrearage interest bonds, who shall have become a subscriber to this instrument, and shall have transferred his bonds pursuant to the terms hereof, shall be entitled to a bond or bonds to be issued under said new first mortgage for the principal sum of three hundred and ten dollars for each $1,000 of the principal amount of the bonds so transferred, and each holder of coupons heretofore issued with such arrearage interest bonds, (provided the original due date of such coupons shall not have been later than the first day of November, 1877,) shall be entitled to new first mortgage bonds for the amount of the coupons so transferred, valuing each such coupon at thirty-six dollars, except that coupons of which the original due date was the first day of November, 1877, shall be valued at six dollars each; each holder of bonds known as Tennessee Substitution Bonds, who shall have become a subscriber to this agreement, and who shall have transferred his bonds as aforesaid to said assignees and attorneys, shall receive in lieu of the bonds so transferred a bond or bonds to be issued under said new first mortgage for the par amount of $626 for each bond so transferred, and each holder of coupons heretofore issued with any such Tennessee Substitution Bonds, (provided the original due date of such coupons was not later than July 1st, 1877,) who shall have become a subscriber to this agreement, and who shall have transferred his coupons to said assignees and attorneys, shall be entitled in lieu thereof to receive a new first mortgage bond or bonds for the amount of his coupons so transferred, estimating each such coupon at thirty-six dollars, except the coupons maturing July 1, 1877, which shall be valued at only thirty dollars each.

Seventh.—The trust deed hereinabove provided for shall be in part for the security of the same class of present creditors who, as above agreed, are entitled to be secured by the said new first mortgage, to the extent of the difference, as below stated, between the amount of new bonds to be issued to them or for their benefit, as above provided, and the principal amounts of the bonds now outstanding and transferred by them respectively, and also for the benefit of the remaining creditors of said company who shall become parties to this agreement and become entitled to the benefit thereof; and to that end it is now provided—

Eighth.—Each bond now held by any such present first mortgage creditor as last aforesaid for the principal sum of one thousand dollars gold or lawful money, or for the principal sum of £225, £205, or £200, shall, for the purpose of ascertaining such difference, be estimated as worth one thousand dollars; and each bond payable in dollars, gold or lawful money, for a less sum than $1,000, shall be estimated at its face, without interest, and each bond payable in sterling money for less than £200 shall be estimated at the rate of five dollars for each pound sterling of principal money payable by the terms of such bond. And after charging to each subscriber hereto who shall have transferred bonds as above agreed, the principal amount of the bonds to be issued to him as above provided in the sixth paragraph, not taking into account any bonds issued in lieu of coupons transferred under said sixth paragraph, he shall be entitled to a preferred income and sinking fund debenture or debentures, of the first series to be issued under said trust deed, as hereinafter provided, for the difference between the principal sum of the new first mortgage bonds so charged to him and the principal sum of the bonds so transferred valued as above provided.

Ninth.—The preferred income and sinking fund debentures issued under said trust deed may be in sums of $1,000, $500, $300, or $100 each, and shall not have any interest coupons attached thereto, and shall not be payable absolutely, but only out of the sinking fund hereinafter provided; and shall be registered and shall be transferable only on the books of the company, at the office of the company, in the City of New York, and shall not otherwise be transferable, and shall be issued in successive series, the first series to be known as first preferred income and sinking fund debentures, the second series to be known as second preferred income and sinking fund debentures, the third series to be known as third preferred income and sinking fund debentures, and the fourth series to be known as fourth preferred income and sinking fund debentures, and such debentures shall be so expressed as that interest at a rate not exceeding seven per cent. per annum shall be payable thereon yearly, that is, on the first day of February in each year after the year 1878, upon the conditions herein specified, that is: on or before the first day of December, in the year 1878 and each year thereafter, said company shall ascertain as closely as practicable the net earnings of such company remaining after paying the expenses of the corporation, cost of maintenance and proper repair, and the interest on the new first mortgage bonds, up to the first day of September next preceding, that being the end of the fiscal year; and in case there shall remain on such first day of December a residue of earnings for the year ending on the first day of the September next previous, and if it shall then be ascertained that up to the first day of September next preceding that first day of December, the earnings of said company, after making provision for such expenses, interest, and the proper maintenance of the property in good order, leave any sum applicable to the payment of interest on such debentures, then such net earnings shall be applied to the payment of interest on said first preferred income and sinking fund debentures, not exceeding seven per cent. in lawful money of the United States, and such application and payment shall be made on or before the first day of February in the next succeeding year; and after payment of interest at the rate of seven per cent. per annum on said debentures of the first series, what remains of said net earnings shall be applied to the payment of interest on said debentures of the second series at a rate not exceeding seven per cent. per annum; and after payment of interest at that rate on said debentures of second series, what remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the third series; and what then remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the fourth series; but in case the earnings of any one of such years shall not be adequate to the payment of seven per cent. interest for that year on all or either series of said debentures, then the deficiency shall not have any claim upon the net earnings of any succeeding year. And the net earnings shall only be applicable to the payment of interest on either series of debentures in case such earnings shall amount to at least one per cent. or a multiple of one per cent. on the total amount of the debentures belonging to such series, so that fractions of net earnings exceeding such one per cent. or a multiple of one per cent., need not be included in the payment of interest for that year, but shall be carried to the credit of the earnings for the succeeding year.

Tenth.—The aforesaid second preferred income and sinking fund debentures shall be issued for the benefit and security of that class of the present creditors of said corporation, who are known as second mortgage bondholders, all to be upon the same footing with each other as to security and priority. Each second mortgage bond of said company, and each coupon thereof, now outstanding shall be considered as of the par value represented on its face in currency, provided the due date originally specified therein shall not have been later than the first day of March, 1878, except coupons maturing March 1, 1878, which when for $80 on their face shall each be estimated as worth only twenty dollars, or in that proportion for any coupon of any smaller amount than $80. Each holder of a present outstanding second mortgage bond or coupon of said company, who shall have become a subscriber to this agreement, and shall have transferred his bond or coupon pursuant to the terms hereof, shall be entitled to receive dollar for dollar for the principal of his bond and coupon so transferred as aforesaid, in a second preferred income and sinking fund debenture.

Eleventh.—The said debentures of the third series shall be for the benefit and security of the holders of the present outstanding bonds of said corporation, known as convertible bonds, and shall be for an aggregate amount sufficient to represent the aggregate amount of now outstanding convertible bonds, and the interest thereon up to the first day of June, 1877. Each holder of a convertible bond who shall have become a subscriber to this agreement, and shall have transferred his bond as and in the manner aforesaid, shall be entitled in lieu thereof to a debenture of the third series, for the par amount of the bond so transferred, estimating the same at its face value in currency, and the accrued interest on such convertible bond, to be computed up to the first day of June, 1877, shall be replaced by a debenture of the third series for the actual amount of such interest up to that date.

Twelfth.—The said debentures of the fourth series shall be for such amount as said assignees and attorneys shall determine to be necessary for the purpose of satisfying such judgment and unsecured indebtedness of the said company as they shall deem to be morally obligatory, in their discretion, so far as the same shall be held by subscribers to this instrument who shall have transferred their claims to the said assignees and attorneys, subject to adjustment by said assignees and attorneys, but the same shall not exceed the sum of the face value of such judgments or indebtedness, and no unsecured or judgment creditor shall be admitted as a subscriber to this instrument, nor entitled to the benefit thereof, for any amount exceeding that which may be adjusted and allowed to him by said assignees and attorneys; and each such judgment and unsecured creditor who shall so become a party hereto, shall be entitled to a debenture of the fourth series for such sum as said assignees and attorneys may adjudge to be justly due to him.

Thirteenth.—In case all the holders of the unsecured or judgment indebtedness of said corporation shall not have become parties hereto, or shall not have assented to the adjustment of their claims by the said assignees and attorneys, and the reduction thereof to the amount which said assignees and attorneys shall deem to be justly and equitably due thereon, then said assignees and attorneys, instead of cancelling and surrendering all of said mortgage bonds now outstanding, transferred to them under this agreement, shall hold said mortgage bonds or so much thereof as may in their discretion be necessary for the security of the new securities against said unsecured and judgment indebtedness, except that the new mortgage and trust deed issued by said corporation shall have priority over such old mortgage bonds; but such original mortgage bonds shall be held by the trustees in the new first mortgage, in trust for the benefit of the holders of the new securities of the said corporation, according to their order and priority, prior to and to the exclusion of, the unsecured and judgment creditors who shall not have assented to this agreement. And each of said present mortgage bonds transferred under this agreement and held by said trustees, as before stated, shall be stamped by the assignees and attorneys with the following words: "In pursuance of the terms of agreement made between the Mobile and Ohio Railroad Company and its creditors, bearing date October 1, 1876, this bond is not negotiable, being held subject to the provisions and for the purposes mentioned in said agreement."

Fourteenth.—The said assignees and attorneys shall not be authorized to cancel or surrender any of the existing obligations or evidences of debt of the said corporation, transferred to them under this agreement, unless all the present holders of the mortgage securities of said company shall have become parties to this instrument, and transferred the securities held by them on or before the first day of March, 1877, or at or before such time as the said assignees and attorneys shall have fixed, as in their discretion they may, by successive extensions of not more than sixty days each; nor until said corporation, or its stockholders, through legal and proper action of its stockholders, if such action be necessary, or otherwise according to law, shall have entered into an adequate and sufficient arrangement or agreement with said assignees and attorneys, and with the holders of said debentures, enabling the holders of such debentures or the trustees under said trust deed to vote at elections for directors of the said company, and irrevocably represent such stock or a majority thereof, at all stockholders' meetings until such debentures shall be extinguished; and upon that privilege of representation being acquired by and vested in or secured to the trustees in said trust deed, or to the holders of the said debentures, by the proper and legal action of such corporation or its stockholders, and upon all the new mortgages and securities above called for being issued, then such cancellation and surrender may be fully completed and consummated (except in the contingency provided in paragraph 13 of this agreement,) and the property and management of the corporation may be restored to it, and said foreclosure suits may be discontinued.

Fifteenth.—Any surplus of new securities created under this agreement, not required for the satisfaction of the claims of existing creditors, may be applied and appropriated by said assignees and attorneys to the payment of the expenses of making this agreement and carrying the same into effect, as well as the expenses of said foreclosure suits; and the said assignees and attorneys, as tranferees and assignees of the subscribers to this instrument, shall have the same rights and relations to the foreclosure suits now pending, and to the complainants in said foreclosure suits, and to the receivers in said suits, and to the funds in their hands, which the subscribers to this agreement now have or would have if they continued to be holders of the bonds and claims subscribed hereto, and shall be entitled to the same share of the proceeds of the present management of the property of said company, and to the same share of the proceeds of the sale of such property which their assignors would have upon a discontinuance of said foreclosure suits, or upon an accounting, or upon a sale or distribution of the proceeds; their several assignors to be considered, in relation to such proceeds, as being upon the same grade of priority and security, as between and among each other, upon which the provisions of this agreement would place them in relation to the new securities to be issued by said company.

Sixteenth.—In case a sufficient number of subscribers shall not be obtained to this agreement on or before the time prescribed herein, to put it within the power of said assignees and attorneys to carry into effect the foregoing clauses and stipulations of this agreement, then this agreement shall be binding upon the subscribers thereto, provided it shall have been subscribed by holders of at least a majority in amount of the existing first mortgage indebtedness and Tennessee Substitution Bonds of said company, as recited in the schedules hereto annexed; and thereupon said assignees and attorneys shall have power and authority to appropriate the bonds, coupons, moneys (if any), and evidences of debt which shall have come into their possession, under the provisions of this agreement, towards the purchase of the property of said railroad corporation, under such decree or decrees of foreclosure as shall be obtained in said pending suits, and shall have power and authority, and it shall be their duty, to aid the complainants in said suits in speeding said suits to their conclusion, by decrees of foreclosure and sale, or of strict foreclosure, in the interest and for the benefit of the subscribers to this agreement, and they shall have power to turn the securities, received by them under this agreement, into court in payment for said property, upon the purchase thereof by them upon the foreclosure; and in the event of its becoming necessary for the protection of the interest of the parties subscribing hereto, that any cash or other payment than the securities in their possession should be made into court, said assignees and attorneys shall have the power to make such payment for the account of and at the risk of the parties subscribing hereto, or by obtaining the amount thereof upon the security of the bonds and coupons in their hands; and shall likewise have power to apply for and receive dividends upon the bonds and coupons received by them under this agreement from the funds in court in the hands of the receivers, or of any master or marshal or clerk or otherwise to the same extent as the original holders of the bonds and coupons retained and held by them would have been; and while no authority is given to them to make any subscribers hereto personally responsible for the payment of any debt incurred by them, they are authorized with the assent of the trustees of the present first mortgages, or a majority of them, to pledge the bonds and coupons in their possession for the purpose so far as necessary of obtaining means to expedite and bring to a conclusion this compromise or said foreclosure suits.

Seventeenth.—The parties subscribing hereto and transferring any evidence of debt or claim according to the terms of this instrument, shall be entitled to certificates, specifying their contributions respectively and their interests respectively to and in this agreement and the benefits thereof; and each certificate shall be transferable and deliverable to bearer without a transfer being required to be made in any book or in writing, and shall represent on its face the securities deposited therefor.

Eighteenth.—Upon the purchase of the property of said company by said assignees and attorneys at any sale or sales under decree of sale or strict foreclosure, it shall be their duty to avail themselves of any existing law in either of the States of Alabama, Tennessee, Mississippi or Kentucky, or to procure legislation, so far as may be necessary, for the purpose of creating a new corporation or new corporations to which it shall be their duty to transfer the property so purchased by them as early as practicable upon receiving from such new corporation the new bonds, debentures, mortgage and trust deed hereinabove specified for the same amount which would be required to carry the above proposed compromise into effect, such mortgage and trust deed to be made to one or more trustees in each case to be selected by said assignees and attorneys, and to be properly framed for the security of the several classes of creditors to be benefited thereby; and so far as the evidences of debt to be issued under such new mortgage or trust deed, whether by said Mobile and Ohio Railroad Company, or by a new corporation, shall not be required to be issued or delivered in exchange for securities which shall have come into and remained in the hands of such assignees and attorneys under this agreement, such surplus securities shall be sold, or so much thereof as in their judgment may be necessary for the purposes hereinafter named; and the proceeds thereof, and also any sums received by them in cash from the receivers, or from any officer of the court, shall be applied, in the first place, in repaying any sums advanced, or procured to be advanced, by said assignees and attorneys for the purpose of meeting the expenses of said foreclosure suits and of carrying this agreement into effect, and the expense of making such purchase and reorganization; and then the surplus, if any, remaining from such disposition of such new securities, as well as any new securities which may remain unsold or undisposed of, and any sums realized by said assignees and attorneys from the receivers or managers of said property in said foreclosure suits, or from the management or running of the road, shall be accounted for by said assignees and attorneys to said new corporation, which said new corporation is to consist of and be created by the subscribers to this agreement, so far as they are entitled to the benefit of the same; and said new corporation, or said existing corporation, in case the compromise above specified shall be carried into effect, shall be considered as subrogated to all the rights of the subscribers to this agreement for the purpose of calling the said assignees and attorneys to account. The said assignees and attorneys shall be allowed out of the fund, for compensation for their services and responsibility, such amounts as shall be reasonably just according to the character of such services and responsibility; but there is no personal responsibility on the part of any subscriber hereto for any part of such compensation; and said assignees and attorneys, and their necessary clerks, book-keepers, and their employees of any grade or description, shall be entitled to a lien upon the new securities and upon the cash received by said assignees and attorneys, and the cash proceeds of such of the same as they are authorized to dispose of, for their compensation, liabilities and disbursements, whether absolute or contingent, until their account shall have been duly and properly settled with such organization; and such existing corporation, or such new corporation or corporations, as the case may require, shall, before payment of interest on any of the new securities, assume and pay any excess of such compensation, liabilities and disbursements above the amount realized by said assignees and attorneys from funds in their hands.

Nineteenth.—The subscribers hereto, who shall respectively have transferred to said assignees and attorneys their several claims, provided such claims shall remain under the control of such assignees and attorneys and available for the purpose of purchasing the property now mortgaged in said foreclosure suits, shall be interested in the property after such purchase and so long as the title thereto remains in said assignees and attorneys, as beneficiaries and *cestui que trust*, in the same proportions, and shall have the same relative rights and interests, as against each other, as in the new securities to be created under this agreement.

Twentieth.—The trust deed hereinabove provided for, whether executed in pursuance of the compromise above agreed upon or by a new corporation or corporations to be created after a foreclosure, shall contain provision for the creation of a sinking fund for the benefit of the holders of said debentures in the order in which the interest on such debentures is as above specified payable.

Such sinking fund is to consist of the proceeds of all lands owned, and which may hereafter be owned by said company, with the exception of such as are covered by the above mentioned first mortgage, and with the exception of the railway, rails, bridges, fences, warehouse and other fixtures, rights, privileges and real estate belonging to the above mentioned branches, but including all lands not so covered but conveyed to the Mobile and Ohio Railroad Company by any State or by the United States. The trustees under said trust deed are to have power of sale over said lands from time to time, and such trust deed shall contain clauses properly framed conveying to the trustees under such deed the same powers of sale in respect to the lands conveyed thereby as are possessed by the trustees under the now existing first mortgage; and the first mortgage to be created under this agreement is not to apply to or cover such lands, and the proceeds of sales of said lands are to be free from the lien of said new first mortgage, and are to constitute a fund for the exclusive benefit of the holders of said debentures. But such new trust deed shall also contain a provision by way of covenant, declaration, grant or otherwise, as said assignees and attorneys may direct, in substance and effect that the amount of principal and interest payable upon said debentures shall constitute a lien upon the railway property of said existing corporation, or of said new corporation or corporations, as the case may require, to such an extent that in case of a foreclosure of said new first mortgage and a sale thereunder, the trustees in said trust deed, for the benefit of holders of said debentures according to their order and priority, shall be entitled to the surplus proceeds of such sale next after payment of said new first mortgage, to the amount of the aggregate principal sum due on such debentures, and so that in case any lien upon said railway property, or any part thereof, shall arise, subsequent to the making of said trust deed, by the act or sufferance of such existing or new corporation, and such subsequent lien shall be enforced to the extent of depriving said existing or new corporation of the possession of such railway property, or any part thereof, then the trustees in said trust deed may enter into possession of such part of said railway property, and sell the same, clear of all subsequent liens, for the benefit of holders of said debentures according to their order and priority, or may exact redemption and payment in full of the principal amount of such debentures before surrendering such property to such subsequent lienors; and said trust deed shall also contain proper covenants and securities, for the ascertainment and application of the income of the property of said existing or new corporation and its successors, as the case may require, according to the provisions of this agreement; and there shall also be paid into the sinking fund all the interest accruing on debentures bought for the sinking fund, until all the debentures shall have been bought, satisfied or extinguished; and there shall also be paid into the sinking fund a further amount equal to the dividend which may hereafter be declared upon the capital stock, now existing or hereafter to be created, of such company, which dividend shall not be declared or paid except an amount equal thereto is also paid in at the same time out of the net revenue into the sinking fund.

The trustees making sales of said lands are to deposit the proceeds thereof in the Bank of the State of New York, in the City of New York; or such other depository as the trustees in said trust deed may select in the said City of New York; and each six months, that is on the first days of May and November, the trustees shall advertise, in the cities of Mobile and New York, stating the amount so deposited and at the disposition of the sinking fund, and asking for tenders therefor in the first series of said debentures then outstanding, awarding the amount so deposited to the holders of debentures, tendered at the lowest grades of price, in succession. In default of any bids or tenders therefor at less than par, the trustees shall thereupon draw by lot a sufficient number of debentures of the first series, then outstanding, to absorb such deposits, and shall apply such deposits to the purchase of the debentures so drawn by lot at par. After purchase of the said debentures of the first series, the said sinking fund shall be applied in like manner, and by the same means, to the purchase of each other of the said several series of debentures in succession.

Twenty-first.—In case a prosecution of said foreclosure suits to a sale or to a strict foreclosure is found to be necessary, and it shall also be found necessary to create a new corporation or corporations, then the capital stock of such new corporation or corporations shall be fixed at not exceeding the sum of ten million dollars, to be divided into shares of one hundred dollars each, and shall be in the first instance issued to said assignees and attorneys as a part of the funds in their hands for the purposes of this agreement; and they shall so place a majority of such stock as to secure to the holders of said debentures directly or through the trustees in said trust deed the control of the management of the corporation; and any surplus of such new stock remaining after that disposition of it, and after the trust under said trust deed shall be fully executed, shall be treated in like manner with any surplus bonds, or other securities, to be issued by the Mobile and Ohio Railroad Company, or by a new corporation or corporations, under the provisions of this agreement.

Twenty-second.—Bonds, securities, claims and evidences of debt, transferred to said assignees and attorneys under the provisions of this agreement, shall be deposited at the option of the parties transferring the same, either in the Farmers' Loan & Trust Co. in the City of New York, or in the Bank of Mobile, at Mobile, in the State of Alabama, or with C. M. Lampson & Co., in the City of London, or at the Frankfurter Bank Verein, in the City of Frankfurt, or with Lombard, Odier & Co. in the City of Geneva, who shall respectively be authorized to give therefor the certificates above provided for, or their receipts exchangeable for said certificates; and the securities so deposited shall remain in the several depositories subject to the order of said assignees and attorneys until the same shall be required for cancellation, surrender, exchange, or delivery into court by said assignees and attorneys, or for other purposes of this agreement, in which case the same shall be transmitted from the depositories thereof to such attorneys and assignees, either at the Farmers' Loan & Trust Co., in the City of New York, or at the Bank of Mobile, in the City of Mobile, as said assignees and attorneys may direct, from which depositories the same may be taken by said assignees and attorneys when required for any or either of the purposes aforesaid; and securities and cash funds received by said assignees and attorneys, under the provisions of this agreement shall be deposited by them, either in the Farmers' Loan & Trust

Co., in the City of New York, or in the Bank of Mobile, in the City of Mobile.

Twenty-third.—In case of a vacancy in the office of assignee or attorney under this agreement, arising from death or resignation of either of the parties, or from his incompetency to act, the vacancy may be filled by the unanimous agreement of the trustees acting under the existing first mortgage of said corporation and the remaining assignees and attorneys under this agreement.

Twenty-fourth.—The said assignees and attorneys shall have an office in the City of New York, and shall keep regular accounts and books of account, showing their transactions, which shall be open to the inspection of certificate holders at reasonable times during business hours; and a majority of said assignees and attorneys shall be competent to transact business at any meeting of which all three of the assignees and attorneys shall have been notified, and any substituted assignee or attorney, duly appointed pursuant to the provisions of this agreement, shall have the same power, authority and control which his predecessor had; and all the provisions of this agreement, and all the powers conferred thereby, shall apply to and be vested in such assignee and attorney so far as his predecessor had such power, or was subject to such provisions; but so far as any discretionary power is conferred by this agreement, no such discretion shall be or can be used without the consent of all the attorneys and assignees acting at the time under this agreement, and each assignee and attorney shall be responsible only for his own acts and not for the acts of others; and neither assignee or attorney shall be responsible for any error of judgment, nor for any error or negligence of any subordinate officer or agent unless such officer or agent shall be employed or continued in employment negligently by such assignees and attorneys.

Twenty-fifth.—The new securities to be issued by said

Mobile & Ohio Railroad Company, or by a new corporation or corporations to be created under the terms of this agreement, shall be in the first instance delivered by the said company to said assignees and attorneys, or their successors, who shall deposit the same in the said The Farmers' Loan & Trust Co., or in the said bank of Mobile, and no subscriber hereto or his successor in interest shall be entitled to any portion of such new securities except upon a return or surrender to said assignees and attorneys at one or other of the said places of deposit of the certificate or certificates held by such subscriber. In case, in the original distribution of the new securities to be issued in pursuance of this agreement, any party shall become entitled to a fractional part, less than $100, of a bond or debenture, a certificate therefor may be issued, which, when united with other fractional certificates, so as to make an entire bond or debenture, for either one of the even amounts in which said bonds or debentures are above authorized to be issued, may be funded in such bonds or debentures of even amounts, as the case may require.

Twenty-sixth.—The assignees and attorneys acting under this instrument are hereby invested with full power and authority to execute the provisions of this plan; to supply any and every defect, in any and every case which is unprovided for in its terms, and to do anything and everything that is proper in their judgment to carry out its provisions.

Twenty-seventh.—The said assignees and attorneys may, in the transaction of business, call themselves "The Committee of Reorganization of the Mobile & Ohio Railroad Company," and when acting in that name, shall be considered as acting as attorneys, agents, managers and assignees under this agreement. In the adjustment of their accounts they shall be allowed such payments and expenditures as shall have been made by them in good faith, in the belief of the necessity of making such payments and expenditures for the benefit of the subscribers hereto, and for the purpose of carrying this agreement into effect.

Twenty-eighth.—All bonds, securities and evidences of debt, &c., transferred under this agreement, shall be in the first instance deposited for the purposes of this agreement in one or the other of the depositories herein named, or in others selected as authorized by this agreement; and all new securities to be issued by the present corporation, or by a new corporation, shall, in like manner, be deposited with one or the other of said depositories, to be by such depository distributed to the parties entitled thereto, under the order and with the assent and approval of the assignees and attorneys; and in the transmission of either the present or future securities in fulfillment of this agreement, the assignees, attorneys and depositories, using due diligence, may, in their discretion, insure or otherwise protect such securities at the expense of the fund, and in case of loss shall be relieved from liability.

Twenty-ninth.—Any duplicate or other copy of this agreement which shall be subscribed by any holder of the said bonds, securities, liens, claims, judgments or stock, and delivered to and accepted by said assignees and attorneys, shall have like effect as if such signatures were herewith subscribed.

In witness whereof, the parties hereto have hereunto set their hands and seals, or otherwise attested the same as the case may require:

NAME AND ADDRESS.	CLASS OF BONDS, &c.	AMOUNT.

Schedule Annexed.

First Mortgage Bonds.

1. Sterling Bonds, £225 each, (by deed of trust stated as "each of said bonds being the same as $1,000,") issued 1853, due 1883.

2. Arrearage Interest Bonds, B & C, £200 or £100 each, issued 1867, due 1883.

3. Interest Bonds, O P Q, $1,000, $500, $200 each, issued in 1866, due 1876.

4. Arrearage Interest Bonds, F, F1, F1, F2, F3, F4, $1,000, $500, $300, $100 each, issued 1868, due 1883.

5. Sinking Fund Gold Bonds, (Tennessee substitution), £205 or $1,000, issued 1871, due 1901.

6. The Interest Coupons on the above First Mortgage issues appear by the books of the company to have been paid up to and including those which matured January 1, 1874, leaving outstanding and unpaid all the conpons on the above issues which matured on or after May 1, 1874.

The foregoing principal and interest to be exchanged for first mortgage bonds and first preferred income and sinking fund debentures, as provided by the scheme of reorganization.

Second Mortgage Bonds.

Several issues, L, R, S, T, Rr, Ss, Uu, $1,000, $500, $300, $100 and irregular amounts, issued in 1867, 1871, 1872, 1873.

The Interest Coupons on the above Second Mortgage Bonds appear, by the books of the company, to have been paid up to and including those which matured March 1st, 1874, leaving outstanding coupons on above Second Mortgage Bonds from and including those which matured March 1st, 1876. The principal and interest of these to be exchanged for 2nd preferred income and sinking fund debentures, as provided by the scheme of reoganization.

CONVERTIBLE BONDS.

Secured next after the above mentioned first and second mortgages by a mortgage known as the Consolidated Mortgage; also by a deposit of the stock of the M. & O. R. R., 4 shares for each $100, in trust. Of these bonds, there were issued in irregular amounts $977,550, but of this issue there remain unused by the company $471,000. The interest upon these bonds appears, by the books of the company, to have been paid up to and including that which matured December 1st, 1874, leaving outstanding, unpaid, the interest from that date. The principal and interest of these convertible bonds to be exchanged for 3rd preferred income and sinking fund debentures, as provided by the scheme of reoganization.

CONSOLIDATED MORTGAGE.

These bonds have been issued only to a very limited amount, as security to previously unsecured creditors, to give to them, as far as lay in the power of the company, a lien upon the property of the company, after the lien of the first mortgage, Tennessee Substitution, Second Mortgage and Convertible Bonds, above enumerated; the original issue was contemplated to be $15,000,000, for the purpose of consolidating all the previous issues, but none were issued beyond the above amount, and the amount so issued was intended to cover all the floating and otherwise unsecured indebtedness except judgments against the company. In the scheme of reorganization they are not recognized.

FLOATING DEBT AND JUDGMENTS.

The total amount of judgments outstanding appears by the records of the several counties through which the railroad runs, to be about $170,000, but from various considerations it is inferred that many of them have been settled, or for other causes are no longer a claim against the company. The receivers are now engaged in examining into this matter. The total amount of floating debt outstanding, exclusive of interest, appears by the books of the company to amount to $538,702.78, (Aug. 1st, 1876).

This may be increased by other unsettled claims, or reduced by realization of securities pledged. The principal and interest of judgments and floating debts is to be exchanged for fourth preferred income and sinking fund debentures, as provided by the scheme of reorganization.

Interrogatories.

United States Circuit Court, Southern District of Alabama.

WM. BUTLER DUNCAN, ET ALS., TRUSTEES, &C.,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET ALS.

Interrogatories to be propounded to witnesses to be hereafter examined upon the claim of Alexander Duncan and others as coupon holders, under the commission issued in this cause to a commissioner authorized to take deposition, &c., in the City of New York.

FIRST INTERROGATORY.

In the year 1874 were you a holder of mortgage bonds or coupons of the Mobile and Ohio Railroad Company; if so, state the extent of your holding such coupons or bonds?

SECOND INTERROGATORY.

Do you now own or hold any such coupons which matured either on the first day of May, 1874, or the first day of July, 1874, or the first day of November, 1874, or the first day of January, 1875; if not, state when, and how and upon what consideration you ceased to be the holder of such coupons and what became of the same?

THIRD INTERROGATORY.

Was it known to you at either of the said dates whether or not the Mobile and Ohio Railroad Company was paying its interest coupons, and what was known to you on that subject and as to the provisions that was made for giving money for said coupons to the then holders thereof, and how did you get your knowledge which you then possessed upon that subject?

C. W. BANGS,
Solicitor for Alexander Duncan, et als.

Sir: The foregoing are copies of the interrogatories to be propounded to witnesses to be hereafter produced and examined as stated in the caption of said interrogatories.

Dated January 2, 1877.

Yours, &c., C. W. BANGS,
Solicitor for A. Duncan, et als.

To E. L. Andrews, Esq., Solicitor for Louis Belloni.

Due service of a copy of the within interrogatories is hereby admitted.

E. L. ANDREWS,
Attorney for Objector.

NEW YORK, January 2, 1877.

Cross-Interrogatories.

United States Circuit Court, Southern District of Alabama.

WM. BUTLER DUNCAN, ET ALS., TRUSTEES, &C.,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET ALS.

Cross-interrogatories to be propounded to witnesses to be hereafter examined upon the claim of Alexander Duncan and others, under the commission issued in this cause to a United States Commission in the City of New York.

FIRST CROSS-INTERROGATORY.

If in answer to the third interrogatory you state how you got the knowledge you then possesed on the subject of the coupons referred to in the interrogatory, state also what you said to the person or persons who put you in possession of such knowledge?

SECOND CROSS-INTERROGATORY.

If in answer to the second interrogatory you state what became of your coupons, also state how do you know what became of them, and if you obtained such knowledge through a written communication, state the substance of such communication, or if you have the original or a copy of the same, annex it to this deposition.

THIRD CROSS-INTERROGATORY.

State where, in what city and at what place, you ceased to be the holder of the coupons referred to in the interrogatories.

FOURTH CROSS-INTERROGATORY.

State specifically what was known to you on the subject of the coupons for May, 1874.

FIFTH CROSS-INTERROGATORY.

State what was known to you on the subject of the coupons for November, 1874.

SIXTH CROSS-INTERROGATORY.

State what was known to you on the subject of the coupons for July, 1874.

SEVENTH CROSS-INTERROGATORY.

State what was known to you on the subject of the coupons for January, 1875.

E. L. ANDREWS,
Solicitor for Belloni.

Sir: The above are copies of cross-interrogatories to be propounded to witnesses to be hereafter examined, under and in pursuance of a commission issued from the above mentioned court, in the caption hereof.

E. L. ANDREWS,
Solicitor for Belloni.

January 6th, 1877.

Deposition of William H. Hays.

NEW YORK, January 15, 1877.

William H. Hays, a witness of lawful age produced on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, in answer to the interrogatories and cross-interrogatories hereto annexed, by me propounded to him, deposeth and saith:

1. In answer to the first interrogatory he saith:

A. I was a holder of them. I cannot say what amount. I should say I had somewhere from $20,000 to $25,000 of the first mortgage.

2. In answer to the second interrogatory he saith:

A. I do not hold any of such coupons. I sold them to Duncan, Sherman & Co. at their face value, although I believe that they deducted a small discount; I think a half per cent.

3. In answer to the third interrogatory he saith:

A. It was known to me that the coupons referred to were not paid by the company, and that it had not the means to pay these coupons. I obtained the knowledge I possessed upon the subject from the fact that I was applied to by Mr. Duncan to unite with his house in providing means to purchase these coupons, so that the company should not be pressed for payment at that time. I offered, as I had done on previous occasions, to assist them; but finally, just previous to the 1st of May, 1874, I was informed by Mr. Duncan that his house had determined to purchase the coupons, and that they were assisted in so doing by means furnished by Alexander Duncan. I urged upon Mr. Duncan the safety of his house in doing this—that the coupons would be abundant security for them. I told Mr. Duncan at the time that I was willing to unite to a moderate extent in advancing, providing that the coupons would be retained by me as my security, which I considered perfectly good. I had no coupons which matured in July or in January, but in November I possessed the same amount if not a larger amount of the first mortgage bonds, 524 and in like manner I knew, from my own knowledge, being a director in the company, that the company had not the means to pay the coupons at that date, nor had they paid the coupons the May previous, and I was informed by Mr. Duncan that he was again purchasing the coupons which matured then.

And in answer to the cross-interrogatories he saith:

1. In answer to the first cross-interrogatory he saith:

A. As already stated, I urged upon them the safety that they would have in purchasing said coupons, as the coupons were abundant security for any amounts that might be advanced upon them—feeling myself that I was willing to do the same thing.

2. In answer to the second cross-interrogatory he saith:

A. I obtained such knowledge from the fact that I was a director in the company, as well as a large bond-holder and stock-holder. It was known to all those interested whom I met. I did not obtain the knowledge by written communication.

3. In answer to the third cross-interrogatory he saith:

A. In the city of New York, at the office of Duncan, Sherman & Co.

4. In answer to the fourth cross-interrogatory he saith:

A. I knew that the company had not the means to meet them. I knew that it was under very heavy engagements, and its revenue was already largely pledged for previous advances. At the same time, I felt that if by any means the coupons could be so arranged as not to press the company for payment at that time, that with the revival of the business, which we had every reason to look forward to, the company would be enabled to pay them.

5. In answer to the fifth cross-interrogatory he saith:

A. On account of the depression of business of the summer of 1874, they had not been able to pay the coupons of May, and I still felt that if they could be further held, and the same relief could be granted to the company for a time for the coupons of November 1st, 1874, that it would be able to redeem and pay all these coupons.

6. In answer to the sixth cross-interrogatory he saith:

A. I have no coupons of July, 1874.

7. In answer to the seventh cross-interrogatory he saith:

A. I have no coupons of January, 1875.

A. H. HAYS.

By me reduced to writing from the statements of the witness, and in his presence, and after having been by me read to him, by him subscribed and sworn to, the 15th day of January, 1877, before me,

JOSEPH GUTMAN, Jr.,
United States Commissioner,
Southern District of New York.

Deposition of Adrian Iselin.

New York, January 15, 1877.

Adrian Iselin, a witness of lawful age, produced on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the matter of controversy herein, in answer to the interrogatories and cross-interrogatories hereto annexed by me propounded to him, deposes and says as follows:

1. In answer to the first interrogatory he saith:

A. In my position as banker I represented the holders, both of sterling and interest bonds and of the Tennessee Substitution bonds at that time, of which I held the coupons for collection, they amounted to about 600 coupons.

2. In answer to the second interrogatory he saith:

A. I do not hold any of the coupons of these dates, except of those coupons of the 1st day of January, 1875, of

526 which I hold 1,177 at $35 each, namely: $41,195 00, gold. The coupons of May and November, 1874, I sold to Duncan, Sherman & Co. My collecting clerk returned to my office and mentioned that he was told at the office of Duncan, Sherman & Co., at the counter down stairs where the coupons had been paid previously, that they were not being paid there, but that if he went up to the cashier's office of Duncan, Sherman & Co., they would buy them. The coupons of the 1st July, 1874, we held for some time for account of Duncan, Sherman & Co. The firm of Duncan, Sherman & Co. subsequently paid us these coupons with interest. We held them at their request. The coupons of the 1st of January, 1875, we at the request of Duncan, Sherman & Co., agreed to purchase as presented. We purchased and still hold the amount of coupons before referred to, namely: 1,177 coupons of $35 each, which matured 1st January, 1875. Messrs. Duncan, Sherman & Co. agreed to reimburse us for these coupons so bought, but have not yet done so.

3. In answer to the third interrogatory, he saith:

A. It was known to me that the Mobile and Ohio Railroad had not the means to pay its coupons and was trying to borrow money to do so, and I understood that they succeeded through the instrumentality of Duncan, Sherman & Co. in making arrangements to take them up.

In answer to the cross-interrogatories, he saith:

1. In answer to the first cross-interrogatory, he saith:

A. I obtained knowledge of the condition of the Mobile and Ohio Railroad Company from its officers. I was also a considerable creditor of the company and conversant with its affairs.

2. In answer to the second cross-interrogatory, he saith:

A. All I know is that I got the money from Duncan, Sherman & Co. I know what became of the coupons from the fact that I parted with them to Duncan, Sherman & Co.

3. In answer to the third cross-interrogatory, he saith:

A. In the City of New York, at the office of Duncan, Sherman & Co.

4. In answer to the fourth cross-interrogatory, he saith:

A. I have answered this in my previous answer.

5. In answer to the fifth cross-interrogatory, he saith:

A. I have answered this in my previous answer.

6. In answer to the sixth cross-interrogatory, he saith:

A. I have answered that in my previous answer.

7. In answer to the seventh cross-interrogatory he saith:

A. I have answered that in my previous answer.

ADRIAN ISELIN.

By me reduced to writing from the statements of the witness and in his presence, and after having been read by him, subscribed and sworn to this 15th day of January, 1877, before me,

JOSEPH GUTMAN, Jr.,
United States Commissioner
Southern District of New York.

Deposition of George J. Bonner.

New York, January 15, 1877.

George J. Bonner, a witness of lawful age, produced on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, in answer to the interrogatories and cross-interrogatories hereto annexed, by me propounded to him, deposeth and saith as follows:

1. In answer to the first interrogatory he saith:

A. I was a holder for account of other parties of the said bonds to the amount of upwards of $30,000 of the first mortgage sterling bonds. These bonds were entrusted to me by the owner to collect the coupons for them, or otherwise to care for their interests.

2. In answer to the second interrogatory he saith:

A. I am not the holder of any such coupons. I only had the coupons of May and November, 1874, to my recollection, and I sold them to Duncan, Sherman & Co. on or about the 1st day of May, 1874, and the 1st of November, 1874. I think I sold them at half per cent. discount. I sold them at a small discount—half per cent. I think.

3. In answer to the third interrogatory he saith:

A. I understood that the coupons were being bought by parties, as the Railroad Company had not the money to pay them. Mr. Duncan, of the firm of Duncan, Sherman & Co., endeavored before May, 1874, to induce me, and through me my friends, to advance moneys for the purchase of the coupons of that date. I endeavored to oblige Mr. Duncan by obtaining advances for that purpose, but failed in doing so. Being very anxious to know whether the coupons would be paid, and knowing that the full amount necessary to pay the coupons had not been subscribed, I went to Mr. Duncan one or two days before the 1st of May, 1874, and was then informed by Mr. Duncan that he had obtained the whole of the money necessary to buy the coupons in one amount from one party, who I was afterwards told was Mr. Alexander Duncan. I understood at the time the parties advancing the money to cash those coupons were to retain them as security, and would not press the company for their immediate payment.

In answer to the cross-interrogatories he says:

1. In answer to the first cross-interrogatory he saith:

A. I expressed much gratification at the fact of the getting of the money for the coupons.

2. In answer to the second cross-interrogatory he saith:

A. I knew and know nothing about the coupons, but I have always supposed that they were still in the hands of the parties who advanced the money to buy them. I did not obtain such knowledge through a written communication, but through conversation with parties interested.

3. In answer to the third cross-interrogatory he saith:

A. In the city of New York, at the office of Duncan, Sherman & Co., at the dates named.

4. In answer to the fourth cross-interrogatory he saith:

A. I have already stated all I knew.

5. In answer to the fifth cross-interrogatory he saith:

A. A few days before the coupons of November, 1874, fell due, I called upon Mr. Duncan and asked him if they would be paid. He informed me that the company had not the money to pay them, but that they would be bought or arranged for in some way.

6. And in answer to the sixth cross-interrogatory he saith:

A. Nothing whatever.

7. In answer to the seventh cross-interrogatory he saith:

A. Nothing whatever.

G. J. BONNER.

By me reduced to writing from the statements of the witness, and in his presence, and after having been by me read to the witness, by him subscribed and sworn to before me, the 15th day of January, 1877.

JOSEPH GUTMAN, Jr.,
United States Commissioner,
Southern District of New York.

Deposition of Otto Plock.

New York, January 16, 1877.

Otto Plock, a witness of lawful age, produced on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, in answer to the interrogatories and cross-interrogatories hereto annexed by me propounded to him, deposes and says as follows:

1. In answer to the first interrogatory he saith:

A. We were the holder and representative of several parties for a considerable amount of first mortgage bonds, exceeding a couple of hundred thousand dollars.

2. In answer to the second interrogatory he saith:

A. I do not hold any of the coupons enumerated. All the coupons due May and November, 1874, were sold by us to the firm of Duncan, Sherman & Co., at 99½ per cent., a half per cent. discount.

3. In answer to the third interrogatory he saith:

A. It was known to me that they were not paying the coupons referred to. The provisions made to give the money for the coupons was known to me to have been made by third parties, who had agreed to purchase the coupons. I got the knowledge first direct from Mr. Duncan, at his office, in April, 1874, and he told me that he was ready to purchase the coupons. Mr. Bonner repeatedly asked us to join in making the necessary advances to buy these coupons and hold them as security until the company would redeem them. I perfectly recollect also that Mr. Duncan said to me, that it was not a great risk, as the coupons would continue to run as a lien equal to the first mortgage of the company.

And in answer to the cross-interrogatories he saith:

1. In answer to the first cross-interrogatory, he saith:

A. I declined to join in the advances, and do not remember having made any other remark.

2. In answer to the second cross-interrogatory, he saith:

A. We parted with them to Duncan, Sherman & Co. We believed that they were held by them. That was our belief at the time. We did not obtain our knowledge through written communication, but through oral.

3. In answer to the third cross-interrogatory, he saith:

A. At the office of Duncan, Sherman & Co. and A. Iselin & Co., New York.

4. In answer to the fourth cross-interrogatory, he saith:

A. We knew that the company was not able to meet the coupons, because we were applied to to aid them to do so.

5. In answer to the fifth cross-interrogatory, he saith:

A. We knew that the conpons of May had been purchased, and we also understood at that time that they were again being purchased.

6. In answer to the sixth cross-interrogatory, he saith:

A. If we had any of these coupons at those dates, I think we cashed them at Messrs. Iselin & Co.

7. In answer to the seventh cross-interrogatory, he saith:

A. If we had any of the coupons of those dates, I think we cashed them at Iselin & Co's.

OTTO PLOCK.

By me reduced to writing in the presence of the witness and from his statement, and after having been by me read to him, by him subscribed and sworn to before me this 16th day of January, 1877.

JOSEPH GUTMAN, Jr.,
United States Commissioner
Southern District of New York.

Deposition of Abraham Murdock.

New York, January 16, 1877.

Abraham Murdock, a witness of lawful age, produced on the part of the claimant, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the matter of controversy herein, in answer to the interrogatories and cross-interrogatories hereto annexed by me propounded to him, deposeth and saith as follows:

1. In answer to the first interrogatory, he saith:

A. I was the agent of holders to the extent of about $20,000 of the bonds, sterling and interest arrearage bonds.

2. In answer to the second interrogatory, he saith:

A. I hold no such coupons now. Those that I had were purchased by the Bank of Mobile, on account of Duncan, Sherman & Co.

3. In answer to the third interrogatory, he saith:

A. It was known to me that they were not paying them. I was a director in the company. I knew that the company was at that time unable to pay them from its own resources, on account of the shrinkage of business. I got my knowledge from being a director in the company.

And in answer to the cross-interrogatories, he says:

1. In answer to the first cross-interrogatory, he saith:

A. I derived my knowledge from my connection and general and intimate knowledge of the condition of the company. Nobody had to tell me anything about it.

2. In answer to the second cross-interrogatory, he saith:

A. My knowledge was obtained from the President of the Bank of Mobile, who told me that he was purchasing them for the account of Duncan, Sherman & Co.

3. In answer to the third cross-interrogatory, he saith:

A. In Mobile, State of Alabama, at the Bank of Mobile.

4. In answer to the fourth cross-interrogatory, he saith:

A. My recollection is very distinct about the May coupons. It was known to me that the company was unable te pay them, and that Mr. Duncan had agreed to raise the money and purchase the coupons himself.

5. In answer to the fifth cross-interrogatory, he saith:

A. At the time the November coupons fell due I was in London, and these coupons were being bought there by the Credit Foncier. I received a telegram from Mr. Duncan requesting me to confer with the Credit Foncier, and explain to them the character of the coupons, so that they might know what was to be purchased. I did call on them and explained to them the character of the different coupons that were included in the arrangement of Duncan, Sherman & Co.

6. In answer to the sixth cross-interrogatory, he saith:

A. I know nothing about those; I held none, and was at the West at the time.

7. In answer to the seventh cross-interrogatory, he saith:

A. I know nothing about them. I held none of them. I was in Europe.

A. MURDOCK.

By me reduced to writing in the presence of the witness and from his statements, and after having been by me read to him, by him subscribed and sworn to before me this 16th day of January, 1877.

JOSEPH GUTMAN, Jr.,
United States Commissioner
Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, S. S.

I, Joseph Gutman, Jr., United States Commissioner, duly appointed and qualified in and for the Southern District of New York, and authorized to take depositions in the city of New York, do hereby certify that the foregoing are the depositions of witnesses produced and examined under oath before me, at the instance of Alexander Duncan, claimant, under and pursuant to the order hereto annexed, and upon the interrogatories and cross-interrogatories annexed. I further certify, that I propounded such interrogatories and

534 cross-interrogatories to the said witnesses respectively on the several days in the said depositions named, and in response thereto they did respectively depose and testify as appears by their said respective depositions, which were by me reduced to writing in the language of the said witnesses respectively, and from their statements made in answer to the said interrogatories and cross-interrogatories.

In witness whereof I have hereunto set my hand and seal this 17th day of January, 1877.

JOSEPH GUTMAN, Jr.,
United States Commissioner,
Southern District of New York.

Received, filed and published January 23, 1877.

JAMES GILLETTE,
Special Master.

Commission (to London).

In the Circuit Court of the United States, Fifth Judicial Circuit, Southern District of Alabama.

WM. B. DUNCAN AND ANDREW F. ELLIOT,

vs. } *In Equity.*

THE MOBILE AND OHIO RAILROAD CO., ET ALS.

On Reference in the Masters' Office, before James Gillette, Special Master, appointed by the Court.

James Gillette, Special Master, appointed by said Court in said cause, to Adam Badeau, Esq., Consul of the United States at London, England, and to Esq., Vice Consul of the United States at London, England, or to either of you—Greeting:

Know ye that in a matter of contestation between Alexander Duncan and Louis Belloni, pending on reference before me, in which said Duncan has filed his claim for the amount of certain coupons of bonds of the Mobile and Ohio Railroad Company before me, which claim is contested by said Belloni, the said Alexander Duncan desires to obtain the evidence and depositions of George H. Milford, Manager of the Union Bank of London, and of J. Hume Webster, Manager of the Credit Foncier, London, in order to obtain the same:

I, James Gillette, Special Master, in confidence of your prudence and fidelity, have appointed you Commissioner, and by these presents do give you, or either of you, full power and authority to call before you, at such times and places as you may think proper, the said George H. Milford and J. Hume Webster, witnesses on behalf of said Alexander Duncan, and examine them diligently, and on oath to be administered by you, on the interrogatories and cross-interrogatories which may be submitted to said witnesses on behalf of said Duncan, and cross-interrogatories if any, and that you shall take said examination and reduce the same to writing as near as may be in answer thereto, and that you shall seal up the said evidence with said interrogatories and cross-interrogatories duly certified by you, or one of you, and send the same enclosed, directed to me at the Court House of the United States, at Mobile, on or before the twentieth day of January, in the year eighteen hundred and seventy-seven. The said evidence to be so taken provided it shall appear that the said Alexander Duncan or his counsel shall have furnished to said Louis Belloni, or to E. L. Andrews, his counsel residing in New York, a copy of the interrogatories to be propounded on his behalf, with notice that cross-interrogatories shall be received by the party giving such notice and interrogatories within five days after serving the interrogatories, which cross-interrogatories so received by the counsel of said Duncan from said Belloni or his counsel, shall be forwarded to said Commissioner with this commission.

Witness the said James Gillette, Special Master as aforesaid, on this fifteenth day of December, in the year eighteen hundred and seventy-six.

JAMES GILLETTE,
Special Master.

The execution of this Commission is contained in certain schedules herein contained.

J. NUNN,
Commissioner.

Interrogatories.

In the Circuit Court of the United States for the Southern District of Alabama.

WM. BUTLER DUNCAN AND A. FOSTER ELLIOT, TRUSTEES, &c.,

vs.

THE MOBILE AND OHIO RAILROAD COMPANY.

Interrogatories to J. Hume Webster, Manager of the Credit Foncier, of London, a witness to be produced, sworn and examined on the part of Alexander Duncan before Adam Badeau, Esq., Consul of the United States at London, England, or before Vice Consul of the United States at London, England, in support of the claim of Alexander Duncan and his assigns, as holder and holders of coupons of the Mobile and Ohio Railroad Company upon the contestation thereof by Louis Belloni.

First Interrogatory.

Do you know an institution called the Credit Foncier fo London; if so, state its business?

Second Interrogatory.

What is your relation to the Credit Foncier of London? If you say you are manager thereof, state what was your relation to that institution from the first of January, 1874, to the first of January, 1875?

Third Interrogatory.

Did the Credit Foncier of London, in the year 1874, become possessed of any coupons issued by the Mobile and Ohio Railroad Company and maturing November 1, 1874, and January 1, 1875, if so, state as particularly as you can what amount of such coupons the said Credit Foncier became possessed of, the particular time or times at which it became possessed of the same, and what consideration it gave therefor, from whom such coupons were received, and what disposition of such coupons the Credit Foncier finally made, that is, to whom did it deliver or part with such coupons, and when?

FOURTH INTERROGATORY.

Had the firm of Duncan, Sherman & Co., of the City of New York, anything to do with the Credit Foncier getting possession of said coupons, if yea, state what Duncan, Sherman & Co. had to do with it. If you received instructions from that firm concerning the purchase or receipt of such coupons, please annex to your deposition a copy of any instructions which you received, and a copy of your replies thereto, and state how far you complied with such instructions, and what you did in compliance therewith.

FIFTH INTERROGATORY.

State whether or not you received any funds from the Mobile and Ohio Railroad Company for the purchase or payment of such coupons, and if not, state on whose account you paid for such coupons.

F. N. BANGS,
Of Counsel for Alexander Alexander Duncan
and others, holders of coupons.

Sir: You are herewith served with a copy of interrogatories to be propounded to J. Hume Webster, Esq., manager of the Credit Foncier, London, under the commission issued in the adove entitled cause by James Gillette, Special Master, dated December 15, 1876, and addressed to the Consul or Vice Consul of the United States at London, and you are notified that cross-interrogatories shall or will be received by me within five days after serving said interrogatories.

Dated December 19, 1876.

F. N. BANGS,
Solicitor and of Counsel for Alexander Duncan
and others, holders of coupons, &c.

To E. L. Andrews, Esq., Solicitor & Counsel for Louis Belloni.

United States of America, } s.s.
Southern District of New York, }

Samuel Davis, being duly sworn, deposes and says that on the 20th day of December, 1876, he served the within interrogatories on E. L. Andrews, counsel for Louis Belloni, by delivering a copy of the same to and leaving a copy of the same with said Andrews, at his office, No. 52 Broadway, in City of New York.

SAMUEL DAVIS,

Sworn to before me this 21st day of December, 1876.

JOSEPH GUTMAN, Jr.,
United States Commissioner,
Southern District of New York.

In the Circuit Court of the United States for the Southern District of Alabama.

WILLIAM BUTLER DUNCAN AND ANDREW F. ELLIOT,
TRUSTEES, &c.,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY.

Cross-interrogatories to J. Hume Webster, manager of the Credit Foncier of London, a witness to be produced, sworn and examined on the part of Alexander Duncan, before Adam Badeau, Esq., or before Consul of the United States at London, Vice Consul of the United States at London, England, in support of the claim of Alexander Duncan, his assigns, as holders of coupons of the Mobile and Ohio Railroad Company upon contestation by Belloni.

'First Cross-Interrogatory.

What is the name of the clerk or clerks, teller or tellers, or other officials, of the Credit Foncier of London, who received coupons of the Mobile and Ohio Railroad Company's bonds which fell due on the 1st day of November, 1874, and of January, 1875, or who paid them?

SECOND CROSS-INTERROGATORY.

Were you present when the coupons referred to in the last interrogatory were received or paid? If so, state what transpired, and with whom by name.

THIRD CROSS-INTERROGATORY.

State the names of the persons or their principals to whom the Credit Foncier paid the coupons described in the preceding interrogatories. If you cannot recall them, state whether you can procure a list of their names, or if you have access to any books or papers from which you can copy a list of the names? If you can obtain such list or a copy, annex the same.

EDWARD L. ANDREWS,
Solicitor of Counsel for Objector.

Sir : Please take notice, that the above is a copy of cross-interrogatories to be propounded to J. Hume Webster under and by virtue of a commission issued by James Gillette, Special Master in the above entitled cause.

In the Circuit Court of the United States for the Southern District of Alabama.

WM. BUTLER DUNCAN AND ANDREW F. ELLIOT,
TRUSTEES, &c.,

vs.

THE MOBILE AND OHIO RAILROAD COMPANY.

Interrogatories to be propounded to George H. Milford, Manager of the Union Bank of London, under and by virtue of a commission issued out of said Court to the Consul or Vice Consul of the United States at London, England.

First Interrogatory.

Are you connected with the institution known as the Union Bank of London; and if so, in what capacity, and were you in any and what capacity so connected during the year 1874?

Second Interrogatory.

Had the Union Bank of London, in the year 1874, anything to do with receiving or getting in any coupons of the Mobile and Ohio Railroad Company maturing May 1, 1874, or July 1, 1874; and if so, state under what circumstances and by whose instructions or directions, and on whose credit and responsibility, and state what the transaction was?

Third Interrogatory.

What ultimately became of such coupons as far as the Union Bank of London was concerned; that is, to whom and upon what consideration did they part with or transmit the same, and in what condition were such coupons when parted with by the Union Bank of London?

Fourth Interrogatory.

Were any of the moneys which were advanced or laid out by the Union Bank of London for the purpose of obtaining such coupons charged to the Mobile and Ohio Railroad Company, or advanced upon its credit; and if not, upon whose credit were such moneys advanced and paid out, and were such moneys refunded, and in what way? How were such advances entered on the books of the Union Bank of London originally and ultimately?

F. N. BANGS,
Of Counsel for Coupon-holders.

Sirs: You are herewith served with a copy of the interrogatories to be propounded to G. H. Milford, Esq., manager of the Union Bank of London, under the commission issued in the above entitled cause by James Gillette, Special Master, dated December 15, 1876, and addressed to

Depositions of George Holland Milford and James Hume Webster, witnesses sworn and examined under and by virtue of a commission issued out of the Circuit Court of the United States Fifth Judicial Circuit, Southern District of Alabama, in a certain cause therein depending between William B. Duncan and Andrew Foster Elliott, plaintiffs, against the Mobile and Ohio Railroad Company et al, defendant.

George Holland Milford, of Hill Side, Surbiton, in the county of Surrey, England, General Manager of the Union Bank of London, Princes street, in the city of London, aged fifty years and upwards, being duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

First.—To the first interrogatory, he saith: Yes. I am the General Manager of the Union Bank of London, and I occupied the same position during the year 1874.

Second.—To the second interrogatory he saith: Yes. The Union Bank of London paid the coupons of the Mobile and Ohio Railroad Company maturing on the first of May and the first of July, 1874, under instructions from Duncan, Sherman & Co., of New York, on their credit and under their responsibility, holding the coupons uncancelled on their account. The Union Bank of London had no communication with the Mobile and Ohio Railroad Company.

Third.—To the third interrogatory he saith: The coupons were sent to Duncan, Sherman & Co., from time to time uncancelled under registered cover.

Fourth.—To the fourth interrogatory he saith: No money was advanced on account of the Mobile and Ohio Railroad Company; it was advanced on account of Duncan, Sherman & Co., to whom alone the Union Bank of London looked for reimbursement. The coupons were in the first instance posted to a special account in the name of Dun-

can, Sherman & Co., which was subsequently closed by transfers of cash from their general account.

Cross-Interrogatories.

First.—To the first cross-interrogatory he saith: The Union Bank of London acted in accordance with instructions received by cable, a copy of which, dated April 28th, 1874, I hereunto annex, marked A, and a letter dated New York, May 29th, 1874, a copy of which I also hereunto annex, marked B. The Union Bank of London were instructed to pursue a like course with regard to the July coupons—in proof of which I hereunto annex, marked C, copy of telegram dated June 30th, as confirmed by their letter dated 30th June, 1874.

Second.—To the second cross-interrogatory he saith: I am not aware of any enquiries having been made when the coupons were left for examination; if such enquiries were made, the answer would have been that we, the Union Bank of London, received our instructions from Duncan, Sherman and Company.

Third.—To the third cross-interrogatory he saith: The coupons were received from time to time by the various cashiers of the Bank, or their assistants; and as it is the custom of the Union Bank of London to continually change the duties of their employees, it is quite impossible for me to answer this interrogatory more definitely.

G. H. MILFORD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the 16th day of January, A. D. 1877, before

J. NUNN, Commissioner.

EXHIBIT A.—*Copy of Telegram, April 28th,* 1874:

UNION BANK, London.—Mobile Ohio Coupons 1st May pay for our account, forwarding coupons uncancelled.

DUNCAN.

At the execution of a commission for the examination of witnesses between William B. Duncan and Andrew Foster Elliot, plaintiffs, against the Mobile and Ohio Railroad Company, et al., defendant, this paper writing was produced and shown to George Holland Milford, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
G. H. MILFORD, Witness.

EXHIBIT B.—*Extract from Letter from Duncan, Sherman & Co., New York, to the Union Bank of London, May 29th,* 1874.

Dear Sirs: The parcel of Mobile and Ohio coupons referred to in your favor of the 16th inst. we found to contain 2898. The Coupon No. 2218, mentioned as lost, was included in the parcel.

Please charge our general account, and credit the Mobile and Ohio May, 1874, coupon account.

2069	Coupons	@ 6.15	to	13,965 15
764		@ 6	to	4,584
65		@ 3		195
				£18,744 15

We may mention that there appears to be 6 coupons (£6 15) more charged up in the account than you have sent us. We are, dear sirs,

Your obedient servants,
for DUNCAN, SHERMAN & CO.
(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between William B. Duncan and Andrew Foster Elliot, plaintiffs, against the Mobile and Ohio Railroad Company, et al., defendant, this paper writing was produced and shown to George Holland Milford, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
G. H. MILFORD, Witness.

Exhibit C.—*Copy of Postscript to Duncan, Sherman & Co.'s Letter to Union Bank of London, June 30th,* 1874 :

We have received your Cable message regarding payment of Mobile and Ohio Railroad Coupons, and have cabled you in reply, "Pay said coupons as before advice sent twentieth, which we confirm."

(Signed) D., S. & Co.

At the execution of a commission for the examination of witnesses between William B. Duncan and Andrew Foster Elliot, plaintiffs, against the Mobile and Ohio Railroad Company, et al., defendant, this paper writing was produced and shown to George Holland Milford, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
G. H. MILFORD, Witness.

Deposition of James Hume Webster.

James Hume Webster, of Keith Lodge, Upper Norwood, in the county of Surrey, England, Managing Director of the Credit Foncier of England, Limited, of number 27, Clements Lane, Lombard street, in the city of London, England, aged years and upwards, being duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

First.—To the first interrogatory, he saith: I know an institution called the Credit Foncier of England, Limited, whose registered office is in London. It carries on a financial business principally in the way of advancing money against securities.

Second.—To the second interrogatory, he saith: My present relation to the Credit Foncier of England, Limited, is that of Managing Director. I was not in the service of that company on the first day of January, 1874. I entered its service on the fifteenth day of January, 1874, as Managing Director, which office I have held without intermission from that date up to the present time.

Third.—To the third interrogatory, he saith: The Credit Foncier of England, Limited, during the year 1874 became possessed of some coupons issued by the Mobile and Ohio Railroad Company, maturing the first day of November, 1874, and the first day of January, 1875. The said Credit Foncier of England, Limited, between the dates of the seventeenth day of October, 1874, and the twenty-ninth day of December, 1874, became possessed of coupons maturing in November 1874, amounting in gross to £19,701 (nineteen thousand, seven hundred and one pounds sterling), less income tax £143.1-9 (one hundred and forty-three pounds, one shilling and ninepence), leaving a net value of £19,557.18-3 (nineteen thousand, five hundred and fifty-seven pounds, eighteen shillings and threepence sterling). These coupons were received from day to day between those dates. The Credit Foncier of England paid the face value for the said coupons less the income tax, amounting to £19,557.18-3 (nineteen thousand, five hundred and fifty-seven pounds, eighteen shillings and threepence sterling), to the parties themselves, and £143.1-9 (one hundred and forty-three pounds, one shilling and ninepence) to the Government for the income tax. The Credit Foncier of England received coupons towards the end of December, 1874, which matured on the first day of January, 1875, amounting to a gross value of £872.10-6 (eight hundred and seventy-two pounds, ten shillings and sixpence sterling) less income tax of £3.1-9 (three pounds, one shilling and ninepence sterling), leaving a net value of £868.11-6 (eight hundred and sixty-eight pounds, eleven shillings and sixpence sterling), but the Credit Foncier of England, Limited, did not pay these bills on and after the first day of January, 1875. The coupons were received from persons or companies in two lists, whose titles or names are now shown to me written on a paper writing hereunto attached and marked Exhibits D and E. On the payment of the said coupons they were forwarded under cover and uncancelled to Duncan, Sherman & Co. of New York. The coupons which matured in November, 1874, were forwarded by the Credit Foncier of England, Limited, in letters bearing date the 20th day of April, 1875, and the 22d day of April, 1875, copies of which are hereunto annexed, marked F. and G. The reason of the amounts in these two letters being larger than the amount paid during 1874 as mentioned aforesaid, is that the letters contained some coupons maturing on the first day of January, 1875, which were paid by the Credit Foncier of England, Limited, between that date and the 20th and 22d days of April, 1875.

Fourth.—To the fourth interrogatory, he saith: The firm of Duncan, Sherman & Co. of New York instructed the Credit Foncier of England, Limited, to get possession or to purchase the coupons maturing on the first day of November, 1874, and on the first day of January, 1875, as per their letter to the Credit Foncier, dated the tenth day of October, 1874, a copy of which is now shown to me and marked H hereunto annexed. This letter will explain what instructions Duncan, Sherman & Co. gave the Credit Foncier of England, Limited, concerning the purchase and receipt of the said coupons. The Credit Foncier of England replied by cable message to Duncan, Sherman & Co. confirming their (Duncan, Sherman's) letter to the said Credit Foncier of England, Limited, which letter is dated the tenth day of October, 1874, as stated aforesaid. The Credit Foncier of England, Limited, by a letter to Duncan, Sherman & Co., dated the twentieth day of October, 1874, acknowledged and confirmed Duncan, Sherman & Co.'s letter of tenth day of October, 1874. I attach hereto, marked I, a copy of said letter which also contains copy of the cable message from the Credit Foncier of England, Limited, to Duncan, Sherman & Co., and which is hereinbefore referred to in this answer. The Credit Foncier of England, Limited, fully complied with the instructions contained in the letter of Duncan, Sherman & Co., to them of the tenth day of October, 1874, concerning the purchase of the said coupons. On the receipt of this letter, the Credit Foncier of England placed a notice in their office to the effect that they were prepared to purchase, at their face value, the coupons of the Mobile and Ohio Railroad Company, which matured on the first day of November, 1874, and the first day of January, 1875. In compliance with this notice the public tendered the coupons which they held, and received in exchange therefor from the Credit Foncier of England, Limited, a ticket bearing, as is usual in such cases, a number corresponding to the number on the schedule of the said coupons lodged by applicant, after being left two or three days at the company's (the Credit Foncier of England, Limited,) offices for examination, the owners or their servants called again and handed in the said ticket which they had received for the coupons and were delivered a cheque for the face value, less income tax, in the case of those people residing in England and for the gross amount in the case of those residing abroad. The coupons were subsequently returned to Duncan, Sherman & Co., New York, uncancelled. I annex to my depositions a copy of the correspondence marked K, from No. 1 to 44, between the Credits Foncier of England, Limited, and Duncan, Sherman & Co., of New York, relative to the coupons referred to in these interrogatories.

Fifth.—To the fifth interrogatory, he saith: The Credit Foncier of England did not receive any funds from the Mobile and Ohio Railroad Company for the purchase or payment of the coupons in question, but paid them solely on Duncan, Sherman & Co.'s account, who reimbursed them for the amount so paid.

Cross-Interrogatories.

First.—To the first cross-interrogatory he saith: The names of the clerks of the Credit Foncier of England, Limited, who received the coupons falling due on the first day of November, 1874, and the first day of January, 1875, were Frederick Everett and John Avery. The said Frederick Everett drew all the cheques for the payment of the coupons, and these cheques were signed by the usual officials of the Credit Foncier of England, Limited. These cheques were delivered by the said Frederick Everett to the persons who applied for payment of the same, and produced the Credit Foncier of England's ticket for the deposit of the coupons with the Credit Foncier.

Second.—To the second cross-interrogatory he saith: I was not present when the coupons referred to in the last interrogatory were received or paid. I can only state that nothing would transpire on such an occasion beyond the handing over of a ticket by the clerk who received the coupons in exchange for the same when they were left for examination, and that on their respective owners or their agents calling for their money the said ticket was returned to the clerk, and a cheque would be handed to the bearer of the ticket, payable to the order of his principals for the face value of the coupons, less income tax.

Third.—To the third cross-interrogatory he saith: The names of the persons or their principals to whom the Credit Foncier of England, Limited, paid the coupons described in the preceding interrogatories are set out in two lists hereunto attached, marked D and E, and referred to in my answer to the third interrogatory in chief; I am unable to state the names of the actual persons to whom the coupons were paid, but only the names of their principals.

JAS. HUME WEBSTER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the 22d day of January, A. D. 1877, before

J. NUNN, Commissioner.

Exhibit D.

LIST OF THE PERSONS THAT THE CREDIT FONCIER OF ENGLAND RECEIVED THE COUPONS OF THE MOBILE AND OHIO RAILROAD DUE 1ST NOVEMBER, 1874.

DATE. 1874.	NAMES.	£6 15s. EACH.	£6. EACH.	£3. EACH.
Oct. 17—	Morgan J., S. & Co	25	....	....
“ 26—	do. do.	20	....	23
“ “	do. do.	58	....	....
“ “	McCalmont Bros. & Co	8	....	....
“ “	National Bank of Scotland	60	....	....
“ 27—	Forbes & Dickinson	18	....	....
“ “	L. & West'n Bank	23	3	17
“ “	L. & County Bank	1	....	....
“ “	Baring Bros. & Co	60	....	....
“ “	Barclay & Co	9	....	....
“ “	Brown, Shipley & Co	2	....	....
“ “	Pawle, Henry & Co	25	....	....
“ 28—	Brown, Janson & Co	19	....	....
“ “	Smith, Payne & Co	12	....	....
“ “	London J't Stock Bank	5	....	....
“ “	Union Bank of London	111	25	....
“ “	Alliance Bank	5	....	....
“ “	McCulloch & Co	3	....	....
“ “	C. M. Lampson & Co	170	110	4
“ “	Streckeison, Bischoff & Co	7	....	....
“ “	Russell, G. P	49	18	2
“ “	Campbell, P	8	3	3
“ “	L. & County Bank	79	....	....
“ “	Berthoud & Co.,	1	....	....
“ “	do. do.	15	....	....
“ 29—	Baumann, E	1	....	....
“ “	Railway Debenture Trust Co	24	....	....
“ “	do. do.	....	50	....
	Over....	818	209	49

DATE.	NAMES.	£6 15s. EACH.	£6. EACH.	£3. EACH.
1874.	Over....	818	209	49
Oct. 29—	London J't Stock Bank..............	25	....	....
" "	do. do.	15	5	....
" "	Berthoud.,............................	5	....	....
" "	Crawshay, R. T........................	635	270	3
" "	William Deacon & Co.,..............	8	....	....
" 30—	London J't Stock Bank..............	83	12	9
" "	Hardy, G................................	....	154	....
" "	do, ...	75	32	1
" "	Pidgeon & Co..........................	53	....	....
" "	Consolidated Bank....................	....	75	....
" "	McCulloch & Co........................	58	....	....
" 31—	Consolidated Bank....................	18	....	....
" "	Pidgeon & Co..........................	24	....	....
" "	Barclay & Co...........................	12	....	....
Nov. 2—	Curtis, C. B............................	5	....	....
" "	Union Bank.............................	15	....	....
" "	Prescott & Co..........................	5	....	....
" "	Sim & Coventry........................	9	....	....
" "	Morris, Prevost & Co................	7	....	....
" "	Woans, G. & A........................	10	....	....
" "	Schmolze, Rischman & Co..........	2	....	....
" 3—	London J't Stock Bank.............	8	....	....
" "	Union Bank.............................	2	....	2
" "	Forbes & Dickinson..................	12	....	....
" "	Pawle & Co.............................	3	....	....
" "	Collard, A. B...........................	....	....	1
" "	Royal Bank of Scotland.............	2	....	....
" "	Pawle & Co.............................	3	2	....
" "	Glyn & Co...............................	15	5	....
	Over....	1927	764	65

Date.	Name.	£6 15s. each.	£6. each.	£3. each.
1874.	Over	1927	764	65
Nov. 3	—Webb, W. L.	2	....	....
" 4	—Pawle & Co	4	....	....
" "	—Consolidated Bank	5	....	....
" "	—Barrett & Co	1	....	....
" "	—Borthwick, Wark & Co	13	....	....
" "	—Berncke, Souchay & Co	63	....	....
" 5	—Barelli J. & Co	1	....	....
" "	—Union Bank	6	....	....
" "	—Consolidated Bank	1	....	....
" "	—Doomsdale & Co	1	....	....
" 6	—Campbell, Roope & Co	5	....	....
" "	—Griffith, J. R	2	....	....
" "	—National Bank	5	....	....
" "	—Glyn & Co	10	....	....
" 9	—Pidgeon & Co	8	....	....
" "	—Berthoud & Co.,	34	....	....
" "	—L. & West'n Bank	37	....	....
" "	—Glyn & Co	7	....	....
" "	—British and Foreign Exchange Bank.	10	....	....
" 10	—Union Bank of London	3	....	....
" "	—Smith, Payne & Co	2	....	....
" "	—L. and County Bank	5	....	....
" "	—W. Ladenburg & Co	2	....	....
" 11	—Glyn & Co	2	....	....
" 19	—Smith, Payne & Co	2	....	....
" 27	—Borthwick, Wark & Co	7	....	....
" 28	—Jno. Thurn & Co	1	....	....
Dec'r 8	—Union Bank	25	....	....
" 10	—Borthwick, Wark & Co	1	....	....
" 12	—Smith, Payne, & Co	2	....	....
	Over	2194	764	65

Date.	Name.	£6 15s. each.	£6. each.	£3. each.
1874.	Over	2194	764	65
Dec'r 22	Baring Bros. & Co	5	....	....
" 24	Morgan & Co	4	....	6
" 29	Pidgeon & Co	4	....	....
" "	Salesburg, D. G	1	....	....
		2208	764	71

SUMMARY.

2208	Coupons @£6 15s. each	£14,904
764	" 6 each	4,584
71	" 3 "	213
		£19,701

Exhibit E.

List of the Persons that the Credit Foncier of England Limited Received the Coupons of the Mobile and Ohio Railway, Due 1st January, 1875, but Received on or before the 31st December, 1874.

Date.	Name.	£7 3s. 6d. each.
1874.		
Dec'r 29	Trumuger & Co	5
" 30	German Bank of London	5
" "	Streckeisen, Bischoff & Co	26
" 31	Ladenburg & Co	6
" "	Morris, Prevost & Co	81
		123

123 Coupons @£7 3s. 6d. each, ... £882,10s. 6d.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliott, plaintiffs, and Mobile and Ohio Railroad Company et als., defendants. This paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
Ja. HUME WEBSTER, Witness.

Exhibit F.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 20th April, 1875.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—We beg to confirm our letter of the 13th instant—Mobile and Ohio Coupons.

We have to acknowledge the receipt of your telegram received yesterday, under date of the 17th instant, and running thus:

"Remitted twenty-five thousand demand thirteenth; send coupons insured in two parcels; cable dates."

To this we immediately replied as follows:

"Total coupons encashed 19,600 November, 3,500 January, we post 11,500 November to-night insured, balance next mail," which we now confirm, with the exception that the coupons leave to-night instead of yesterday, as advised; for we send you by the evening's post, registered and insured for their value, about one-half of the total amount of coupons which we have encashed, as follows:

71	at £3	0	0......	£ 213	0	0
764	" 6	0	0......	4,584	0	0
974	" 6	15	0......	6,574	10	0
				£11,371	10	0

all due 1st November, 1874, (a detailed Bordereau enclosed). The balance being the remaining portion of the November coupons, and all the January ones will follow by post in similar manner on Thursday, the 22d instant.

These coupons are all uncancelled, and form part of the security for the credit still current, which we had the pleasure of granting to you direct, and under your guarantee, according to the terms of our letter dated the 20th October, 1874.

We also enclose detailed lists, showing the distinctive numbers and amounts of 26 November, and of 486 January coupons, amounting, after deduction of income tax, to £152.0-1 and £3,481-4.8 respectively, which we have encashed up to and inclusive of the 16th instant.

Requesting that in due course you will be good enough to acknowledge the receipt of the coupons now advised,

We are, dear sirs, yours, very faithfully,

For the Credit Foncier of England, Limited,

(Signed) Ja. HUME WEBSTER,

Managing Director.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al. defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,

Ja. HUME WEBSTER, Witness.

Exhibit G.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 22d April, 1875.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—Mobile and Ohio Coupons.—Confirming our letter of the 20th inst. (copy enclosed), we beg to advise the remitment by the evening's post, registered and insured for their value, of the balance of coupons which we have encashed, as follows:

1240	Coupons	@£6 15 0..	£8,370 0 0,	due 1 Nov., 1874
486		7 3 6..	3,487 1 0,	due 1 Jan., 1875
1726	Coupons value....		11,857 1 0	

A detailed Bordereau is enclosed. These coupons are all uncancelled, and form part of the security for the credit still current, which we had the pleasure of granting to you direct, and under your guarantee, according to the terms of our letter dated the 20th October, 1874.

Requesting that you will in due course acknowledge the receipt of the coupons now advised,

We are, dear sirs, yours, faithfully,
For the Credit Foncier of England,
[2 Enclosures.] W. BAILEY, Secretary.

P. S.—Kindly instruct us what we shall do with the various papers which we hold in respect of this transaction, E G, the numerical coupon lists deposited by proprietors, and the declarations of those who claimed exemption from income tax, &c., &c. W. B.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit H.

Per steamer City of Richmond.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, October 10, 1874.

The Credit Foncier of England, (Limited),
No. 27 Clements Lane, London:

Dear Sirs—Confirming our respects of 3d inst. and referring again to your favor of 18th ult., we do not see that the credit as issued by you the Mobile and Ohio Railroad Company, under our guarantee, can be availed of at present, but desirous that some business should result from the frequent negotiations our Mr. Grain had with you when in London, we beg to suggest the following:

The Mobile and Ohio Railroad have maturing on the first day of November about $300,000 of interest coupons on the first mortgage bonds and the first mortgage interest bonds. In anticipation of their receipts, they desire us to provide for the same which we are quite willing to do by purchasing the coupons and holding the same unpaid and uncancelled. The security is unquestioned, as upon the demand of these coupons the possession of the road can be entered upon if it should become necessary to adopt such a course.

We are willing to avail of a credit on you for the purchase of these coupons, both in London and here, or in London only. About £20,000 are usually presented in London. You may retain the coupons uncancelled in London, and we will similarly hold such as we pay here for account of the credit, the whole to be under our guarantee.

We should avail of the credit by sixty day sight bills on you, and for such amounts as you purchase in London we should remit you cable transfers.

This credit would be to us direct and would bear a commission of half per cent. to you each sixty days. We agreeing not to bring you in cash advance, but to cover at maturity *with sight exchange* when redrawing.

As time will not permit our receiving your reply by mail since the coupons must be purchased 1st November, we shall be glad to hear from you by cable.

We remain, &c.,

(Signed) DUNCAN, SHERMAN & CO.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliott, plaintiffs, and Mobile and Ohio Railroad Company et al., de-

fendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit I.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard street,
London, E. C., 20th October, 1874.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—Confirming our last letter of the 7th inst. we have to acknowledge the receipt in due course of yours of the 2d, 3d, 6th, and two of the 10th idem. The contents of the three first named have been noted, but call for no special reply.

To your two letters of the 10th inst., we this afternoon sent you the following cable dispatch in cipher:

"Agree to full credit yours tenth, you keeping New York coupons for account of credit cable instructions, how we must act respecting London coupons."

In confirming the above message, we beg to say that it is understood according to the terms of your two above mentioned letters of the 10th inst., that we are willing to grant you a credit for the purchase both in New York and London, of collecting about $300,000 of interest coupons maturing on the 1st November, 1874, of the first mortgage bonds and the first mortgage interest bonds of the Mobile and Ohio Railroad, of which coupons about £20,000 are usually presented in London. The coupons presented in London are to be retained by us uncancelled, and you are similarly to hold such as you pay in New York for account of the credit.

The whole of the credit to be to you direct and to be under your guarantee.

You are to use the credit by sixty days sight bills on ourselves, and for such amounts of coupons as we purchase in London, you will remit us cable transfers.

You engage not to bring us under cash advance, but to cover at maturity *with sight exchange* when redrawing.

The credit to bear a commission to us of half per cent. for each sixty days, and upon all coupons which we may purchase under the arrangement, we are to receive the usual commission allowed on the payment of similar coupons on this side.

Awaiting the receipt of your cable message,

We are, dear sirs, yours, very truly,

(Signed) JA. HUME WEBSTER.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliott, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.

JA. HUME WEBSTER, Witnsss.

Exhibit K 1.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 18th Sept., 1874.

The Mobile and Ohio Railroad Company,
Per favor of Messrs. Duncan, Sherman & Co., N. Y.:

Gentlemen—We agree to grant you an acceptance credit of £50,000 (fifty thousand pounds) for one year, to be availed of by sixty day bills, renewed at maturity, and covered by a remittance of sight exchange or first-class sixty day bills.

The bills are to be drawn upon us by you to the order of Messrs. Duncan, Sherman & Co., and to be passed through those gentlemen.

As security for this credit, you are to deposit with Messrs. Duncan, Sherman & Co. £100,000 (one hundred thousand pounds) of your 7 per cent. consolidated mortgage bonds, which are to be placed in the custody of such names in London or New York as may be agreed upon between the Credit Foncier and Messrs. Duncan, Sherman & Co. Messrs. Duncan, Sherman & Co. are to have the power to sell such bonds at their option during the currency of the credit, and the proceeds to be used in retiring the bills drawn under the credit.

In the event of the failure of any of the engagements of the credit, the Credit Foncier is to have the right to exercise this power immediately.

This credit is granted solely upon the understanding that we have such guarantee from Messrs. Duncan, Sherman & Co., personally, as we can accept.

The commission to be paid to us for accepting is 1 per cent. for each sixty days' acceptance, and the remittances in cover to come through Messrs. Duncan, Sherman & Co., and to be discounted by us at Bank rate.

Should this credit not be used by you, you are to pay Messrs. Duncan, Sherman & Co. for our account a commission of ½ per cent. on £50,000.

We are, gentlemen, your obedient servants,
For the Credit Foncier of England, Limited,
(Signed) JA. HUME WEBSTER,
Managing Director.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., de-

fendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 2.

Mobile and Ohio Railroad Company—Acceptance Credit for £50,000.

Proposed Letter of Guarantee from Messrs. Duncan, Sherman & Co., New York, to the Credit Foncier of England, Limited, London:

In consideration of the profits and commissions accruing to us, arising from our position as financial agents for the Mobile and Ohio Railroad Company, and further, you having agreed to divide with us your commission under this credit, we are willing to guarantee your company that the credit dated 18th September, 1874, for £50,000 sterling, which you have granted to that railroad, will be availed of according to the terms therein expressed (copy of which is on the other side hereof), and that your company will not be called upon to come under any cash advance during the currency of the credit; and we ourselves personally further undertake, and do hereby guarantee, that at its maturity the credit will be duly closed by the railroad company, or ourselves in case of their default.

[Messrs. Duncan, Sherman & Co. to copy on the back of their letter of guarantee, the letter from the Credit Foncier granting the credit.]

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., de-

fendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 3.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 St. Clements Lane, Lombard street,
London, E. C., 18th September, 1874.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—Referring to the various conversations we have had with your Mr. Grain, we now enclose a letter addressed by us to the "Mobile and Ohio Railroad Company," granting them an acceptance credit for one year of £50,000 (fifty thousand pounds), and you will notice that the credit is granted wholly dependent upon our receiving from you a letter of guarantee.

Such letter of guarantee we have drafted in conjunction with your Mr. Grain, and enclose copy herewith.

If you do not like this form of guarantee, you are at liberty to alter it, but it must remain a practical undertaking that the said credit of £50,000 will be carried out by the railroad company as asked for, and also an undertaking from your own goodselves that it will be closed at the expiration of the twelve months.

It is also understood that the commission of one per cent. for each sixty days' acceptance is to be divided equally between you and ourselves, and that the drafts upon us under this credit will receive your own protection and not be placed in the open market.

We propose that the security in respect of this credit, viz: £100,000 seven per cent. consolidated mortgage bonds of the Mobile and Ohio Railroad Company should be sent by you to London, and lodged either with Messrs. Smith, Payne & Smiths, or the Consolidated Bank, Limited, subject to our joint order, and we shall be glad to have from you the form of receipt you wish given by the bank.

Should this credit not be used by the aforesaid railroad company, it is understood that they are to pay us a commission of one-quarter per cent. (say £125), in which case please collect the same and place it to our credit with you.

Faithfully, yours,
For the Credit Foncier of England, Limited.
(Signed) JA. HUME WEBSTER,
Managing Director.

P. S.—We have the pleasure of handing this letter to your Mr. Francis H. Grain personally. JA. H. W.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 4.

Per steamer America.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, October 3, 1874.

The Credit Foncier of England, Limited,
Clements Lane, Lombard street, London :

Dear Sirs—We have to acknowledge receipt of your favor of the 19th September, and have received by hands of our Mr. Grain your letter of the 18th idem, enclosing your credit in favor of the Mobile and Ohio Railroad Company for fifty thousand pounds sterling, which shall be replied to by next mail.

We are, dear sirs, your obedient servant,

For Duncan, Sherman & Co.

(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et el., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 5.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard street,
London, E. C., 19th September, 1874.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—(Mobile and Ohio Railroad credit £50,000)—Referring to and confirming our letter of yesterday, we beg to inform you that we have written the "Mobile and Ohio Railroad Company," under this date, requesting that not more than a moiety of the credit, say £25,000, shall be drawn upon us in one and the same month.

Faithfully, yours,

(Signed) JA. HUME WEBSTER.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 6.

[£50,000 Acceptance Credit.]

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 19th Sept., 1874.

The Mobile and Ohio Railroad Company,
Per favor of Messrs. Duncan, Sherman & Co., N. Y.:

Gentlemen—Referring to and confirming our letter of yesterday, we have to request, that in the event of your availing yourselves of this credit, not more than a moiety thereof, say £25,000, shall at any time during its currency be drawn upon us in one and the same month.

We are, gentlemen, your obedient servants,
(Signed) JA. HUME WEBSTER.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 7.

OFFICE OF DUNCAN, SHERMAN & CO., Bankers,
New York, October 10, 1874.

The Credit Foncier of England, Limited,
Clements Lane, London:

Dear Sirs—In our letter of this morning we ommitted to say, that on all M. & O. Coupons which you might purchase, under the arrangement therein suggested, you would receive the usual commission allowed on the payment of similar coupons on your side.

Yours, very truly,
(Signed) DUNCAN, SHERMAN & CO.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 8.

CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 27th October, 1874.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—We beg to acknowledge receipt of your message of 20th inst.:

"Repeat in English fifth, sixth, seventh, eighteenth words; Heimreath suit decided favorably."

To which we replied on 21st idem:

"Yours, you, keeping, must."—Mobile and Ohio Railroad Company.

We have to acknowledge, also, the receipt of your telegram in cipher of the 24th instant, but inasmuch as several of the words were not clear to us, and as we desired to be perfectly certain in regard to your instructions, we thought it only prudent to telegraph you to repeat the entire message in English. We received your reply yesterday afternoon as follows:

"Will next week cable deposit with you £10,000, and further amounts as advised of purchase of November coupons. Murdock will give details of coupons. Have told Union Bank to refer holders to you."

And beg to thank you for the same. If equally agreeable to you, we think, as on each side we have had to ask for a repetition in English, and as the concoction and deciphering of a cipher message involves some time and trouble, it would be preferable, in all ordinary cases, to cable in English.

Of course, should occasion arise when secrecy is desirable, the cipher can then be employed, and in such instances, if it be necessary to employ a prefix to show that the message is in cipher, then let the first word in every case be "Africa." Faithfully, yours,

(Signed) W. BAILEY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 9.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, October 22, 1874.

To the Credit Foncier of England, Limited:

Gentlemen—We have instructed the Union Bank to refer parties holding Mobile and Ohio Railroad Company coupons due 1st November, and presenting the same to them for payment to you, stating that you will purchase the same at their face value.

Simple notice as follows at your coupon desk will be all sufficient:

"Coupons of the Mobile and Ohio Railroad Company, due November 1, 1874, of £6 15s., £6, and £3 each, will be purchased at their full value."

This is sufficient notice to the parties holding the same that the coupons are not paid by the company, which is the position we wish maintained until reimbursed for the advances.

In the meantime we will cable you these instructions, and also cable funds to meet the purchases made in sums of £5,000 and £10,000 each, as advised by you. This is necessary, as it is quite uncertain what amount of coupons will be presented in London and what here. Last May the amounts purchased in London were about £15,000 only of the whole £60,000. Your cable advice to us to remit for coupons paid shall be promptly responded to by wire.

We remain your obedient servants,
(Signed) DUNCAN, SHERMAN & CO.

We have cabled Mr. Murdock, late President of the company, now in London, to see you personally.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliott, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 10.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard street,
London, E. C., 2d November, 1874.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—(Mobile and Ohio Railroad coupons)—We beg to confirm our letter of the 27th ult., followed by cable messages duly answered by you, and to acknowledge

572 receipt of your letter of 22d idem, which reached us simultaneously with your telegram: "Anglo-Foreign pays five thousand, cable receipt," which we immediately did upon the bank handing us this morning their cheque for that amount. We have thus received from you £20,000 in all, and the coupons presented for payment up to and including to-day amount to £17,298 16s. 11d. net.

We are, dear sirs, very faithfully yours,
(Signed) W. BAILEY, Secretary.

P. S.—We have put up in our office the notice which you suggest. W. B.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 11.

Per steamer Adriatic.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, October 24, 1874.

The Credit Foncier of England, Limited, London:

Dear Sirs—We have received your cipher dispatch which reached us with a few of the words a little confused, but which with the aid of the partial repetition we cabled for, we made out to mean as follows:

"Agree to full credit yours 10th, you keeping New York coupons for account of credit cable instructions, how we must act respecting London coupon."

In pursuance of this authority we have valued on you for £25,000 at sixty days' sight, in two bills for £15,000 and £10,000, (Nos. 5071 and 5072, 2nds of Exchange, accepted 5-11-'74), respectively to our own order which please honor. The coupons which may be purchased with the proceeds of these bills will be held uncancelled for account of the credit as arranged, and we shall later on instruct you as to the treatment of the coupons taken up in London.

We remain, your obedient servants,
(Signed) DUNCAN, SHERMAN & CO.

We have wired you in cipher: "Will next week cable deposit with you ten thousand pounds, and further amounts as advised of purchases of November coupons; Murdock will give details of coupons. Have told Union Bank to refer holders to you." D., S. & Co.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 12.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 6th Nov'r, 1874.

Dear Sirs—Confirming our last letter of the second inst., we beg to inform you that two bills of £15,000 and £10,000 respectively, drawn by you to your own order upon this company at sixty days sight, were yesterday presented and accepted by us, under our credit to your good selves, in respect of the Mobile and Ohio Railroad coupons, although no advice of such drafts has yet reached us.

We learn from Messrs. Smith, Payne & Smiths that their New York agent has handed you for our account 400 Louisiana Levee Coupons.

Faithfully yours,

(Signed) W. BAILEY.

Messrs. Duncan, Sherman & Co., New York.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al. defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 13.

Per steamer Oder.

OFFICE OF DUNCAN, SHERMAN & CO., Bankers,
New York, October 31, 1874.

The Credit Foncier of England, (Limited), London :

Dear Sirs—Referring to our respects of the 24th, we beg to confirm our dispatch reading: "Anglo-Foreign will pay you fifteen thousand pounds; cable receipt; will cable further sums as required by cable advice from you."

And have your reply: "Paid seventeen thousand pounds Mobile coupons; cable further remittances" in conformity with which we have ordered, through same channel £5,000 addition, of which we have cabled you and await your acknowledgment.

We remain, your most obedient servants,

for DUNCAN, SHERMAN & CO.,

(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et el., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 14.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 17th November, 1876.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—Confirming our last letter of the 6th instant, we beg to acknowledge receipt of yours of the 31st ultimo and 2d instant respectively, the contents of which in order require no special reply.

Louisiana Coupons enclosed, we beg to hand you a letter signed by Mr. Arthur Kimber and Messrs. Kimber & Vivian, under date of the 7th instant, requesting you to remit to us "the proceeds of ten Louisiana Coupons, which you received some time ago."

Very faithfully, yours,
[Enclosure.] For the Credit Foncier of England, Limited,
(Signed) W. BAILEY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 15.

Per steamer Celtic.

Office of Duncan, Sherman & Co., Bankers,
New York, December 5, 1876.

The Credit Foncier of England, London:

Gentlemen—Referring to our respects of the 24th October, we have now to advise that we have further drawn on you, under the authority therein quoted, the following bills:
No. 5192 60 days sight on account ourselves for £10,000
5193 60 " " " 15,000
proceeds of which we apply in reimbursement of Mobile and Ohio Railroad November Coupons, purchased by us, and which we hold uncancelled as before for account of the credit. Be good enough to inform us what amount of these coupons you have taken up in London. We believe there are but few outstanding, judging from the amount presented here.

Soliciting your kind protection for these drafts,

We remain, your most obedient servant,

(Signed) DUNCAN, SHERMAN & CO.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliott, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
Ja. HUME WEBSTER, Witness.

Exhibit K 16.

Per steamer Celtic.

Office of Duncan, Sherman & Co., Bankers,
New York, November 20, 1874.

The Credit Foncier of England, Limited,
27 Clements Lane, Lombard street, London:

Dear Sirs—We have to acknowledge your favors of October 27th, November 2d and 6th, the contents of which are noted with attention.

We are obliged by your care in accepting, in the absence of advice, our bills for £25,000, though we are at a loss to account for the non-arrival of our letter, which by our postage account, was duly forwarded per "Adriatic" (which carried the bills), and of which we now enclose copy for case of need.

A short time ago Messrs. Maitland, Phillips & Co. handed us for account of Messrs. Smith, Payne & Smiths, 400 Louisiana coupons, of which we advised them, asking for instructions. We do not seem to have so far, received any letter from Messrs. S., P. & S. directing that they be placed at your disposal.

We are faithfully, yours,
For Duncan, Sherman & Co.
(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
Ja. HUME WEBSTER, Witness.

Exhibit K 17.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard street,
London, E. C., 15th December, 1874.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—(A. Kimber's Louisiana coupons)—We beg to acknowledge the receipt of your letter of the 1st inst., enclosing a sight draft for £36 6s. 0d., proceeds of these ten coupons of $20 each, Mobile and Ohio credit. We have received, also, your letter of the 5th inst., advising your drafts at sixty days sight for £15,000 and £10,000 respectively, which will be duly protected on presentation to the debit of your account.

The total sum paid by us to date on account of these coupons is £19,446 1s. 5d., and we will shortly send you a tabulated statement now in course of preparation, giving the distinctive numbers and other particulars.

Faithfully, yours,
For the Credit Foncier of England, Limited,
(Signed) W. BAILEY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 18.

The Credit Foncier of England, Limited,
27 St. Clements Lane, Lombard street,
London, E. C., 18th December, 1874.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—(Mobile and Ohio coupons)—Confirming our letter of the 15th inst., we beg to hand you enclosed firstly, detailed numerical list of the coupons cashed by us to 12th inst., showing a net total of £19,446 1s. 5d., and secondly, a list of the income tax deducted from each coupon and amounting in the aggregate to £142 8s. 7d.

The coupons themselves we hold uncancelled awaiting your further instructions.

Yours, faithfully,
For the Credit Foncier of England, Limited.
[2 Enclosures.] W. BAILY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 19.

Per steamer Republic.

Office of Duncan, Sherman & Co., Bankers,
New York, December 19, 1874.

The Credit Foncier of England, Limited, London:

Dear Sirs—We sent you yesterday the following message by cable:

"Shall we send you bank sixty days or sight for amount maturing seventh," and are this morning in receipt of your reply:

"Always remit us as suits yourselves best," in pursuance of which we have now the pleasure to hand you eight bills at sixty days' sight, amounting as per accompanying specification to twenty-two thousand, three hundred pounds, with which please do the needful (£22,300).

We remain, your most obedient servant,

(Signed) DUNCAN, SHERMAN & CO.

P. S.—The remittances by this mail are for account of this specific credit, which please, for regularity's sake, designate as No. 1. We shall not redraw against this credit till a late date.

For your information the Mobile and Ohio road report their business assuming proportions equal to before the panic, though the year 1874 has been a very severe one for them in common with all roads in this country, especially in the South; up to October their loss in gross receipts was over $400,000;

In October,	1874..........	$242,000,	
	1873..........	218,000,	increase $24,000
In November,	1874..........	287,000,	
	1873..........	236,000,	increase 51,000

The economies forced upon all roads from necessity will, on an improved business, yield hereafter greater net results.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witnsss.

Exhibit K 20.

The Credit Foncier of England, Limited,
27 Clements Lane, Lombard street,
London, E. C., 30th December, 1874.

Messrs. Duncan, Sherman & Co., New York:

Confirming our last letter of the 18th instant, we beg to acknowledge receipt of your two dated 19th idem.

No. 1 Credit.—Your remittance of £22,300 (8 bills at sixty days sight) shall be specially applied to this credit, against which we note that you will not redraw till a later date.

Ohio and Mobile Coupons due 1st January, 1875.—We are preparing to carry out your instructions with respect to the encashment of such coupons as may be presented for payment in London. When purchased they will be remitted to you uncancelled. We return the specimen sent for our guidance, and recapitulating, for the sake of regularity the two telegrams of the 28th instant, noted at foot.

Remain, dear sirs, faithfully, yours,

For the Credit Foncier of England, Limited.

Enc. (Signed) W. BAILEY, Secretary.

We cabled you, "Are we to encash January Mobile Coupons. If so, cable instructions." And you replied: "Advised you 19th purchase January coupons, will cable for same."

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliott, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
Ja. HUME WEBSTER, Witness.

claim for the registration of certain stock we are sending them by the mail, charging the same to our account.

(Signed) W. BAILEY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et el., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 23.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 4th January, 1875.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—Confirming our last letter of the 5th ult., we beg to acknowledge the receipt of yours of the 29th December, 1874, and 2d January, 1875, and 7th idem, all of which reached us in due course. (Mobile and Ohio coupons.) From our aforesaid letter of the 5th January, you will have seen how, in the absence of instructions on the subject, we have applied your various remittances, by cable or otherwise, and that we consider we have received £25,850 from you in respect of account No. 1.

If you have no objection to adopt this application of your remittances, then after providing for our £25,000 acceptances and debiting the account with £250 commission, and allowing about £200 for discount of your remittances, but exclusive of other expenses, we have in hand in round figures in respect of account No. 1 about £400.

Since our last we have encashed coupons to date to the extent of about £850, thus leaving us at the present time, in cash disburse, of about $450, for which we shall feel obliged by your providing us in course.

We do not trace that you have favored us with your instructions as to the disposal of the coupons we have encashed. We shall be glad to hear from you on this point.

Yours, faithfully,
For the Credit Foncier of England, Limited.
W. BAILEY, Secretary.

[Omitted]

We do trace that you have favored us with your instructions as to the disposal of the coupons we have encashed.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 24.

Per steamer Russia.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
London, E. C., January 25, 1875.

W. Bailey, Esq., The Credit Foncier of England, Limited,
27 Clements Lane, Lombard street, London, E. C.:

Dear Sirs—We are in receipt of your favor of the 5th inst., the contents of which have due attention.

(Louisiana State coupons.) These are not being paid at present, and we see no immediate prospect of their payment being resumed. We hold those received from your account subject to your further instructions.

(Mobile and Ohio Railroad credit.) Our respects of the 7th inst. appears fully to meet your remarks upon this subject.

We remain, your obedient servants,
For Duncan, Sherman & Co.
(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 25.

Per Oceanic.

OFFICE OF DUNCAN, SHERMAN & CO., Bankers,
New York, January 29, 1875.

W. Bailey, Esq., Credit Foncier of England, Limited, London :

Dear Sir—Enclosed we beg to hand No. —, 7-4953 Barclay Bevan T. & Co., d'd. £5,000, which please pass to credit of our account No. 1 under advice,

And oblige, your obedient servant,
For Duncan, Sherman & Co.
(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., de-

fendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 26.

Per steamer Hermann.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, January 30, 1875.

The Credit Foncier of England, (Limited), London:

Gentlemen—We beg to enclose the following bills:

7-4966	L'pl Com. Bkg. Co. 60 d. sgt.......	£1,334 1 9
4965	Manch. & Co. Bank, 60 d. sgt.......	3,700
132	Baring Bros. & Co., d'd.............	10,000
10409	Union Bank, London...............	5,000
		£20,034 1 9

with which please do the needful to our credit in account No. 1.

Our senior Mr. W. B. Duncan sailed per Russia, 27th inst., and will no doubt see you shortly.

We are, gentlemen, your most obedient ser'vt.,
For Duncan, Sherman & Co.
(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 27.

Credit Foncier of England, Limited,
27 Clements Lane, Lombard Street,
London, E. C., 11th February, 1875.

Messrs. Duncan, Sherman & Co., New York :

Dear Sirs—(Mobile and Ohio coupons)—Confirming our letter of the 4th inst., we beg to acknowledge receipt of yours of 25th, 29th and 30th ult. respectively. By the two latter you remit us £5,000 and £20,034.1-9 (together £25,034.1-9) which, as requested, we will place to the credit of No. 1 account.

Trusting that our aforesaid letter will satisfactorily settle the question as to the allocation of your various remittances.

We are, dear sirs, yours, faithfully,
For the Credit Foncier of England.
W. BAILEY, Secretary.

It will afford us particular pleasure to make the acquaintance personally of your Mr. W. B. Duncan.

W. B.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 28.

Per steamer City of Chester.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, February 20, 1875.

W. Bailey, Esq., Sec'y, Credit Foncier of England, Limited,
27 Clements Lane, Lombard street, London:

Dear Sirs—Referring to our respects of December 19th, we beg to advise that we have valued on you for this mail in our drafts.

No. 5420, @ 60 d. sght	£10,000	
" 5421, @ 60 d. sght	15,000	£25,000

which please protect, debiting the same under advice to account No. 1.

We remain, your obedient servants,

(Signed) DUNCAN, SHERMAN & CO.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 29.

Per steamer Frisia.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, February 24, 1875.

W. Bailey, Esq., Sec'y, Credit Foncier of England, Limited,
27 Clements Lane, Lombard street, London:

Dear Sir—We are in receipt of your favor of the 4th inst., the contents of which have our careful attention.

The disposition which you have made of our remittances seems to be unobjectionable, and we see no reason to change it unless Mr. Duncan, whom you have doubtless seen, should instruct you to do so.

To cover your cash disbursements as advised, we enclose our bill for £500, with which please do the needful.

Your cable message, reading "Draw on us three thousand pounds, sixty days, credit Burness proceeds," is received, and we have accordingly valued on you at sixty days' sight for £3,000, passing proceeds to credit of Mr. James M. Burness under advice.

Asking due honor for our draft as advised.

We remain, your obedient servants,

For Duncan, Sherman & Co.

(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 30.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard street,
London, E. C., 14th March, 1875.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—Mobile and Ohio Railway Coupons.—Confirming our last letter of the 6th instant, we write a line to say that we should feel obliged if you would kindly make us a further remittance on that account, as we are already more than £200 in cash disburse.

Introductions.—We may from time to time give Mr. Webster's card to a friend or acquaintance visiting the United States, and we should feel obliged by your showing any little civility in your power to persons presenting such cards, which, however, you will of course not treat as bearing the same importance as letters of introduction.

Yours, very faithfully,
For the Credit Foncier of England, Limited,
W. BAILEY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 31.

OFFICE OF DUNCAN, SHERMAN & CO., Bankers,
New York, March 2d, 1875.

The Credit Foncier of England, Limited, London :

Dear Sirs—We beg to acknowledge your valued favors of the 4th and 11th ultimo, contents of which are carefully noted. Kindly continue to hold the coupons referred to uncancelled, until further instructed by us,

And oblige, your most obedient servant,
For Duncan, Sherman & Co.,
(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., de-

fendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 32.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard Street,
London, E. C., 23d March, 1875.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—We beg to acknowledge the receipt of your letter of the 2d instant, the concluding paragraph of which is duly noted, and to confirm the cablegram at foot.

Awaiting your early reply thereto,

We are, dear sirs, yours faithfully,
For the Credit Foncier of England, Limited,
W. BAILEY, Secretary.

"Erie market depressed, cable reason dividend, Gold Bonds not advertised."

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et el., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 33.

Per steamer Rhein.

Office of Duncan, Sherman & Co., Bankers,
New York, March 27th, 1875.

W. Bailey, Esq., Secretary, Credit Foncier of England, Limited, No. 27 *Clements Lane, London :*

Dear Sir—We have your favor of the 14th inst., and to cover the cash advance on account of purchases of Mobile and Ohio Railroad Coupons, beg to enclose our bills No. 10709 at three days' sight Union Bank £250, with which pray do the needful. We hardly think there can be many more of these coupons presented on your side.

It will afford us pleasure to receive any of Mr. Webster's friends bearing his card, and we observe carefully your remarks on this head.

We remain, your most obedient servant,
For Duncan, Sherman & Co.,
(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner,
JA. HUME WEBSTER, Witness.

Exhibit K 34.

The Credit Foncier of England, Limited,
27 Clements Lane, Lombard Street,
London, E. C., 7th April, 1875.

Messrs, Duncan, Sherman & Co., New York :

Dear Sirs—Confirming our last letter of the 27th ultimo, we have to acknowledge the receipt of your two bearing date the 25th and 27th idem, respectively, and are glad to learn that the credit of one hundred thousand pounds is agreeable to you, and that you will proceed to use the same as opportunity offers.

Mobile and Ohio Coupons.—We have to thank you for so promptly remitting us £250 against our disbursements on this account,

And remain, dear sirs, yours faithfully,
For the Credit Foncier of England, Limited,
W. BAILEY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witnsss.

Exhibit K 35.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, May 1st, 1875.

W. Bailey, Esq., Secretary
Credit Foncier of England, London :

Dear Sir—We have your favor of the 12th inst., and note contents. We are sending you to-day a parcel of circulars relating to the Mobile and Ohio Railroad Company, to which we invite your attention. The bonds respecting which you enquire are quoted nominally 50@60; no late transactions.

We are, dear sir, your most obedient servant,
For Duncan, Sherman & Co.,
(Signed) A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 36.

Per steamer City of Chester.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, April 30th, 1875.

W. Bailey, Esq., Secretary Credit Foncier of England, Limited, 27 *Clements Lane, Lombard Street, London:*

Dear Sir—We are in due receipt of your favors of 12th, 13th and 15th inst., the contents of which have our usual attention.

In reply to your enquiry, we beg to say that the Sterling Bonds, Mobile and Ohio Railroad Company, are nominally quoted at 50 bid and 60 asked. While the interest is unpaid, we have every confidence that the rights of the First Mortgage Bond-holders will be religiously protected, and we therefore consider the present price low.

We remain, your obedient servant,
For Duncan, Sherman & Co.,
(Signed) A. MACKINTOSH.

P. S.—We enclose copy of our cable of 26th inst.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., de-

fendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 37.

MOBILE, April 23.

Credit Foncier, London :

The directors of the Mobile and Ohio Railroad Company beg to inform the holders of their bonds that the unexampled falling off in earnings, resulting from business depression general throughout the country and which will probably continue till another crop is assured, deprives the company of the ability to meet the May interest at its maturity. All the earnings of the past business season have been applied to arrears of pay rolls, to current supplies, to necessary improvements of the road and to other matters which are strictly in the interest of the bondholders. All our labor and current supply bills are now paid as far as practicable in cash. The directors recognize the fact that the bondholders have the first claim on property, and that it is imperative upon the direction to apply all the earnings of the road to the interest in the strict order of equity. With this assurance the directors invite the confidence of the holders of the mortgage liens to enable them to make some acceptable proposition upon a substantial basis which will permit the continued development of the property in the interest of all concerned.

For details of the application of the earnings of the past year, the directors beg leave to refer to the annual report of the company.

By order of the Board.

(Signed) A. L. WILLOUGHBY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 38.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard street,
London, E. C., 12th April, 1875.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—Together with our last letter of the 7th inst., and Mr. Webster's private letter of the 9th inst., we beg to confirm a cablegram dispatched to you this morning, of which a copy is subjoined.

"Reported hitch about advertising interest Grant's bonds. Jewett should not allow this for Erie's own credit. Is general position changed? Cable."

Awaiting your reply, we are, dear sirs, faithfully yours,
For the Credit Foncier of England, Limited,
(Signed) W. BAILEY, Secretary.

P. S.—Will you kindly inform me what is the market value of the first Mortgage Bonds of the Mobile and Ohio Railroad, £225 sterling each, redeemable in 1883, and whether you consider it safe to put another person's money into with a view to the high rate of interest and increase of capital, &c. The enquiry is made of me by a friend who has held nine bonds for six years, six of which he intends to retain in his own hands, and to part with the remainder to a relative.

598 If you can kindly inform me on the subject, I shall be exceedingly obliged by your courtesy.

(Signed) W. BAILEY.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commmissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 39.

19th April, 1875.

Foncier, London, Duncan, New York:

Total coupons encashed 19600 November, 3500 January. We post 11500 November to-night insured, balance next mail.

For the Credit Foncier of England, Limited.

(Signed) W. BAILEY, Secretary.
27 Clements Lane, E. C.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 40.

Per Steamer.

Office of Duncan, Sherman & Co., Bankers,
New York, April 9, 1875.

J. H. Webster, Esq.,
Credit Foncier of England, Limited, London:

Dear Sir—I intended before leaving for Mobile to advise you of the determination arrived at by the Mobile and Ohio Railroad Company with reference to their coupons, but find it impossible to do so until I can meet the directors on the spot, and look very carefully into their affairs. I do not see any prospect, however, of their being able to pay their coupons due 1st May next, but will advise you from Mobile of the decision arrived at, and if it is determined to allow the coupons to default, I shall probably suggest that the bondholders be asked to appoint a committee to look into their affairs. The value of the property must afford ample security for its bonded debt, which, in the aggregate, is less than $25,000 per mile, and first mortgage less than $20,000 for a finished and equipped road. Its management is honest; expenses are reduced to the lowest point; but at the same time its business has fallen off very greatly, owing to the depression of business generally and the political agitation of the South. This cannot last, and while the people there are economizing, and so for the moment spend but little, either in travel or in other use of the roads, these very economies will in the end work to the advantage of the property.

The annual statement, which will be published May 1st, will show its financial condition, and that with the increased business which we have every right to expect, it can earn sufficient to pay the interest upon all its securities. There is, of course, the danger that an attempt may be made to force the road out of the hands of the directors, but if so, every means will be taken, and I think with success, to protect the security-holders.

Should such be the case, a full statement will be laid before said security-holders, and their judgment asked as to what course should be pursued.

I remain, yours very truly,

(Signed) W. BUTLER DUNCAN.

The depression in business through the section is universal, and its effects on all the Southern roads alike.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 41.

Per steamer China.

OFFICE OF DUNCAN, SHERMAN & Co., Bankers,
New York, April 13th, 1875.

W. Bailey, Esq., Secretary, Credit Foncier of England, Limited, 27 Clements Lane, Lombard Street, London, E. C.:

Dear Sir—Enclosed we beg to hand our bills:

No. 7,	5983, Baring Bros. & Co., d'd...	£15,000
"	5984, Union Bank of London...	10,000
		£25,000

with which please do the needful, placing proceeds to credit of account No. 1 under advice.

We remain, your obedient servants,

(Signed) DUNCAN, SHERMAN & CO.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 42.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 St. Clements Lane, Lombard street,
London, E. C., 27th April, 1875.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—Mobile and Ohio Coupons.—We beg to acknowledge the receipt of your letters of the 13th instant, one of which contained a remittance of £25,000, which, as requested, will be placed to the credit of No. 1 account.

We have also to acknowledge the receipt of your telegram of yesterday's date, conveying a statement for distribution amongst such bond-holders as may present their next coupon (that due May proximo) for encashment at our office. We immediately sent your message to be set up in type, and have now the pleasure to send you a proof enclosed. We are, dear sirs, yours faithfully,

For the Credit Foncier of England,

W. BAILEY, Secretary.

P. S.—Your cablegram of the 24th instant, advising message above referred to, duly reached us. W. B.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., de-

602 fendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
[Enclosure.] JA. HUME WEBSTER, Witness.

Exhibit K 43.

Per steamer Scotia.

OFFICE OF DUNCAN, SHERMAN & CO., Bankers,
New York, May 1st, 1875.

The Credit Foncier of England, Limited,
No. 27 Clements Lane, London, England:

Dear Sirs—We beg to acknowledge your favors of—

April 22—With registered package of coupons, which are under examination, and will no doubt be found in order. The papers relating to these coupons kindly send to us.

April 27—With printed circulars, which appear to conform precisely with our cablegram, and for which we are obliged.

April 29—It will be quite in order that you continue to pay such few remaining coupons Mobile and Ohio Railroad, of the prior maturities, as may appear.

Several copies of the annual report have already been forwarded, and are no doubt in your possession ere this.

We are, dear sirs, your most obedient servants,
For Duncan, Sherman & Co.,
A. MACKINTOSH.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company, et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Exhibit K 44.

THE CREDIT FONCIER OF ENGLAND, LIMITED,
27 Clements Lane, Lombard street,
London, E. C., 29th April, 1875.

Messrs. Duncan, Sherman & Co., New York:

Dear Sirs—We beg to confirm our letter of the 27th inst., and to acknowledge the receipt of yours—purely formal—of the 17th idem. (Mobile and Ohio coupons). A few pounds' worth of these due November, 1874, were presented yesterday and will be encashed by us, as we presume that the circular (second copy of which is enclosed) does not affect over-due coupons.

Yours, faithfully

For the Credit Foncier of England, Limited.

[Enclosed.] W. BAILEY, Secretary.

At the execution of a commission for the examination of witnesses between W. B. Duncan and A. F. Elliot, plaintiffs, and Mobile and Ohio Railroad Company et al., defendants, this paper writing was produced and shown to J. Hume Webster, and by him deposed unto at the time of his examination before

J. NUNN, Commissioner.
JA. HUME WEBSTER, Witness.

Commissioner's Certificate.

To the Honorable the Justices of the Circuit Court of the United States, Fifth Judicial Circuit, Southern District of Alabama, in the United States of America:

I, Joshua Nunn, Vice and Deputy Consul General and Notary Public, ex-officio, of the United States of America, at London, England, the commissioner named in said commission, do hereby certify that the evidence of the witness, George Holland Milford, was taken down under oath and subscribed by him in my presence, on the 16th day of January, 1877, at the office of the Union Bank of London, No. 2 Princes street, London, in the county of Middlesex, and Kingdom of Great Britain; and also of the witness James Hume Webster, was taken down under oath and subscribed by him on the 22d day of January, 1877, at my office No. 53 Old Broad street, London aforesaid (the Consulate General of the United States of America), and that I have personal knowledge of said witnesses, and that I am not of counsel, or of kin, to any of the parties to the cause, or in any manner interested in the results thereof. And I further certify that all the exhibits annexed to the answers to the interrogatories and cross-interrogatories of said commission, have been carefully read and examined personally by me, with the books and letters, &c., of the said Union Bank of London, and the Credit Foncier of England, Limited, and the same agrees with said originals, word for word, in every particular.

SEAL
U. S. CONSULATE,
LONDON.

Witness my hand and seal this the 22d day of January, 1877.
J. NUNN,
Commissioner.

January 22, 1877.
Mailed by J. Nunn, Commissioner.

MOBILE, ALA., February 10, 1877.
Received, published and filed.
JAMES GILLETTE,
Special Master.

In Equity, Circuit Court of United States Southern District of Alabama.

WM. B. DUNCAN, A. FOSTER ELLIOT, TRUSTEES,

vs.

MOBILE AND OHIO RAILROAD COMPANY, ET ALS.

Notice.—To R. T. Wilson, A. Iselin, Trustees, and to the holders of the bonds of the Mobile and Ohio Railroad Company, known as Tennessee Substitution Bonds:—

You will take notice, that under and in pursuance of the order of reference in this case, made by the Honorable the Circuit Court of the United States for the Southern District of Alabama, I have appointed Monday, the 22d day of January, 1877, at the United States Court Room, in the City of Mobile, to take up and consider certain objections which have been filed at the instance of certain of the holders of the bonds of said Railroad Company, known as the First Mortgage Bonds, and the Trustees of the Second Mortgage of said Company, to the allowance of the bonds known as the Tennessee Substitution Bonds, as entitled to priority of lien, or to any lien, upon the said Railroad and property, described in the bill of complaint filed in this cause.

This is to notify you, and each of you, to appear at the time and place named, then and there to defend against said objections as you may be advised.

It is further ordered, that this notice be published once a week in a newspaper published in the cities of New York, Mobile, Alabama, and Frankfort, Germany, until the day above named; and that a copy hereof be served personally or by mail upon said trustees, and upon each of said holders of bonds who have made presentation of their claims in this cause.

JAMES GILLETTE, Special Master.

MOBILE, December 7th, 1876.

606 *Marshal's Return.*—I hereby certify that, on the 15th day of December, 1876, at the City of New York, in my District, I personally served the within notice upon the within named trustees, R. T. Wilson and A. Iselin, by exhibiting to them the within original, and at the same time leaving with each of them a copy thereof.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

Dated January 16th, 1877.

In the Circuit Court of the United States, Fifth Judicial Circuit and Southern District of Alabama.

WILLIAM BUTLER DUNCAN, ET AL., TRUSTEES,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY.

MONDAY, January 22, 1877.

The session of the Master reconvened at eleven o'clock A. M., pursuant to adjournment, and notice in the matter of objections filed by certain holders of the First Mortgage Bonds of said Railroad Company, and at the instance of the Trustees of the Second Mortgage, to the allowance of the bonds known as the Tennessee Substitution Bonds, as entitled to priority of lien, or to any lien, upon the Railroad property.

It appears from the record that notice issued December 7, 1876, was published according to the terms thereof in newspapers published in the cities of New York, Mobile, and in Frankfort, Germany.

It further appears that copies of said notice were served on the 15th day of December, 1876, upon R. T. Wilson and A. Iselin, Trustees of the Tennessee Mortgage (see Notice and Marshal's Return thereon). Owing to absence of counsel the matter is adjourned until to-morrow, January 23, 1877, at ten o'clock.

JAMES GILLETTE, Special Master.

TUESDAY, January 23, 1877.

The session opened at ten A. M., pursuant to adjournment.

Present, the Special Master and George N. Stewart, of counsel for Alexander Duncan.

Counsel for objectors to the Tennesse Bonds not attending, that matter is continued.

In the matter of the objections to the coupons of 1874, claimed as a lien on the Railroad property by Mr. Alexander Duncan, the testimony of George Boyd, William Butler Duncan, Angus Mackintosh, John J. Walker, Adrian Iselin, George T. Bonner, Otto Plock, and Abraham Murdock, taken by commission in New York at the instance of Alexander Duncan, is received and filed.

On motion of George N. Stewart, ordered that the testimony be published.

Thereupon the reference adjourned until to-morrow, Wednesday morning, at 10 o'clock.

JAMES GILLETTE, Special Master.

WEDNESDAY, January 24, 1877.

Reference resumed pursuant to adjournment. Counsel failing to attend, adjourned subject to reconvene on notice from counsel.

JAMES GILLETTE, Special Master.

SATURDAY, February 3d, 1877.

The time allowed for a hearing before the Master expires by limitation in the decree of the Court. Therefore, ordered that this reference do now adjourn *sine die*.

JAMES GILLETTE, Special Master.

MOBILE, February 21st, 1877.

Hon. James Gillette:

Dear Sir—In view of the extension of time to take testimony until April next, will you please issue a subpœna

608 *duces*, returnable this day, at twelve o'clock, for Mr. Du Puy and the Tennessee Substitution papers, as more particularly specified in our notice of the 19th inst.

Very respectfully,

E. L. ANDREWS and
E. H. GRANDIN.

NOTICE.—United States Court, Southern District of Alabama.

W. B. DUNCAN, ET AL., AS TRUSTEES, &C.,
vs.
MOBILE AND OHIO RAILROAD COMPANY.

To the Hon. James Gillette, Special Master:

We hereby respectfully request that you issue the subpœna *duces tecum* heretofore ordered herein to T. Haskins Du Puy, returnable on February 19th, 1877, at 12 M., when we desire to proceed with the examination on the Tennessee Substitution claims. Respectfully,

E. L. ANDREWS,
E. H. GRANDIN.

The subpœna *duces tecum* should be to produce all papers and books, with the minutes of the Board of Directors of said corporation, defendants, in reference to the transaction whereby the said Company took up the bonds issued in aid of the construction of its railroad by the State of Tennessee, and attempted to substitute therefor its own bonds, commonly called Tennessee Substitution Bonds.

E. L. ANDREWS,
E. H. GRANDIN.

MOBILE, February 19, 1877.

SUBPŒNA.—In the Circuit Court of the United States, Fifth Judicial Circuit and Southern District of Alabama.

W. B. DUNCAN, ET AL.,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET AL.

On Reference before the Master.

To T. Haskins Du Puy:

You are hereby summoned to appear before the undersigned, Special Master in the above entitled cause, at his office, in the United States Court Room, in the City of Mobile, this 21st day of February, 1877, at 12 o'clock M., and then and there to testify, and the truth to say, according to your knowledge, in the matter of W. B. Duncan and A. F. Elliot, Trustees, vs. the Mobile and Ohio Railroad Company and others, wherein Messrs. Moran Brothers, of New York City, have filed objections to the bonds known as Tennessee Substitution Bonds.

And you will bring with you "all the papers and books, with the minutes of the Board of Directors of said corporation, defendant, in reference to the transaction whereby the said Company took up the bonds issued in aid of the construction of its railroad by the State of Tennessee, and substituted therefor its own bonds, commonly called Tennessee Substitution Bonds."

Attest, this 21st February, 1877.

JAMES GILLETTE, Special Master.

Marshal's Return.—Received Marshal's Office February 21, A. D. 1877, and executed upon the same day by serving a copy of the within Subpœna upon T. Haskins Du Puy.

GEORGE TURNER, U. S. Marshal,
By F. Y. ANDERSON, Deputy.

In the Circuit Court of the United States, Fifth Circuit and Southern District of Alabama.

WM. BUTLER DUNCAN, ET AL., TRUSTEES,

vs. } *In Equity.*

THE MOBILE AND OHIO RAILROAD CO., ET ALS.

Before the Special Master, James Gillette, on Reference.

WEDNESDAY, February 21, 1877.

Present, the Special Master and Counsel, as follows: P. Hamilton, representing trustees, complainant and receivers; Geo. N. Stewart, representing Mobile and Ohio Railroad Company, defendant, and Alexander Duncan and holders of coupons of 1874; E. H. Grandin, of counsel for Trustees Second Mortgage; and E. L. Andrews, Solicitor for Moran Bros., objecting bond-holders.

T. Haskins Du.Puy, a witness called at the instance of counsel for Moran Brothers, and counsel for Trustees of the Second Mortgage, being duly sworn, says in answer to questions propounded by Mr. Andrews:

Q. Have you the minutes of the Board of Directors of the Mobile and Ohio Railroad Company for 1870 and 1871? If so, produce them.

A. They are in their proper place in the general office of the Company.

Q. Have you control of them?

A. As Vice President of the Company I have.

Q. Will you, in obedience to the subpœna of the Circuit Court, produce the minute books above referred to? Please answer the question directly.

A. I will answer in my way.

Q. Question repeated.

A. I am under the advice and control of counsel, and will do as they direct me to do.

Motion by Mr. Andrews, to strike out the answer as not being responsive to the question.

Motion by Mr. Hamilton, to strike out the question.

Decision reserved.

Q. Mr. Du Puy have you produced the books and papers required of you by the subpœna *duces tecum* of James Gillette, Special Master, dated February 21, 1877, in the cause of W. B. Duncan *et al.*, vs. The Mobile and Ohio Railroad Company, pending in this court, either in this court-house building or in this Master's office. I will ask you for a categorical answer—yes or no.

A. I received the subpœna about five minutes before I came down, and I had no time to get the books or no knowledge of what books were wanted, or what parts of books were wanted. The general recital of the subpœna would take a wheel-barrow load of books.

Q. Then it appears, Mr. Du Puy, that you knew sufficiently well what books were required by the subpœna of this court to be able to state what their quantity and bulk would be. Is that not so?

A. I can read the subpœna as calling for the minute books.

Q. Have you got that minute book.

A. Not in this room.

Q. Is it in this court-house building?

A. No; nor could I have brought it into this building and been in time to obey the summons of the Master.

Mr. Andrews: Motion to adjourn for one hour to give the witness time to produce the books called for.

Mr. Hamilton, of counsel for trustees and receivers, asked the witness if he had examined the books so as to be able to know which and what parts have reference to the matter named in the subpœna?

A. I have not.

Q. Have you ever heretofore been notified that you would be required to bring such books?

612 A. I have not.

Q. How long would it take to make such examination?

A. I can't say. I can't do it in an hour or two hours. I can do it with all diligence, but cannot say how long it would take.

Question by *Mr. Andrews.* Have you not seen the deed executed to Duncan, Iselin and Wilson, for the claims known as the Tennessee Substitution bonds, and don't you know or believe that that deed was dated in 1871, and that the minutes called for by this subpœna related to meetings of the board during or about that year?

A. I have no recollection of ever having seen that deed and consequently could have no knowledge of what particulars were referred to in the subpœna. I have no recollection of ever having seen the deed, and I can't have any belief on the subject.

Q. Do you believe that deed was executed in 1871?

A. I don't know.

Q. Did you not sign a paper addressed to the creditors of the Mobile and Ohio Railroad Company, or to that address in substance, in which you advised and recommended the First Mortgage bondholders of the Mobile and Ohio Railroad Company to exchange each one thousand dollars First Mortgage bond, or Sterling bond £225, for a New Mortgage bond for $440 and for a balance in debentures, and the balance of which New Mortgage was to be allotted to the Tennessee Substitution bonds, the deed securing which you have just said you never saw, or did not remember to have seen or did not know the date thereof? I ask a categorical answer.

[Mr. Stewart, on behalf of the Mobile and Ohio Railroad Company, objected to the question for irrelevancy. If intended as a cross-examination, it is improper. The question has no relevancy to the issue on trial, whether he did present such a paper or not.]

The Special Master.—If the books and papers pertaining to the Tennessee matter are what are wanted, the question is irrelevant. The witness has stated on oath that he had not time to produce the books required. It is within the Master's knowledge from the time of issuing the subpœna that he had not. If counsel can agree as to the time, to which this reference will adjourn, an adjournment will be in order.

Mr. Hamilton moved for an adjournment until Monday.

Mr. Andrews objected to an adjournment for so long a time, stating that one hour was ample time to give the witness to produce the books, and he moved for a subpœna *duces tecum* to T. Haskins Du Puy to produce the Minute Books of 1870, 1871 and 1872, of the Mobile and Ohio Railroad Company, returnable in one hour.

Mr. Stewart, objecting, said: If we have time to make examination so as to discriminate what parts pertain to this controversy and what parts do not, the subpœna will be obeyed cheerfully.

Mr. Andrews argued that all books in the possession of the trustees of the Mobile and Ohio Railroad Company pertain to this controversy, and are held by them as the agents of his clients the bondholders, and that he had the right to examine any and all books or any part of the same.

Mr. Stewart: As to all transactions recorded in those books which have no relation to this controversy, witness is advised that he is not bound to produce the same, and therefore will act accordingly.

Mr. Grandin: Who is the judge as to what is pertinent?

Mr. Stewart: The witness is the judge, the authorities sustain that.

Mr. Andrews renewed his motion for a subpœna *duces tecum*, returnable in one hour, which was refused.

Mr. Andrews: I move for a subpœna *duces tecum*, returnable in two hours.

614 [Objected to by Mr. Stewart on the ground that the time is too short.]

Special Master: Objection sustained.

Mr. Andrews: Motion for the Minute Book of 1871 in two hours.

[Objected to by Mr. Stewart.]

Special Master: Objection sustained.

Mr. Andrews: Motion for subpœna, returnable in three hours. (Mr. Andrews stated that he would leave the city to-night, also his associate counsel.)

[Objected to by Mr. Stewart.]

Special Master: Objection sustained.

Mr. Andrews moved for the production of that Minute Book at any time during the present day, before 10 o'clock P. M.

Mr. Stewart objected, on the ground that the parties have no right to the books, but to only such parts as relate to the subject under reference.

Special Master: Objection sustained.

Mr. Andrews moved for a subpœna for the production of the contract of the Mobile and Ohio Railroad Company with Duncan, Iselin and Wilson, in reference to the purchase of Tennessee State bonds, returnable in three hours or any time during the day, in the discretion of the Master.

Ordered that the witness produce the described paper without further notice at 5 o'clock P. M., to which time reference adjourned.

JAMES GILLETTE, Special Master.

WEDNESDAY, Feb'y 21, 1877, 5 o'clock P. M.

Reference resumed pursuant to adjournment. Present, the Special Master and counsel as before. Present also the witness, T. Haskins Du Puy, who submitted the following return in writing in answer to the notice hereinbefore directed to him:

MOBILE, ALA., February 21st, 1877.

James Gillette, Esq., Special Master, &c.:

Dear Sir—I have examined the Minute Book of the Mobile and Ohio R. R., from April, 1870, to November, 1872, and I can find no entry thereon of any contract or agreement by resolution or action of the President and Board of Directors, in reference to the Tennessee Substitution bonds named in the subpœna served upon me this morning, excepting the resolution and indenture of deed of trust, published in the pamphlet, containing the mortgage of the company.

I have examined the papers in the President's vault, together with his letter books for the year 1870 to 1872. I have called for the Minute Book of the Executive Committee for the same time, and find that all such minutes were discontinued after August, 1870—neither the papers in the vault—nor the letter books of the then President show that any contract of the Mobile and Ohio R. R. with Duncan, Iselin and Wilson, in reference to the purchase of Tennessee State bonds, is in my keeping.

I have used the best exertion capable in the limited time assigned me, to discover such contract, if such contract were made.

All the information I have or can find upon the subject, is contained in the resolutions and deed hereinbefore mentioned.

Yours, truly,
T. HASKINS DU PUY,
Vice President M. & O. R. R.

Mr. Stewart filed the following objection:

The Mobile and Ohio Railroad Company, by its solicitor, objects to the examination of any and all evidence of any description in respect to the subject of the Tennessee Substitution bonds, because the trustees of the Tennessee Substitution bonds are not before the court or Special Master, and, therefore, they having omitted and declined to become parties to this proceeding or submit to the jurisdiction of the court as to them, and as there is no authority to compel their appearance in this investigation, they would not be bound thereby, and therefore this proceeding would be unavailable and without legal jurisdiction or effect.

GEORGE N. STEWART,
February 21, 1877. Solicitor M. & O. R. R. Co.

In the matter of the petition of Moran Bros., now before the Special Master, Mr. Hamilton, not as representing the Tennessee Substitution trustees, but in the name of trustees of First Mortgage, unites in the objection of Mr. Stewart.

P. HAMILTON.

Received and filed February 21, 1877, 5 P. M.

JAMES GILLETTE, Special Master.

Examination of T. Haskins Du Puy resumed by Mr. Andrews.

Q. Are you not the attorney and agent in fact of the trustees and receivers in this cause.

A. I am.

Q. (By Mr. Hamilton). Are you not also Vice President of the Mobile and Ohio Railroad Company.

Q. I am.

Motion by Mr. Andrews, that a subpœna issue, returnable at 12 M. to-morrow, on T. H. Du Puy for the production of the Minute Books of the Directors and of the Executive Committee, from 1870 to 1872, both inclusive; for the telegram books of the Mobile and Ohio Railroad Company, and letter books for the same period, and for such minutes, letters and telegrams for the same period, not in the form of books, and for resolutions (or copies of the same) of the Directors and Executive Committee, not in the form of books.

The motion concurred in by counsel for the Second Mortgage trustees.

[Objected to by Geo. N. Stewart, on the ground that the subpœna must be confined to what is desired in connection with the subject.]

Ruling.—The Master grants the subpœna, returnable at 12 M. to-morrow, for the books and papers in question, so far as the same pertain to the question now under consideration, viz: the bonds known as the Tennessee Substitution bonds.

Mr. Grandin moved, in behalf of the trustees of the Second Mortgage, the production of the same books, the production of which was moved for by E. L. Andrews by a subpœna *duces tecum* to T. Haskins Du Puy, returnable to-morrow at 12 M., and stated "I base my motion on the express terms of the order of reference to the Master, made on March 6, 1876, in this cause, and also on a subsequent order enlarging the time for the taking of proofs.

Ruling.—The Master grants the subpœna, returnable at 12 M. to-morrow, for the books and papers in question, so far as the same pertain to the question now under consideration, viz: the bonds known as the Tennessee Substitution bonds.

Mr. Grandin moves further for the books and papers of the Company for 1874 and 1875, in order that he may ascertain if they contain evidence applicable to the issues made by the answer of the trustees of the Second Mortgage to the bill of complaint in this cause. A subpœna is desired to the attorney in fact of the trustees, returnable at 12 M. to-morrow.

Ruling.—The motion is refused, on the ground that this is not a general inquiry into the issues presented by the pleadings in the case, but this proceeding at this time is limited to the inquiry into the Tennessee lien.

Mr. Andrews then presented the following motion in

618 writing: "After the declaration of counsel in Court, that portions of the books called for would be sealed, I move for the production of the books named in my previous motion, without any qualification in the subpœna." Which motion for a subpœna was refused by the Master, except the subpœna be qualified by limiting the books to be produced to the question of the Tennessee lien, which is the subject matter of to-day's reference.

Thereupon, E. L. Andrews, counsel for Moran Bros. and objecting bond-holders, and E. H. Grandin, of counsel for trustees of the Second Mortgage, object and except to each and every ruling of the Master on this reference.

The reference then adjourned until Thursday, February 22d, at 12 o'clock M.

JAMES GILLETTE, Special Master.

THURSDAY, February 22, 1877.

The reference was resumed, pursuant to adjournment.

Present, counsel as of the day previous. There being no further business presented, reference adjourned subject to be reconvened on application of counsel, or on notice from the Master.

JAMES GILLETTE, Special Master.

United States Circuit Court, Southern District of Alabama,
In Equity.

WILLIAM BUTLER DUNCAN, ET AL., TRUSTEES,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET AL.

MOBILE, March 21st, 1877.

To Messrs. P. & T. A. Hamilton, Solicitors for Trustees and Receivers, George N. Stewart, Solicitor for Mobile and Ohio Railroad Company, and representing Alexander Duncan, William G. Jones and E. H. Grandin, Solicitors for Trustees Second Mortgage—Gentlemen:

On Friday, March 23d, at 12 M., at my office in the U. S. Court Room, pursuant to the order of the Court extending the time for taking testimony in the above entitled cause to the 1st April, prox., and pursuant to notice this day received from E. L. Andrews, Solicitor for certain bondholders, who have objected to the bonds known as Tennessee Substitution Bonds, and to the First Mortgage Coupons of 1874, held by Alexander Duncan and others, I will resume the hearing before me for the purpose of taking such testimony as may be presented in reference to said subject matters.

Very respectfully,
JAMES GILLETTE, Special Master.

SUBPŒNA.—In the Circuit Court of the United States, Fifth Judicial Circuit and Southern District of Alabama.

W. B. DUNCAN, ET AL.,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET AL.

On Reference before the Master.

To T. Haskins Du Puy:

You are hereby summond to appear before the undersigned, Special Master in the above entitled cause, at his office, in the United States Court Room, in the City of Mobile, on the 23d day of March, 1877, at 12 o'clock M., and then and there to testify, and the truth to say, according to your knowledge, in the matter of W. B. Duncan and A. F. Elliot, Trustees, vs. the Mobile and Ohio Railroad Company and others, wherein Messrs. Moran Brothers, of New York City, have filed objections to the bonds known as Tennessee Substitution Bonds. And you will bring with you all the "Minute Books of the Directors and of the Executive Committee, from 1870 to 1872, both inclusive," also, "the Telegram Books of the Mobile and Ohio Railroad Company, and Letter Books for the same period," and "such minutes, letters and telegrams for the same period, not in the form of books,," and "resolutions, (or copies of the same,) of the Directors and Executive Committee, not in the form of books," so far as said books and papers pertain to the bonds known as Tennessee Substitution Bonds, or so far as said books and papers refer to "the transaction whereby the said Company took up the bonds issued in aid of the construction of its railroad by the State of Tennessee, and substituted therefor its own bonds, commonly called Tennessee Substitution Bonds."

Attest, this 21st March, 1877.

JAMES GILLETTE, Special Master.

Received Marshal's Office March 21st, A. D. 1877, and executed upon the 22d day of March, 1877, by serving a copy of the within Subpœna upon T. Haskins Du Puy.

GEORGE TURNER, U. S. Marshal.
By F. Y. ANDERSON, Deputy.

SUBPŒNA.—In the Circuit Court of the United States, Fifth Judicial Circuit and Southern District of Alabama.

W. B. DUNCAN, ET AL.,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET AL.

On Reference before the Master.

To T. Haskins Du Puy:

You are hereby summoned to appear before the undersigned, Special Master in the above entitled cause, at his office, in the United States Court Room, in the City of Mobile, on the 24th day of March, 1877, at 12 o'clock M., and then and there to testify, and the truth to say, according to your knowledge, in the matter of W. B. Duncan and A. F. Elliot, Trustees, vs. the Mobile and Ohio Railroad Company and others, wherein L. J. Belloni, Jr. of New York City has filed objections to the Coupons of First Mortgage Bonds, falling due in 1874, held by Alexander Duncan, and others, and you will bring with you "Minutes of the Boards of Directors for 1874; correspondence between Mr. Walker, Vice President, and Mr. Duncan, or Duncan, Sherman & Company, either by letter or telegraph, in relation to the payment of the Coupons of the First Mortgage Bonds falling due in May and November, 1874."

Attest, this 21st day of March, 1877.

JAMES GILLETTE, Special Master.

Received Marshal's Office March 21st, A. D. 1877, and executed upon the 22d day of March, by serving a copy of the within Subpœna upon T. Haskins Du Puy.

GEORGE TURNER, U. S. Marshal.
By F. Y. Anderson, Deputy.

In the Circuit Court of the United States, Fifth Judicial Circuit and Southern District of Alabama.

WILLIAM BUTLER DUNCAN, ET AL., TRUSTEES,
vs.
THE MOBILE AND OHIO RAILROAD CO., ET ALS.

Friday, March 23, 1877.

The session of the Master convened at 12 m., pursuant to adjournment and notice in the matter of the objections filed by certain holders of the First Mortgage Bonds of said Railroad Company, and at the instance of Trustees of the Second Mortgage, to the bonds known as Tennessee Substitution Bonds, and to the allowance of the First Mortgage Coupons of 1874, as entitled to priority of lien or to any lien upon the railroad property.

Present—Special Master and following Counsel: P. Hamilton, representing W. B. Duncan and A. F. Elliot, Trustees and Receivers, Wm. G. Jones and E. H. Grandin, representing trustees of Second Mortgage, E. H. Grandin also representing E. L. Andrews, Solicitor for objecting bondholders, and T. Haskins DuPuy, witness, summoned at the instance of objecting bondholders.

Motion by Mr. Hamilton, that reference be postponed on statement received from Mr. Geo. N. Stewart, Sol'r M. & O. R. R. Co., that he could not be present owing to his being in attendance on the Circuit Court, Mobile County, waiting for the trial of a cause against the Railroad Company set for this day.

Objection by E. H. Grandin, on the ground that Mr. Hamilton is present, and Mr. Stewart's presence is not necessary in the examination of Mr. DuPuy.

Objection overruled and reference adjourned until 10 A. M. to-morrow.

JAMES GILLETTE, Special Master.

SATURDAY, March 24, 1877, 10 o'clock, A. M.

Reference proceeded pursuant to adjournment. Present, the Master, Counsel and witness as of the day previous; also, George N. Stewart, Solicitor for Mobile and Ohio Railroad Company, and for Alexander Duncan.

Minutes of the proceedings of yesterday read and approved.

E. H. Grandin, of Counsel for trustees of Second Mortgage, submitted the following motion to amend minutes of last session:

I move that the minutes of the sitting of 21st February, 1877, be so amended as that it shall be made to appear that a separate objection and exception were made by Counsel of Trustees of Second Mortgage to each and every ruling of the Master pending the examination of T. Haskins DuPuy.

E. H. GRANDIN, of Counsel.

Motion granted and proposed amendment allowed.

George N. Stewart, of Counsel for Committee on Reorganization of the Mobile and Ohio Railroad Company, filed the following objection and protest:

To the Special Master, James Gillette, in the proceeding now pending before him in respect to objections so far as they may be presented and admitted on the part of the Counsel representing the Second Mortgage Bonds in the reference in the case of Duncan & Elliot vs. The Mobile and Ohio Railroad Company, et al., under order of the Circuit Court of the United States, Mobile:

624 The Committee on Reconstruction—that is to say, Wm. H. Hays, Wm. S. Pierson and T. Haskins DuPuy, by their Counsel, shew to the Special Master, and in fact, say, that there have been transferred to them as trustees and that they now hold and lawfully represent Second Mortgage Bonds of the Mobile and Ohio Railroad Company, to the amount of $841,061.54, with agreements signed investing them with the right to $40,000 more,' all which they have right to control in this cause as such. That they object to the prosecution of the proceedings by way of objections now under consideration in respect to said Second Mortgage Bonds, to the extent of the interest and control they now have over the same, and protest against the continuance of said proceeding at their instance or expense, and give notice and claim that they do not and will not hold themselves responsible for any cost or expense in relation thereto, and claim that all such cost and expense shall be at the charge of the parties or persons who may prosecute the same. Of all which they hereby give notice so that the same may be made of record in this investigation.

GEORGE N. STEWART,
Of Counsel for said Committee.

Mobile, March 24, 1877.

E. H. Grandin objects to the filing of said objection, on the following grounds:

1. It is incompetent for the Master, under the order of reference to receive anything that does not come under the denomination of pleadings and proofs, and the paper offered is not within either denomination.

2. That the paper offered is a paper *in terrorem*, and while it does not frighten any body, is impertinent, and therefore ought not to be filed.

3. No person, not a party to the record in this cause, has any right to make any protest or motion in reference to the same, without the leave of the Court first had and

obtained, and the parties offering this paper are not in any sense parties to the record and have not any such leave.

4. The paper ought to and would be utterly useless for any purpose, even if allowed to be filed, because, although it may be true that the parties on whose behalf it is offered do represent the number of Second Mortgage Bonds that they pretend to represent, yet, it would be and is still the duty of the trustees of the Second Mortgage to insist upon their defences to the bill of complaint set up in their answer, and would be and is still the duty of this Master to receive evidence tending to support those defences, and this too, even if the trustees were requested thereunto by only one bondholder holding only one bond.

T. Haskins DuPuy, witness, sworn and examined by E. H. Grandin, of Counsel for the trustees of the Second Mortgage.

Q. Have you got with you in pursuance of the Subpœna the Minute Books of the Directors and of the Executive Committee of the Mobile and Ohio Railroad Company, from 1870 to 1872, both inclusive? the telegram books of the Mobile and Ohio Railroad Company, and the letter books of said Company for the same period, and such minutes, letters and telegrams for the same period not in the form of books, and resolutions or copies of the same not in the form of books, so far as the same pertain to the bonds known as Tennessee Substitution Bonds?

Mr. Hamilton objects to the examination of any matters in reference to the Tennessee Substitution Bonds, as the trustees of that lien are not before the Court, and they are necessary parties to any proceeding concerning the validity of their lien.

Judge Grandin, in answer to the objection of Mr. Hamilton, says: That on the ground stated by him that the trustees are not before the Court, he, Judge Grandin, deems that any inquiry into the validity of the lien of Tennessee

626 Substitution Bonds before this Master, would be *coram non judice*, and therefore, he does not proceed with the examination of the evidence brought before the Master by Mr. DuPuy in this matter.

(The reference proceeding as to the First Mortgage Coupons of 1874, held by Mr. Alexander Duncan and others.)

Q. Have you the minutes of the Board of Directors of the Mobile and Ohio Railroad Company for the year 1874?

A. Yes.

Q. Will you be so good as to direct the Master's attention to any evidence in those minutes showing any action of the Board of Directors in reference to raising money for the payment of the First Mortgage Coupons of May, 1874, and that of November, 1874?

A. Page 393, minutes of a meeting of the Board of Directors, held at Mobile, 28th April, 1874, at which were present, John J. Walker, Vice President and President *pro tem.*, Henry Hall, A. Murdock, Wm. D. Dunn, Moses Waring, Wm. H. Pratt and A. J. Gillespie, Directors—the following resolution appears:

"*Resolved*, That the net earnings of the Company, after payment of the current expenses, be pledged for repayment of advances obtained by the President for the purpose of meeting the May interest, and that the Floating Debt in the shape of bills payable, be extended so far as practicable, to next winter, and that credits so extending shall be secured by pledge of consolidated bonds in the hands of Bank of Mobile, or at such other bank or place as may be determined by the Vice President, in trust, at the rate of 75 cents." Which stands attested by A. L. Willoughby, Secretary.

On pages 430 and 431 of the minutes of November 5th, 1874, the following entry appears, which the Counsel for Alexander Duncan asks shall be spread on the minutes.

"OFFICE OF THE MOBILE & OHIO RAILROAD CO.;
Mobile, November 5th, 1874.

A special meeting of the Board of Directors of this Company was held this day.

Present, Wm. B. Duncan, President, J. J. Walker, Vice President, Messrs. W. D. Dunn, W. H. Pratt, W. P. Halliday, A. J. Gillespie, M. Waring, A. Foster Elliot.

The Finance Committee submitted a report through their Chairman, the President, which, on motion, was received and ordered to be spread on the minutes.

The Committee to which was referred the question of the Finances of the Company, with power to act, have to report:—First, That continued depression of business during the first nine months of the year 1874, so far diminished the gross receipts, as to render it impossible for the Company to meet to any material extent, its maturing indebtedness. For the same reason, the Company has been unable to pay the interest coupons which have matured since February last. These coupons are now held by the parties who purchased them, and who have demanded and now demand payment therefor. The total net earnings of the Company for said nine months, which by the statement, appear to be between $300,000 and $325,000, have been appropriated to the reimbursement of coupons matured previous to Februay last, and held by the purchasers and to the payment of the class of claims against the Company which was essential to the preservation of friendly relations with connecting roads, and to reduction of the floating debt. It is the opinion of this Committee, that nothing should be permitted to interfere with the payment of the coupons and interest upon the bonded debt of this Company at the earliest moment, and that the entire receipts of the Company after the payment of the labor, supplies and expenses incident to, and necessary for the efficient operation of the road, shall be appropriated towards the payment of the coupons and interest; and more especially, as upon this policy being pursued, they have every reason to hope that the holders of the past due and to become due coupons and interest on the bonded debt will withhold pressing their just demands. Confident in this being accepted as the true policy of the Company, the President has not hesitated to authorize such expenses as are absolutely necessary for the safety of the operation of the road to be made; and such indebtedness which has been incurred since the first of May last, should be protected at all hazards, as the restoration of the credit of the Company for its necessary operating expenses is essential to the economical working of the road.

Your Committee is well aware that the bills payable of the Company have already been renewed, with the hope that the business of the country, and consequently of the road, would have so far recovered as to have permitted, ere this, a payment of at least, a portion of such paper, but from circumstances entirely beyond their control and beyond their power to avert, this the Company is unable to do.

Therefore, your Committee report that they have instructed the officers of the Company to give to the holders of the coupons, the assurance that this policy shall be carried out, and they recommend that the holders of the maturing obligations of the Company be communicated with, and that they be asked to renew the same as they mature, for the period of twelve months, at eight per cent. per annum, interest payable in advance.

The rapidly improving business of the road, and the continued, and if possible, increased economy in its management, gives confidence that another year will see the property and its results in a much more favorable condition, and, perhaps, admit of a negotiation of the securities of the Company at favorable rates—a result which it was hoped could have been reached this year—but has been prevented by the general distrust in all railroad enterprises.

Your Committee would also recommend that the holders of the paper of the Company, secured by pledge of securities, should be given the option of purchasing such securities, on terms to be agreed upon, and that any securities of the road at the disposition of the Company, be also disposed of and applied to the settlement of the floating indebtedness of the Company.

All which is respectfully submitted.

(Signed,) WM. H. PRATT,
HENRY HALL,
M. WARING,
W. BUTLER DUNCAN,
Committee of Finance."

Correct copy from M. B. of the Company.

T. HASKINS DU PUY,
Vice Pres't M. & O. R. R.

The Minute Book examined from page 366 to 432 inclusive, embracing from 31st January, 1874, to 16th December, 1874, being all the minutes for that year, by the Master, in presence of counsel. There appears thereon, having reference to the payment of the First Mortgage Coupons of 1874, only the resolution and report hereinbefore set forth, and a copy of the assignment dated 28th April, 1874, to Wm. Butler Duncan, which appears on pages 27 and 28, Part 3, printed testimony of Wm. Butler Duncan.

Witness T. Haskins Du Puy discharged by counsel for Trustees Second Mortgage.

Motion by E. H. Grandin for a Subpœna, returnable on Tuesday, March 27th, 1877, at 10 A. M., for A. L. Willoughby, C. A. Wetton, James H. Masson, Henry Hall, Nathan Whiting, John B. Hazard, William H. Ross, and Hugh Monroe.

Subpœna granted.

Thereupon adjourned to Tuesday, March 27th, at 10 A. M.

JAMES GILLETTE, Special Master.

MOBILE, March 24th, 1877.

To A. L. Willoughby, C. A. Wetton, James H. Masson, Henry Hall, Nathan Whiting, James B. Hazard, Wm. H. Ross, and Hugh Monroe:— [Subpœna.]

You are hereby summoned to appear before the undersigned, a Special Master Commissioner of the Circuit Court of the United States for the Southern District of Alabama, at his office, in the United States Court Room, in the Custom House building, in the City of Mobile, on Tuesday, March 27th, 1877, at 10 o'clock A. M., then and there to testify and the truth to say, in the matter of W. B. Duncan, et al., Trustees, vs. the Mobile and Ohio Railroad Company and others, pending in said Court.

Attest: JAMES GILLETTE, Special Master.

Marshal's Return.—Received March 26th, 1877, and executed same day by serving copies of within Subpœna on A. L. Willoughby, C. A. Wetton, James H. Masson, Henry Hall, Nathan Whiting, J. B. Hazard, Wm. H. Ross, and Hugh Monroe.

GEORGE TURNER, U. S. Marshal.

By F. Y. ANDERSON, Deputy.

TUESDAY, March 27th, 1877.

The reference resumed pursuant to adjournment. Present, the Special Master and Counsel as of the days previous.

Nathan Whiting sworn and examined, in answer to questions by Counsel of Trustees of Second Mortgage, says:—

Q. At the times in the year 1874 that you presented your coupons cut off of the Mobile and Ohio Railroad Company's Sterling and Interest Bonds to the Treasurer Mobile and Ohio Railroad Company for payment, did you or not, see any written notice in the office, or was or not any verbal notice given to you by the Treasurer or other person employed in the office, that, or to the effect that, or conveying the impression that the Company was not paying its First Mortgage Sterling Coupons, but that the same were being purchased by any person or persons?

A. I have no recollection of seeing any notice in the office. My coupons were handed to Mr. Willoughby, and when they were returned to me, I am pretty sure he never said anything about any one buying them, but referred me to the Bank of Mobile to get my money.

Q. When, to your knowledge, did the Mobile and Ohio Railroad Company first make default in the payment of its First Mortgage Coupons?

A. The first I heard of it was 1st May, 1875.

Cross-examined by Mr. Stewart, counsel for Alexander Duncan.

Q. Had you ever collected any coupons of the Company before 1st May, 1874?

A. Yes.

Q. How were they paid to you, and by whom, previously to that time?

A. They were paid by check, either from Mr. Willoughby or through his instructions, on the Bank of Mobile for the money.

Q. On those previous occasions when you got the check for the payment, did you not surrender the coupons?

A. Yes; to Mr. Willoughby, the Treasurer.

Q. Did you, in 1874, notice the difference in the mode of payment from that heretofore?

A. As near as I recollect, I got a check from Mr. Willoughby in May, 1874. I have a recollection of it in November, that the coupons were given to Mr. Willoughby for a few days, and returned to me in an envelope, and I was directed to go to the Bank of Mobile.

Q. Did you make any inquiries of Mr. Willoughby why it was that your coupons were returned to you?

A. I do not remember making any.

NATHAN WHITING.

Sworn to and subscribed before me, this 27th March, 1877.

JAMES GILLETTE, Special Master.

William H. Ross, called by Counsel for Trustees Second Mortgage, testifies as follows:—

Q. At the times in the year 1874 that you presented your coupons cut off of the Mobile and Ohio Railroad Company's Sterling and Interest Bonds to the Treasurer Mobile and Ohio Railroad Company for payment, did you or not see any written notice in the office, or was or not any verbal notice given to you by the Treasurer or other person employed in the office, that, or to the effect that, or conveying the impression that the Company was not paying its First Mortgage Sterling Coupons, but that the same were being purchased by any person or persons?

A. I recollect nothing of that sort. I saw no notice that the coupons were to be purchased. I never heard of such a thing.

Q. When, to your knowledge, did the Mobile and Ohio Railroad Company first make default in the payment of its First Mortgage Coupons?

A. My recollection is that it was May, 1875.

Cross-examined by Mr. Stewart.

Q. Did you collect any of those coupons previous to the year 1874?

A. Yes; I did for several years.

Q. Please state who paid them, where they were paid, and how they were paid.

A. My recollection is that they were paid by Mr. Willoughby, the Treasurer, and I think by check on the Bank of Mobile, but I won't be positive about it.

Q. Did you not, on receiving check or payment, surrender the coupons to Mr. Willoughby?

A. Yes.

Q. Did the difference in the mode of payment in 1874 from previous payments strike you?

A. My recollection is, that it did, and I remarked upon it and I was told that the Company had made arrangements with the Bank of Mobile to pay those coupons.

Q. Who told you so?

A. I don't recollect. It was some one in the office of the Mobile and Ohio Railroad.

Q. I understand you to have stated that the coupons were returned to you in 1874, and not taken up by Mr. Willoughby?

A. Yes; they were taken by Mr. Willoughby and checked, then put into an envelope and I was requested to take them to the Bank of Mobile for payment. The paying teller, Mr. Gale, paid me in currency for the interest payable in currency, and offered me the currency at a rate for the gold coupons, which I declined, when he gave me a check on T. P. Miller & Co. for the gold. I surrendered the coupons to the teller.

WM. H. ROSS.

Subscribed and sworn to before me, this 27th day of March, 1877.

JAMES GILLETTE, Special Master.

James B. Hazard called by Counsel for Trustees of the Second Mortgage and examined, says:—

Q. At the times in the year 1874 that you presented your coupons cut off of the Mobile and Ohio Railroad Company's Sterling and Interest Bonds to the Treasurer of the Mobile and Ohio Railroad Company for payment, did you or not see any written notice in the office, or was or not any written notice given to you by the Treasurer or other person employed in the office, that, or to the effect that, or

634 conveying the impression that the Company was not paying its First Mortgage Sterling Coupons, but that the same were being purchased by any person or persons?

A. I saw no written notice there, and Mr. Willoughby told me to take my coupons to the Bank of Mobile and they would be paid.

Q. When, to your knowledge, did the Mobile and Ohio Railroad Company first make default in the payment of its First Mortgage Coupons?

A. On the 1st of March, 1875, on the Second Mortgage Bonds; on the 1st of May, 1875, on the First Mortgage. I learned in the latter part of April that they would not be paid.

Cross-examined by Mr. Stewart.

Q. Had you collected any coupons previous to 1874?

A. On $800 of Interest Coupons. I had collected them sometime previous to 1874.

Q. In what manner and by whom and where were those previous coupons paid?

A. My recollection is, that I took them to the office and that they were paid there.

Q. Did the difference in the mode and manner of the payment of coupons in 1874 attract your attention?

A. No; I thought nothing about it.

Q. Did you make any question as to why it was that the coupons were given back to you.

A. In October, 1875, I presented coupons for several years back. In my previous testimony I omitted to state that I collected in May, 1874, $32 due on the 1st of May, 1874. Now, I speak in reference to two Sterling Bonds, with coupons for several years back, which came to my possession in August or September, 1874. They, the coupons, were settled by the Railroad Company. For those previous to May, 1874, they settled by giving me a note for part, and cash or check for the balance, and at the same time, they gave me an envelope containing coupons, with directions to take it to the Bank of Mobile for payment, and the coupons were paid there. This was either in the latter part of October, or early in November; I believe in the latter part of October.

Q. You stated you collected $32 for coupons due in 1874. State how they were paid, when, where and by whom?

A. My recollection is, that they were paid at the Bank of Mobile.

Q. Were they not paid by delivering you the coupons in an envelope to be paid there?

A. That is my recollection.

Q. Did you make any inquiries as to why it was that the coupons before 1874 were paid by the Company, and those for 1874 sent to the Bank of Mobile?

A. I made no inquiries.

JAMES B. HAZARD.

Subscribed and sworn to before me, this 27th March, 1877.

JAMES GILLETTE, Special Master.

Hugh Monroe, a witness called by Counsel for Trustees of the Second Mortgage, and sworn and examined.

Q. Were you a holder of Mobile and Ohio Railroad Bonds in 1874? If you say yes, what description?

A. I was. Some of them were Sterling Bonds and some Interest Bonds.

Q. Did you or not present coupons cut off of the bonds you held in May and November, 1874, to the Company for payment, and were they paid?

A. Yes; I took the coupons to Mr. Willoughby and he put them in an envelope. My recollection is, that he said he would send them down to the Bank of Mobile, and that Mr. Gale would put them to my credit.

Q. At the times in the year 1874 that you presented your coupons cut off of the Mobile and Ohio Railroad Company's Sterling and Interest Bonds to the Treasurer of the Mobile and Ohio Railroad Company for payment, did you or not see any written notice in the office, or was or not any verbal notice given to you by the Treasurer or other person employed in the office, that, or to the effect that, or conveying the impression that the Company was not paying its First Mortgage Sterling Coupons, but that the same was being purchased by any person or persons?

A. I don't think I was told anything about it. I saw no notice and was told about none.

Q. When, to your knowledge, did the Mobile and Ohio Railroad Company first make default in the payment of its First Mortgage Coupons?

A. In 1875.

Cross-examined by Mr. Stewart.

Q. You spoke of sending your coupons to Mr. Gale, does that relate to May or November Coupons, 1874?

A. My impression is they were both sent down. I know the first ones were.

Q. Did he put them in an envelope?

A. He did. I saw him do it. I think put my nameon it.

Q. Why was it you did not take them yourself, as others did?

A. I suppose he did not have them ready that day. He said he would take them down himself or send them down. I got the envelope afterwards at the Bank of Mobile, and opened it and handed the coupons to Mr. Gale, who entered them on my bank book.

Q. Did Mr. Willoughby tell you that to save you the trouble of calling again, that he would send them to the Bank of Mobile?

A. I don't think he did the second time.

Q. Did you receive any money or check from Mr. Willoughby either of those times for the payment of those coupons?

A. Neither.

Q. Had you, previous to the year 1874, collected coupons of the Company for those bonds?

A. Yes; always by Mr. Willoughby's checks, then on Bank of Mobile or Mr. Miller.

Q. Did you not on those previous occasions surrender the coupons to Mr. Willoughby?

A. Yes, and those also.

Q. Were the previous coupons ever put in envelopes and sent to the Bank of Mobile?

A. They were always put in envelopes, but I suppose they were not sent to the Bank of Mobile.

Q. Did the difference in the mode and manner of payment in 1874 from what had been previously practised attract your attention?

A. Yes.

Q. Did you make any inquiries why this difference was adopted?

A. I understood arrangements had been made by the Bank of Mobile to pay them. In fact, I was told so by Mr. Gale.

Q. Did you learn from him what were the particulars of that arrangement?

A. No, I did not.

Q. Did you make any inquiries as to the particulars?

A. I don't know that I did; I might have heard conversations.

HUGH MONROE.

Subscribed and sworn to before me, this 27th March, 1877.

JAMES GILLETTE, Special Master.

James H. Masson, a witness called by E. H. Grandin and sworn, says:—

Q. You are the President of the First National Bank of Mobile?

A. Yes.

638 Q. In the year 1874 was or was not the First National Bank of Mobile the holder of promissory notes of the Mobile and Ohio Railroad Company? If so, what date in that year?

A. Yes; I think we held them the whole year.

Q. Do you remember what notes they were?

A. I don't remember the amounts; I suppose it was the floating debt. The Railroad drafts or acceptances on Walsh, Crawford & Co., New York. It was part their acceptances, and part renewals of their acceptances.

Q. Were those drafts or acceptances held by your bank taken up in due course?

A. No sir; I don't think any of it was ever paid to the Bank by the drawer or drawees.

Q. State what disposition the bank made of all this paper?

A. We held about $100,000; I sold it and traded it off in any shape that I could, until I reduced my line down to about $20,000.

Q. To whom or to what party or parties did you trade or sell this paper in so reducing your line?

A. I sold a great deal of that paper to the brokers here. I believe I traded and sold some in New York; I believe I traded some with Mr. Duncan. I traded or exchanged it with the brokers whenever I could. I was about eighteen months handling that paper.

Q. How much of that paper did you sell or trade Mr. Duncan?

A. I exchanged twenty-five thousand dollars of the paper for twenty-five thousand Mobile County Bonds.

Q. When was that?

A. I think it was some time about the middle of 1874.

Q. Is that all the paper that went from your bank to Mr. Duncan?

A. That is all I know anything about. Then, I exchanged about $15,000 or $20,000 of the paper with Mr. Pratt, for Oktibbeha County Bonds.

Q. Those were good bonds, were they not?

A. No; I did not think they were worth much. We considered it about an even thing.

Q. The rest of the paper you traded off with other parties?

A. Yes; we swapped it off for chips and whetstones, and some of it at quite a sacrifice.

Q. Are you able to say or not, or do you not know whether Mr. Wm. Butler Duncan got any of the rest of the paper from the parties to whom you traded it?

A. I do not think he got one dollar of it.

Q. Did the paper that you traded with Mr. Duncan for these County Bonds bear the endorsement of your bank?

A. No; it was exchanged for the bonds on its own merits. We never endorsed any railroad paper.

Q. Do you know what specific pieces of paper you traded for the bonds?

A. I don't think I could show. I think there is no record on my books. The denomination of the paper was somewhere in the neighborhood of $37,000, I think.

Cross-examined by Mr. Stewart.

Q. I understand you to state that you exchanged with Mr. Duncan about $25,000 of paper for a like amount of County Bonds.

A. Yes.

Q. What is your recollection of the then market value of Mobile County Bonds?

A. It's pretty hard to recollect. I suppose nominally 80 or 90 cents. The paper also sold at depreciated value. We considered it about an even exchange.

Q. Please state, if you have any knowledge, that the Mobile County Bonds which you received belonged to the Railroad Company, or that the Company had any interest in them, and were they not traded to you as the private property of Mr. Duncan?

A. I'm pretty well satisfied the Railroad had nothing to do with them; for Mr. Duncan's agent had tried to sell them to me a long time before. They were a lot of fifty bonds of one issue that had been in the hands of Duncan, Sherman & Company for years.

Q. Please state whether or not, so far as you know, that the said exchenge was a private transaction between Mr. Duncan and yourself, with which the Railroad Company had nothing to do?

A. I never knew but Mr. Duncan in the transaction, knew nothing about the Railroad, and did not think it had anything to do with it.

Q. Did you in the year 1874, or your bank, hold coupons for interest of the First Mortgage Bonds of the Mobile and Ohio Railroad Company, due in May and November. (The witness testifying at the instance of Mr. George N. Stewart.)

A. The Bank of Mobile paid us some coupons in that year. I don't remember their exact amount–a small amount. I have a dim recollection that some were paid at the Bank of Mobile.

Q. Do you know who paid them?

A. No. I know nothing about it personally; my runner collected them.

Q. Did you have information in 1874 that the Railroad Company could not pay its coupons, and that they were taken up by others, and not paid by the Railroad.

(Objected to by Judge Grandin.)

A. I knew it from street talk and conversation with the Directors, but I had no official notice from the Company of that fact.

Q. Please state if before the interest of that year became due, you were not apprised that the Company would not pay the coupons for want of means, or had you any information that the Company would pay them.

A. I can only say what I said before; I never got any official notice, but the street talk and what some of the Directors said at the bank made me pretty sure that the interest would be passed.

Q. I presume that you are attentive to the bond and stock market, and make yourself pretty familiar with the condition of affairs.

A. Yes.

Cross-examination by Mr. Grandin.

Q. What was the market value of Mobile and Ohio Railroad Bonds at the 1st May, 1874, up to the 1st January, 1875?

A. 1st May, 1874, the Bond commanded a pretty fair price. The First Mortgage Sterling Bonds in May, 1874, must have been worth eighty odd cents. The latter part of the year not so much.

Q. State the market value First Mortgage Bonds Mobile and Ohio Railroad Company in November, 1874.

A. I think after the coupon was off they declined to 70 or 75 cents. The Certificate Bond was worth a little more I think.

Q. You have stated that the value of your holdings was reduced while you held the paper by payments on account of the paper.

A. When the paper fell due it was reduced by partial payments, so that a $5,000 piece of paper was reduced to about $3,700.

Q. Who made those partial payments on that paper to your bank?

A. I think the Railroad. I think it was in the year 1874. In the fall of 1873 and the year 1874.

Q. So that your bank received in cash from the Mobile and Ohio Railroad Company about $30,000 in the year 1874,

A. I could not have received that. On interest paid and partial payments and all, I think I got about $21,000 or $22,000. For full particulars, I would have to look at my books.

JAMES H. MASSON, Pres't First Nat'l Bank.

Subscribed and sworn to before me this 27th March, 1877.

JAMES GILLETTE, Special Master.

Henry Hall, a witness summoned at the instance of E. H. Grandin, Counsel for Second Mortgage, says:—

I was and am a member of the Finance Committee of the Board of Directors of the Mobile and Ohio Railroad Company about the 1st May, 1874, and down to the present time.

Q. Name your associates on that Committee.

A. Wm. H. Pratt and Moses Waring.

Q. Was not Mr. Duncan a member of that Committee?

A. I never heard that he was. I suppose he was *ex officio* member. I don't remember whether he was or not.

Q. Did the Mobile and Ohio Railroad Company, in the year 1874, about the middle of that year, own any Mobile County Bonds and Oktibbeha County Bonds?

A. In my knowledge they did not own any Mobile County Bonds and Oktibbeha County Bonds.

Q. Do you know what disposition was made of the Oktibbeha County Bonds?

A. A portion of them were under hypothecation with the Bank of Mobile, a portion with a Bank at Cairo. I think those hypothecations were made before I became connected with the road. I cannot state when they were taken out from under hypothecation.

Q. Can you state whether or not Mr. Pratt had control of any of those bonds?

A. I cannot.

Q. Do you know anything about the purchase by Mr. Duncan or Mr. Pratt of the promissory notes of the Mobile and Ohio Railroad Company from the First National Bank of Mobile?

A. The First National Bank sold a great deal of the railroad paper in the summer of 1874, generally doing so through brokers. I know of no purchase by Mr. Pratt. The sale of $25,000 made in New York for Mobile County Bonds in exchange, was represented by the broker there to have been made to Duncan, Sherman & Co.

Cross-examined by Mr. Stewart.

Q. Please state as to the sale of $25,000 of paper, whether that transaction was on account of the Company or the Company had any connection with it?

A. The Company had nothing whatever to do with it.

Q. Did the Company own any Mobile County Bonds, or have any interest in any manner in the bonds given in said transaction?

A. Not to my knowledge. I never heard of their having any interest in it.

Q. Please state if it was not the fact that the Oktibbeha County Bonds were pledged by the Company with the option on the part of the pledgees to take the same, and was not that the result?

A. Many of them were handled in that way. In reference to those pledged at the Bank of Mobile and Bank of Cairo, I can't remember. I cannot answer positively; I believe that was the result.

Q. Please state whether or not Mr. Pratt was the President of the Bank of Mobile at that time?

A. He was.

(Examination in chief by Mr. Stewart.)

Q. You have stated you were a Director of the Mobile and Ohio Railroad Company from the 1st May, 1874. Please state whether the Company paid any of the coupons due 1st May and 1st November, 1874?

644 A. They were not paid by the Company nor with funds of the Company.

Q. Please state by whom they were taken up?

A. The coupons presented here were taken up by the Bank of Mobile.

HENRY HALL.

Sworn to and subscribed before me, this 27th March, 1877.

JAMES GILLETTE, Special Master.

The Master announced that conformably with the order of the Court dated February 10th, 1877, extending the time for taking testimony herein to the 1st day of April, 1877, and the period for filing the Master's Report to the 10th of April, he would sit daily, up to and including Saturday, March 31st, for the purpose of receiving such evidence as the parties might desire to lay before him touching the matters referred in the decree of reference in the cause dated March 6th, 1876, and the issues presented thereunder.

Thereupon, the session adjourned until to-morrow morning, at eleven o'clock.

JAMES GILLETTE, Special Master.

WEDNESDAY, March 28th, 1877, 11 A. M.

Reference resumed pursuant to adjournment. Present, the Special Master and Counsel as of the days previous; Alonzo L. Willoughby, witness, recalled and examined by E. H. Grandin of Counsel for the Second Mortgage Trustees.

Q. In the report of the Board of Directors Mobile and Ohio Railroad Company for the year ending December 31, 1874, there is a statement of the cash resources of the Company for that year, and the disposition thereof. Look at that statement! Tell me, if you can, what County and Convertible Bonds there were that realized by sale thereof, $93,850, which appears to be one of the cash resources of the Company for that year.

(Objected to by Mr. Stewart as being irrelevant to the subject of the objections of Louis Belloni.)

Mr. Grandin stated that he was not appearing now for Mr. Belloni, but for the Trustees of the Second Mortgage. He, however, volunteers to appear for Mr. Andrews, who is Solicitor for Belloni, and to elicit the truth, if possible, for the information of the conscience of the Court.

(Question still objected to on the ground of irrelevancy and the matter not being before the Master.)

A. Most of the County Bonds were of the County of Oktibbeha, Mississippi, and two or three were of Lowndes County, Mississippi. The Convertible Bonds were of the Mobile and Ohio Railroad Company. There were no Mobile County Bonds.

Q. State, if you can, to whom the County Bonds were sold?

A. I cannot at present, from memory.

Q. As to the Convertible, to whom were they sold, and the price, and through whom?

A. I cannot state.

Q. Can you ascertain and state on Friday morning?

A. I cannot state in regard to the Convertible Bonds, as the transaction did not go through my department. I think it can be found on the Auditor's books.

Q. Look at the same statement but on the other side "Expenses," you see an item, interest coupons matured and paid in 1874, $197,970.70. Be good enough to say what interest coupons those were?

A. They were interest coupons on various bonds maturing prior to 1874, as well as I can recollect. The Auditor makes these statements from his books. I do not keep the books of accounts.

Q. Can you throw any light on any of the items in the same statement, particularly the items of interest paid to secure renewal of floating debt, and to prevent proceedings against the Company on the part of holders, $118,346.97; sundry amounts paid in settlement of old judgments, cattle claims, &c., $10,764.92; and paid on account of floating debt to prevent sacrifice of securities belonging to Company, $281,948.85; also, Auditor's warrants to January 1st, 1875, $172,447.96, or must I apply to the Auditor for the light that I want?

Mr. Stewart—Objected to for irrelevancy, for the reason that the general accounts of the Company cannot be gone into in this investigation. These are not in issue.

By Mr. Hamilton—Not only that, but because they are transactions of the Company when the Board of Directors were in full possession of its assets, railroad and management, before possession was taken or demanded by the Trustees, all of which matters are foreign to this reference.

A. I cannot, beyond the Auditor's statement.

Cross-examined by Geo. N. Stewart, Counsel for Alexander Duncan.

Q. State, if you please, whether there were coupons of the Second Mortgage due on the 1st March, 1874, and whether they were paid by the Company.

A. I think they were.

Q. You have spoken of $197,970.70 of coupons paid in 1874; was not the amount of those Second Mortgage coupons paid on the 1st March, included in that amount?

A. It includes the payment of the Second Mortgage coupons which were due on the 1st March, 1874, they being of the class of annual coupons.

Q. Were there any coupons due on the 1st January, 1874, due by the Company?

A. I cannot state from memory.

Q. Please state whether or not coupons due before 1874, and payment of which had not been called for, were not, in some cases, paid in 1874?

A. I cannot state the details.

Q. Were any of the coupons falling due on the First Mortgage 1st May and 1st November, 1874, paid by the Company?

A. They were not.

Were any of those coupons of May and November, 1874, First Mortgage, embraced in that item of $97,970.70?

A. No.

Examination in chief by Mr. Stewart, Counsel for Alexander Duncan.

Q. Please state whether Duncan, Sherman & Co. were creditors of the Railroad Company on the 1st May, 1874?

A. Yes.

Q, Was the amount due them large or small?

A. Large.

Q. Please state whether Duncan, Sherman & Co., or any members of that firm, were Stockholders of the Mobile and Ohio Railroad Company on those dates, 1st May and 1st November, 1874? (Objected to by Mr. Grandin.)

A. I think they were.

Q. Can you state the amount of stock held by Duncan, Sherman & Company?

A. I cannot state from memory.

A. L. WILLOUGHBY.

Subscribed and sworn to before me, this 28th day of March, 1877.

JAMES GILLETTE, Special Master.

Thereupon the reference adjourned until Friday morning, at 11 o'clock.

JAMES GILLETTE, Special Master.

FRIDAY, March, 30th, 11 o'clock A. M.

The reference resumed pursuant to adjournment. Present, the Counsel as of the days previous.

Judge Grandin exhibited and desired to have spread on the record, the following order of the Hon. W. B. Woods, Judge:

United States Circuit Court, Southern District of Alabama.

W. B. DUNCAN, ET AL.,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET AL.

Upon the verified petition of Amedie D. Moran and Louis J. Belloni, Jr., and upon motion of Labatt & Aroni, of Counsel for petitioners herein, it is ordered that petitioners be allowed to take testimony until the 20th day of April, next, and the Master in the matter of their application and opposition will suspend the making up of his report until that day, and that after that day no further testimony can be taken by the Master on the oppositions or applications.

It is further ordered, that as to all other matters, the making up of the report, the orders now existing will be continued in force, and the Master in the matter of the application and opposition of these petitioners may file his report on or before the first day of May for exceptions. No further extension will be granted.

(Signed) W. B. WOODS,

March 28, 1877. U. S. Judge.

Motion by Judge Grandin for a Subpœna *duces tecum* for T. Haskins DuPuy, for the production of the stock books and stock registers and stock transfer books of the Mobile and Ohio Railroad Company for the years 1873 and 1874, and also any other books and papers in his possession as agent of Receivers, showing by and to whom proxies to vote on stock were given in those years.

(Objected to by Mr. Stewart as involving matters not in issue in this investigation, and not pertinent to the issue.)

Objection sustained.

Mr. Grandin objects to the ruling of the Master.

Motion by Judge Grandin for a Subpœna *duces tecum* to T. Haskins DuPuy for the correspondence, telegrams and entries in telegram books of the Mobile and Ohio Railroad

Company and its officials, with Wm. Butler Duncan and Duncan Sherman & Co., and any one representing him or them in reference to the coupons on the Company's bonds which fell due in November, 1873, and January, 1874, and also for all books and papers of the Mobile and Ohio Railroad Company containing entries in reference to any advances or claims of Duncan, Sherman & Co., or Wm. B. Duncan, or any one else acting for them or him in the years 1870, 1871, 1872, 1873, 1874 and 1875.

Objected to by Mr. Stewart as being too comprehensive and not appearing to be relevant to the issue before the Master.

Objection sustained.

The ruling of the Master objected to by Judge Grandin.

Motion by Judge Grandin for a Subpœna *duces tecum* to T. Haskins DuPuy, for the production of the general ledger or any special ledger of the Mobile and Ohio Railroad Company for the year 1870, containing the accounts of the Company with Wm. Butler Duncan and Duncan, Sherman & Co., and also for the production of the correspondence of the Company, and telegrams and the telegram books of the Company for that year, containing copies of correspondence by telegram with the same parties; and motion for the books, correspondence and telegram books for each succeeding year down to end, including 1875.

Objected to as being too general, not pointed to any specific matter in issue in this examination, and for irrelevancy.

Objection sustained.

The ruling of the Master objected to by Judge Grandin.

Motion by Judge Grandin for a Subpœna *duces tecum* to T. Haskins DuPuy, for the production of all correspondence or copies of the same between the Mobile and Ohio Railroad Company and its officials and attorneys on the one side, and Charles Walsh, Alexander Jackson and George H.

650 Young on the other side, in reference to a change in the trusteeship of the First Mortgage, in the year 1875; also, for the production of all papers and resolutions of the Directors of the Company in reference to the same, and also for the production of all papers or copies of the same in reference to the connection of Duncan and Elliot with the trusteeship of the First Mortgage in April and July 1875; also, for the annual report of the Directors for the year 1873.

All these motions for Subpœnas *duces tecum* for T. Haskins DuPuy, are made by E. H. Grandin on behalf of the Trusstees of the Second Mortgage, and also as representing E. L. Andrews, Esq., Solicitor for the objectors in this cause.

The last motion for Subpœna objected to by Mr. Stewart for being too broad, fishing in its character, irrelevancy to the subject in hearing and not pointing to any specific matter appertaining to the issue.

The objection sustained by the Master and ruling objected to by Counsel.

A. L. Willoughby recalled, added the following to his testimony of Wednesday.

In regard to the County and Convertible Bonds: The
County Bonds consisted of (Oktibbeha County)....$6,250
(Town of Starkville) 1,250

Total,......$7,500

which bonds were paid at par to Powers and job contractors who built the Oktibbeha Branch known as Starkville Branch.

In regard to the stock inquired for by Mr. Stewart, Messrs. Duncan, Sherman & Co. and Wm. Butler Duncan appear the owners prior to and during the year 1874, of 9109 shares.

C. A. Wetton recalled by Counsel for Trustees of the Second Mortgage, submits a copy of the General Account of Duncan, Sherman & Co. with the Mobile and Ohio Railroad, from April, 1873, to April, 1874.

Mr. Stewart objects to the introduction of the account as irrelevant, and swelling the record unnecessarily.

(Account filed, marked Exhibit D.)

Q. Mr. Wetton, look at the statement of the account of Duncan, Sherman & Co. with the Mobile and Ohio Railroad, and state whether it is or not a true statement of said account as appears by the books in your department?

A. Yes.

Cross-examined by Mr. Stewart.

Q. Mr. Wetton, we wish to know what was the indebtedness of the Company to Duncan, Sherman & Co. on the 1st May, 1874, and 1st November, 1874. Does the balance of $41,104.80 represent the whole of the indebtedness of Duncan, Sherman & Co. on the 28th February, 1874?

A. No.

Q. In what other sum was the Railroad Company liable to Duncan, Sherman & Co. at the time, and how?

A. In the additional sum of $150,000 secured by notes of the Mobile and Ohio Railroad Company to Duncan, Sherman & Co., and accepted by them, and also secured by $210,000 of Convertible Bonds.

Q. Did that indebtedness continue until after the 1st May and 1st November, 1874?

A. Yes.

Examined by Judge Grandin.

Q. How do you know that the Company owed ~~[illegible]~~ Duncan, Sherman & Co. outside the statements in the account.

A. The $150,000 I have just indicated as a liability of the Mobile and Ohio Railroad Company to Duncan, Sherman & Co., is shown by the statement filed. It was a credit by loan on general account. The firm of Duncan, Sherman & Co. loaned the Mobile and Ohio Railroad Com-

652 pany one hundred and fifty thousand dollars on general account, for which they were secured by notes of the Company which they held against the Company for the amount so loaned.

C. A. WETTON.

Counsel for Second Mortgage offers in evidence the petition of complainants in this suit to the court in reference to the floating debt and the Master's report on the petition.

(Objected to for the reason those papers are a part of the record in this cause and their introduction here is unnecessary.)

Objection sustained.

P. Hamilton called as a witness for Trustees Second Mortgage.

Judge Campbell and myself are counsel for complainants in this cause. I was present at the argument upon the exceptions to the Master's report on the floating debt.

Q. Do you remember what you said to the court on that subject.

A. Yes, in substance.

Q. Was not the following the substance of all that you and your associate counsel stated to the court in that argument: "May it please the court, on behalf of the trustees and receivers Duncan and Elliott, we submit ourselves to such direction as the court may see fit to make in the premises."

(Objected to by Mr. Stewart as irrelevant to this investigation.)

Objection sustained, answer taken subject to exception.

A. No; what occurred was something like this: The complainants had not filed any exceptions to the Master's report. Judge Jones, on behalf of the floating creditors, desired to treat that non-action as an admission by the counsel for complainant of the propriety of the report. To that I rose and objected, stating in substance, in the presence of my associate, that the application by petition of the trustee's complainant to the court was an application under the orders of the court theretofore made for instruction as to their duty upon the facts set forth in the petition. That, therefore, the report by the Master on that petition was not such a proceeding as required exceptions on the part of the trustees to it. The said trustees had not felt at liberty to recognize the demand of these floating creditors, and therefore had brought it to the attention of the court for its instruction to them, as they were authorized to do by its orders. To this view of the case the presiding Judge assented, and thereupon Judge Jones no longer insisted upon the ground at first assumed, and thereupon I stated in substance that the facts of that claim being now before the court on the petition, the report of the Master and the evidence returned by him, the trustees submitted themselves to the decision and instruction thereon.

Q. Is not Mr. George N. Stewart who appears before the Master for Alexander Duncan's claims, the same Mr. George N. Stewart who appears for the Mobile and Ohio Railroad Company.

A. Yes.

Q. Is Alexander Duncan, the claimant, the father of Wm. Butler Duncan, one of the complainants in this cause?

A. I am not acquainted with Mr. Alexander Duncan, but I understand he is the father of Mr. Wm. Butler Duncan.

P. HAMILTON.

Subscribed and sworn to before me this 30th day of March, 1877.

JAMES GILLETTE, Special Master.

George N. Stewart called, answered for himself, as follows, to the same questions asked Mr. Hamilton.

In relation to the occasion of the report on the floating debt, I was present in court. My relation in the case was:

I was the general Solicitor of the Mobile and Ohio Railroad Company, and had been a long time previous, to which was added the duty of attending on behalf of the trustees to the running business of the road in matters occurring along the route, but had no concern as counsel for the trustees in the matters of litigation subject of this suit. When the question came up on the exception made by Mr. Andrews to the report on the floating debt, I spoke to Mr. Duncan on the subject. He said he could take no part in that question, and Mr. Hamilton acted in that sense; the precise language he used I do not recollect, but he took no part in the debate. I myself felt interested for the company in the matter, because there were a great many collateral securities held by floating debt creditors which would be sacrificed. Mr. Jones argued the matter for the floating debt creditors and perhaps for other counsel. I afterwards presented a written argument in the interest of the Company on account of the collaterals involved and in support of the report. As to my position in relation to Alexander Duncan, there is no conflict of interest between Alexander Duncan and the Company. The Company admits fully his right to the coupons in contest as shown by the report on that transaction in this investigation in 1874, and therefore I feel free to press the claims of Alexander Duncan as the company yields its full assent to the same.

Question by Judge Grandin: When you say that the Company admits fully Alexander Duncan's right to the coupons in contest, whom do you mean by the Company?

A. I mean the officers representing its interests and its records from which I draw my instructions as its counsel.

Q. Is there any record of the Company expressly sanctioning the right of the Company to these?

A. The report on the minutes of the Company for 1874, of which a copy is on file in this investigation, I think shows it, and the answers of the Company filed in this court I think show it, and all the instructions I have had corroborate the same position.

Q. From whom did you get your instructions?

A. From the Vice President of the Company who has generally attended here in the absence of the President, to its affairs?

Q. Do you mean Mr. Du Puy?

A. Yes.

Q. Did you ever get any such instructions from Mr. Wm. Butler Duncan?

A. In all my conversations with Mr. Duncan that state of the question was fully understood and assented to and undisputed. I do not recollect any particular instructions, but all general intercourse was to that effect.

Q. Then it amounts to this, that you and Mr. W. B. Duncan thought alike as to Mr. Alexander Duncan's rights?

A. As to Mr. Duncan's thoughts I infer it to be so from his conversations, and as to my own, I consider it to be very clear with respect to the rights of Alexander Duncan, from all the information I have and from the full proof in the cause.

Q. Were not your instructions from Mr. Du Puy founded upon your opinion as general Solicitor of the Company as to the rights of Alexander Duncan.

A. As to the instructions from Mr. Du Puy I have to say he is very apt to have his own opinions when he gives them. That I certainly did in my intercourse with him, and from my knowledge of the facts, so express myself to him. But as I again say, he is very decided in his own opinions.

Q. Are you or not instructed by any officer of the Mobile and Ohio Railroad Company, or by the so-called trustrustees and receivers to admit as the attorney for the Mobile and Ohio Railroad Company that your client, Alexander Duncan, has a right to the coupons proved by him before the Master as purchaser of the same.

656 A. In all papers drawn up by me having full knowledge of the facts, and having had the same before any connection with Alexander Duncan, I would always answer according to the truth and justice of the case as I understood it, submitting the same to the officers of the Company for their attestation, knowing that there was a concurrence of opinion with my own without asking for instructions, expecting my understanding of the facts and rights to be approved and assented to by the officers of the Company who were required to attest the same.

Q. Question repeated.

A. I think I have answered this question substantially by my statement. I understand my position to be in conformity with that of the officers controlling the Company, and therefore consider myself so instructed as to which I presume there is no denial or dissent.

Q. Then this is the situation. You, on your own responsibility, admit for the Mobile and Ohio Railroad Company the claim of Alexander Duncan, and you infer the assent of the Company to its admission from the silence of its officers.

A. That is not my position. My position is that from the facts of the case the right of Alexander Duncan is complete, as to which in law and fact I have no doubt. I have always so advised before any connection with Mr. Duncan as a client. Such was the concurrent position taken by the directors and officers, and was therefore in conformity with their acts and declarations as the records will show.

Q. What records will show, the records of the cause or the records of the Company?

A. I have referred to the report of the transaction on the minutes, to answers of the Company, and I refer to the books of the Company, by which it appears that the coupons were not paid; by the evidence taken in this cause by the investigations made by the Master of the books of the Company and all the records to which I have access, all concurring to the same result.

Q. Will you be kind enough to refer me to any record of the Mobile and Ohio Railroad Company, showing or tending to show that the coupons of May and November, 1874, were not paid by the Company, but were purchased by Alexander Duncan.

A. I have referred to the records on this subject, including the records in this cause.

Q. Question repeated.

A. That is all the answer I have to make at present from memory without further examination.

Q. Don't you know that the Mobile and Ohio Railroad Company never in any way, shape or form, notified its stockholders or bondholders in public notorious manner that its coupons of May and November, 1874, were not paid by it with its own revenues but were purchased?

A. That question I cannot answer. I know of no publication to that effect. I knew that from the fall of 1873 it became very doubtful how long the Company could continue to pay its coupons, and from all the information I had, I did not know whether the May coupons would be paid or not. I expected a stoppage of payment, but I do not know how far other persons had information on this subject. I know of no publication to that effect.

Q. Did you have any information as to the financial condition of the Mobile and Ohio Railroad Company in the month of December, 1873, the early months of 1874, which was not contained in the published report of the Company for the year 1873, and accessible to the bondholders and stockholders?

A. I had very little knowledge of the financial condition of the Company, as it did not enter in my department of business. I made no questions generally on that subject, and the finances did not come under my notice. I knew that the Company was heavily indebted and embar-

658 rassed, the times becoming very difficult. Persons were constantly asking me if the interest on the bonds were to be paid. I could not answer the question. In New York, in October, 1873, I discovered a good deal of conversation going on in respect to the finances of the Company, and I put the question to Mr. Duncan whether the coupons would be paid. He said he could not tell, but hoped they might be. I had no further knowledge on the subject. I knew that it was in contemplation to endeavor to obtain a renewal of the notes of the floating debt which were to fall due soon after. As it was said they could not be paid.

Q. Do you or not remember that the annual report of the directors to the stockholders for the year 1873 showed a net income for the year of $904,862.99.

A. I cannot recollect the figures. There was every year a surplus over expenses, and that year, I suppose, as well as the rest. If I am right, I believe the net revenue never was equal to expense and interest on the debt.

Q. Who retained you as counsel for Alexander Duncan.

A. Mr. Bangs, of New York, with whom I corresponded on that subject.

Q. Is or is not Mr. Bangs the attorney of Mr. Wm. Butler Duncan?

A. I don't know his exact relation. He has been attorney in this proceeding.

GEORGE N. STEWART.

Subscribed and sworn to before me this 30th day of March, 1877.

JAMES GILLETTE, Special Master.

Thomas P. Miller, a witness called by Counsel for Second Mortgage Trustees, and affirmed, says:—

Q. Did your firm, in 1874, receive coupons of the First Mortgage Bonds of the Mobile and Ohio Railroad Company for collection?

A. Yes.

Q. Did you collect them and remit the proceeds to your correspondents?

A. Yes.

Q. Did you, in any instance, inform correspondent to whom you remitted proceeds of coupons that his coupons were not paid by the Company, but were purchased by some one else?

(Objected to by Mr. Stewart as irrelevant.)

A. I don't recollect.

The witness directed to examine his letter books and ascertain the facts, and make answer on a future day.

Thereupon, on motion of Counsel for Second Mortgage Trustees and objectors, the reference adjourned until Monday, April 2d, 1877, at 12 M.

JAMES GILLETTE, Special Master.

SUBPŒNA.—United States Circuit Court for the Southern District of Alabama.

To Thomas P. Miller, Moses Waring and Wm. Butler Duncan:

You are hereby commanded to appear before the undersigned, Special Master, Commissioner of the Circuit Court of the United States, for the Southern District of Alabama, at his office, in the Custom House Building, in the City of Mobile, forthwith, and there to testify the truth, according to your knowledge, in the matter of and on behalf of Trustees of Second Mortgage, in case of Duncan and Elliot vs. the Mobile and Ohio Railroad Company.

JAMES GILLETTE, Special Master.

Special Master's Office, Mobile, Ala., March 30, 1877.

Received Marshal's Office March 30th, A. D. 1877, and executed by reading the within Subpœna to Thos. P. Miller and Moses Waring, and upon Wm. Butler Duncan upon the 2d day of April, 1877.

GEORGE TURNER, U. S. Marshal.
By F. Y. ANDERSON, Deputy.

[Exhibit D to testimony of C. A. Wetton.]

Accounting Department---Mobile and Ohio Railroad.

Dr. Mobile and Ohio Railroad Co. in Acc't with Duncan, Sherman & Co. Cr.

1873.				
April 16.	For Union Bank, London, for their short bill to be applied to the payment of Sterling Coupons falling due on the 1st of May, 1873, viz: Am't bill £21,000 at 128¾			$120,166 67
July 12.	Paid Walsh, S., C. & Co.			7,500 00
22.	" " " "			29,161 81
Dec. 3.	Loan renewed from Nov. 26,		$15,000 00	
"	" " " " 28,		15,000 00	30,000 00
10.	Advanced to W., S., C. & Co.,			5,000 00
31.	Payments as follows, viz:		5,000 00	
"	December 4,		5,000 00	
"	" "		1,973 04	
"	" 5,		5,000 00	
"	" 8,		1,054 00	18,027 00
"	Rebate on 2d Installment,	$ 789 92		
"	" 3d "	882 54		
"	" 4th "	1,420 55		
		$3,093 01		
"	Less Int. on 1st "	86 43	$3,006 58	
"	Amount of Nov'r Interest taken in paym't of Stock installm'ts, viz:			
	On 2d installment,	4,833 84		
	" 3d "	40 00		
	" 4th "	6,937 41		14,817 83
				$224,673 35

1873.			
Feb'y 12.	By Balance		$ 5,817 24
June 10.	Warrant 1707 paid thro' W., S., C. & Co.	$20,000 00	
"	" 1708 " " "	30.000 00	50,000 00
20.	" 1782 " " " June 17,		25,000 00
Dec'r 30.	Amount paid them to our credit Dec'r 20,		2,439 00
"	Stock installments N. Y., for amount of installm'ts rec'd by them, as follows:		
	1st installment 15,710 shares @ 5.00	$ 78,550 00	
	2d " 13,082 " " 10.00	130,820 00	
	3d " 13,022 " " 5.00	65,110 00	
	4th " 13,022 " " 5.00	65,110 00	339,590 00
	J. J. Walker for payment made Dec'r 8, 1873, as per acc't rend'd by D., S. & Co., 13th Jan., '74.		5,000 00
31.	For the following am'ts loan to pay interest on 1st Mortgage Bonds, viz:		
	From Goettel & Co., Nov. 26, 1873	$ 10,000 00	
	" Duncan, S. & Co. Nov. 26, 1873	50,000 00	
	" A. Iselin & Co, Dec. 4, 1873	50,000 00	110,000 00
	Am't paid by G. T. Bonner & Co., viz:		
	2d installment	$1,000 00	
	Interest	15 73	
	3d installment	500 00	
	Interest	4 43	
	4th installment $500, interest 4.44	504 44	2,024 60
			$539,870 84

Accounting Department---Mobile and Ohio Railroad.

Dr. Mobile and Ohio Railroad Co. in Acc't with Duncan, Sherman & Co. Cr,

1873.			
	Amount Forward........		$224,673 35
Dec'r 31—	Exchange Account, June to Dec'r, 1873.		
	For despatch to A. Murdock, President.....$	26 14	
	For advertising in Herald and World.......	204 80	
	For telegrams $4 51, Banking House stamps $30 00..........	34 51	
	For stationery $73 50, American Bank Note Company $710 00..........	783 50	
	For bill of Jones $40 00, one stock ledger $29 00..........	69 00	
	For advertising Coupons..........	2 40	
	For cable telegrams to Union Bank, London	85 27	
	For printing circulars..........	5 25	
	For box of vouchers $8 00, telegram $9 90 ..	17 90	
	For stationery $35 95, Ex. chgs $1 50........	37 45	
	For collection and charges on stock........	13 00	
	For cable telegrams $25 53, engraving bonds $432 00..........	457 53	
	For telegrams $13 03, postage 33c..........	13 36	
	For 1 per cent. per month per statement on $120,000..........	2,884 44	
	For commission on purchase of 32,000 Company's Second Mortgage Bonds..........	40 00	
	For ⅛ per cent. commissions on general account from June 24th to 31st December, 1873..........	5,510 80	
	For 7 per cent. interest on general account to 1st October, 1872..........	188 59	
	For 7 per cent. interest on general account to 31st December, 1872..........	37 42	
	For 7 per cent. interest on general account to 1st September, 1873..........	1,674 46	
	For 7 per cent. interest on general account to 31st December, 1873..........	3,084 72	$15,170 54
	For cable transfer of 23d June, 1873.		
	For £12,000 @111, gold, $59,200 00.		
	Despatch 17 00.		
			$239,843 89

1874.			
	Amount Forward..........		$539.870 84
Jan'y 31—	S. R. Hamil, agent, for amount paid them through J. J. Walker, 2d V. P........		
	8th January..........$	110 27	
	8th January..........	13,883 49	
	23d January..........	3,552 50	
			$17,546 26
	Payments made by J. J. Walker—		
	January 2d..........$	2,000 00	
	January 3d..........	5,000 00	
	January 5th..........	2,500 00	
	January 6th..........	1,000 00	
	January 12th..........	5,000 00	
	January 23d..........	5,000 00	
	January 14th..........	5,426 45	
			$25,926 45
Feb'y 28—	For amount of draft Illinois Central Railroad, for ticket balance..........$	1,345 45	
	For the following loans, viz,		
	Duncan, Sherman & Co., secured by $210,000 Certificate of Convertible Bonds..........	150,000 00	
	W. Hays, secured by Certificate of $50,000 Convertible Bonds..........	40,000 00	
	G. T. Bonner & Co., secured by Certificate of Convertible Bonds.......	10,000 00	
	Payments by J. J. Walker, to them to buy gold for interest on Tennessee Substitution Bonds, January 26th.	102 50	
	February 2d..	2,411 53	
			$203,859 48
			$787,203 03

United States Circuit Court, Southern District of Alabama, In Equity.

WILLIAM BUTLER DUNCAN, ET AL., TRUSTEES,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET AL.

MONDAY, April 2d, 1877, 12 o'clock M.

Session resumed pursuant to adjournment, and under the order of Hon. W. B. Woods, Circuit Judge, dated March 28, 1877, allowing until 20th April, 1877, to Moran Brothers and L. J. Belloni, to adduce further testimony on their contestations. Present, the Special Master and Counsel as of the days previous.

E. H. Grandin submitted the following motion:

I move for an order by the Master, authorizing the taking of testimony as to the matters in contestation before the Master, before any United States Commissioner in the City of New York or elsewhere, on notice given by the Solicitor of L. J. Belloni, or of Amedie D. Moran to F. N. Bangs, Esq., of Counsel for Alexander Duncan, in New York; and that such testimony may be taken either *viva voce*, or in any other manner that may be agreed upon between the Counsel of the respective parties, expressed in writing, and that such testimony shall be returned to the Master on or before the 20th April, 1877.

E. H. GRANDIN,
for E. L. Andrews, Sol'r for Belloni and Moran.

April 2d, 1877.

Counsel for Duncan and Elliot, Trustees, and Counsel for Alexander Duncan, consent to the issuing of such order, provided it is limited to the terms and scope of the order of Judge Woods of the 28tb March, 1877.

Ordered as follows:

Special Master's Office,
Mobile, Ala., April 2, 1877.

Under the decretal order of Hon. W. B. Woods, Circuit Judge, dated March 28, 1877, upon the petition of Amedie D. Moran and Louis J. Belloni, Jr., extending the time to take testimony upon the matter of their application or opposition until the 20th day of April next, and upon motion this day made by E. H. Grandin, representing E. L. Andrews, Solicitor for Belloni and Moran, and by consent of counsel: It is ordered that testimony as to the matters in contestation upon the ojections filed by Louis J. Belloni and A. D. Moran, may be taken before any United States Commissioner in the city of New York, or elsewhere, on notice given by the Solicitor of said Belloni and Moran to F. N. Bangs, Esq., of Counsel for Alexander Duncan, in New York, and that such testimony may be taken *viva voce*, or in any other manner that may be agreed upon between the Counsel of the respective parties expressed in writing. It is further ordered, that Alexander Duncan or others, whose claims are objected to, may take testimony in their behalf upon notice, the same in all respects as is allowed objecting parties. And it is further ordered, that all testimony taken under this order shall be restricted within the limits prescribed by the order of the Hon. W. B. Woods, of the 28th March, 1877, and that all such testimony taken under this order shall be returned to the Master on or before the 20th April, 1877.

JAMES GILLETTE, Special Master.

Motion by E. H. Grandin for a Subpœna *duces tecum* to T. Haskins DuPuy, agent of the receivers in this cause, and proved to be the custodian of the books and papers of the insolvent defendant corporation, requiring him to produce before the Master forthwith, all correspondence or copies of letters or telegrams, and originals of correspondence or telegrams, between the Mobile and Ohio Railroad Company or any officer thereof, and William Butler Duncan and Duncan, Sherman & Co., in the year 1874, in reference to the coupons of the First Mortgage Bonds maturing 1st May and 1st November that year, and also in reference to all remittances made during that year by the Company to Duncan, Sherman & Co.

Objected to by Mr. Stewart, as this subject has already been passed upon by the Commissioner on previous motions, and also, as being a requirement appropriate to a call for discovery and not for a call for evidence; as being general, not specific, irrelevant, incompetent testimony, not proper to be allowed, and that the papers called for are not in possession of the witness as agent or attorney of the receivers as alleged, and because the same is too broad and comprehensive. Objection is made on the part of Alexander Duncan.

The Subpœna *duces tecum* for correspondence and telegrams relating to remittances to Duncan, Sherman & Co., or Wm. Butler Duncan is denied, except in so far as such telegrams and correspondence pertain to the question at issue.

The Counsel objects to the restriction contained in the preceding order of the Master, and insists that he has a right to all correspondence and telegrams as called for by his motion.

Motion by E. H. Grandin for Subpœna for J. W. Holmes, returnable to-morrow at 11 A. M.

Subpœna issued.

W. B. Duncan sworn and examined, says in answer to questions propounded by counsel for Objector Belloni.

Q. When did you become a director of the Mobile and Ohio Railroad Company, and how long have you been a director?

A. I became a director in 1871, and have remained a director ever since.

667 Q. In whose name did a majority of the capital stock of the Company stand in 1872? If you can't answer from memory, please refresh your memory by looking at the stock book which is in your custody.

(Objected to by Mr. Stewart, counsel for Alexander Duncan, for irrelevancy, as having nothing to do with this controversy.)

Objection sustained and answer excluded, to which ruling counsel for objector excepts.

Q. By whom and in whose names was the majority of the stock voted in 1872 at the annual meeting? Were not proxies given for a portion of that stock? If so, to whom? If you cannot answer from memory, refresh your recollection by looking at the stock and transfer books now in your custody as receiver. If those proxies for 1872, if there were such proxies, were voted by the persons to whom they were given, under the direction or request of Wm. Butler Duncan, or any person requesting to act for him, or Duncan, Sherman & Co., please state the names of the persons giving such instructions or making such requests, and also the names of the persons so voting on the proxies; also were not proxies, and if so, what amount of stock voted on the annual election of 1872 at the request of Wm. Butler Duncan, or some one indicated in the preceding paragraph of this question, for certain persons indicated by Duncan.

(Objected to by counsel for Alexander Duncan as entirely irrelevant.)

Objection sustained and answer excluded.

To which ruling objector's counsel excepts.

Q. How many shares of stock stood in the name of W. B. Duncan, in that of Andrew F. Elliott, and in that of Wm. Watts Sherman, Francis H. Grain, Alexander Duncan, George A. Leete, and Duncan, Sherman & Co., at the time of the annual election of 1872? Refresh your memory by looking at the stock books for that year, and answer the question. I ask the same question in reference to each of the years 1872, 1873, 1874 and 1875 respectively.

(Objected to for irrelevancy as to all, except as to Alexander Duncan and Duncan, Sherman & Co., in 1874.)

Objection sustained and the ruling excepted to.

Q. What commissions or charges in any and all respects, were made for loans or procuring loans to or from the Company by yourself or Duncan, Sherman & Co., in the years 1871, 1872, 1873, 1874 and 1875? I mean the average per centage. If you cannot state from memory, refresh it by looking at your books and answer.

(Objected to as irrelevant to the question before the court.)

Objection sustained and ruling excepted to.

Q. When did A. Foster Elliot first became director in the Mobile and Ohio Railroad Company, and when did you first become President?

A. In April, 1874.

Q. What changes were made in the Board at the annual meeting for 1874, and at whose suggestion were such changes made?

(Objected to as irrelevant and incompetent.)

Objection sustained and answer excluded.

Ruling excepted to.

Q. Did not Wm. H. Hays, Wm. H. Pratt, Moses Waring and Henry Hall, become directors of the Company at the annual meeting of 1874, and were they not put into the Board at your suggestion or that of some one acting for you?

(Objected to as irrelevant and incompetent testimony.)

Objection sustained and answer excluded.

Counsel excepts to the ruling of the Master.

Q. Is not the Wm. H. Hays, who then became a director, the same Hays who is named in a scheme of certain

669 parties in reference to the Mobile and Ohio Railroad Company, annexed to the deposition of yourself under the commission issued by the Master herein, and were not W. H. Hays, W. H. Pratt and Moses Waring continued as directors at the annual meeting in the year 1875, and if so, at whose instance were they so continued; was it not at your instance, or at the request of some one acting for you?

(Objected to as incompetent and irrelevant, as against the rights of Alexander Duncan.)

Objection sustained and answer excluded.

Ruling excepted to.

Q. Is not the First National Bank of Mobile now and has it not been, from 1874 inclusive, down the present time, a depository of a portion of the funds of the Mobile and Ohio Railroad Company and of the funds in this cause?

(Objected to for irrelevancy.)

Objection overruled.

A. It is not now, and I have no recollection of its having been a depository of the funds of the Company or of the trust. It may have been temporarily so, but I have no recollection.

Q. Did not Mr. Beers, the Auditor of the Mobile and Ohio Railroad Company, in March, 1874, write to you that the floating creditors were absorbing the revenues of the road?

(Objected to as irrelevant and not the best evidence.)

Objection sustained and answer excluded.

Ruling objected to by counsel for Belloni.

Thereupon, reference adjourned until to-morrow at ten o'clock A. M.

JAMES GILLETTE, Special Master.

TUESDAY, April 3, 1877.

Reference met pursuant to adjournment. Present, Counsel as heretofore.

Examination of W. B. Duncan resumed by E. H. Grandin.

Q. Look at the report of the Mobile and Ohio Railroad Company for 1873, and state whether it does not contain the following under the head of Floating Debt: "The policy of your directors is to retire it at the earliest possible momoment, and their efforts are being especially directed to that end."

(Question objected to by Mr. Stewart for irrelevancy, and if the object is to arraign the conduct of the Board, or any of its members or their proceedings, that subject is not in issue; the right to do so is denied, and, therefore, the question is scandalous and impertinent.)

The counsel for the objecting bondholders objects to the language of the objection as scandalous and impertinent.

A. The extract from the report in the question of the counsel appears in the printed copy of the report for that year.

Q. Did not the annual report for the year ending December 31, 1873, show net receipts after deducting expenses from the gross receipts of $904,862.99?

(Objected to, as the question whether the Company had the means to pay the coupons or not is not material to the subject of whether they did pay them or not. The subject being matter of a public report, the witness may answer or not as he thinks proper.)

A. Such an entry appears upon the printed report of that Company for that year.

Q. Look at Statement A to the same report, and say whether or not it shows in the condensed balance sheet the following entry: "Coupon interest: Coupons of First Mortgage Bonds in 1873, $710,656.50; coupons of Second

671 Mortgage Bonds paid in 1873, $125,383.09, making a total of $836,049.59?"

(Objection by Mr. Stewart as before.)

A. That entry appears.

Q. Does not the same statement contain the following item: "Interest paid on floating debt, $117,527.98"?

(Objected to as irrelevant to the issue.

A. It does.

Q. Does not the same balance sheet contain the following under the head of floating debt: "Bills payable maturing in 1874 and 1875, $1,018,882.45; call loans, New York and Mobile, $147,412.40"?

(Objected to as before.)

A. It does.

Q. Was it not at the annual meeting at which the report and statements referred to were rendered, that you were made President of the Company?

(Objected to for irrelevancy, not material to this controversy.)

* * * * * * * *

A. I do not know whether it was or not. I was not present.

Q. Did the report of 1874—

* * * * * * * *

(Objected to as not the best evidence, the report itself is the best evidence.)

Objection sustained. Said report is printed in part 2, of this testimony.

Q. When did you or your firm, Duncan, Sherman & Co., first claim to officers of the Company that Mr. Alexander Duncan was the owner of these coupons?

A. In May, 1874, we claimed that he was interested in the coupons.

Q. Is that the whole answer?

A. Yes, with reference to the coupons maturing in May, 1874. The Company were aware of his interest in the successive coupons as they matured.

Q. When did Mr. Duncan make the first payment to Duncan, Sherman & Co. on account of said coupons, if he ever did make any such payments; and when did he make the succeeding payments, if he ever made any such?

A. The funds were provided by Mr. Alexander Duncan at the time of or in anticipation of their purchase by Duncan, Sherman & Co., or through their instructions. He did make such payment in that manner, and for the entire cost of the coupons.

Q. What day, or about what day in May, 1874, did Mr. Duncan become possessed of the coupons?

A. If by possession you mean interested in or having any lien thereon, he became so possessed at the time of their purchase or shortly thereafter.

Q, I mean manual possession, either by himself or his agent?

A. If Duncan, Sherman & Co. may be considered his agent in holding these securities for his account, he held them at that time.

Q. Are you able to tell the price in the market of New York of Mobile and Ohio Sterling Bonds, with or without the certificate on the first day of each month in 1874, and of the first days of each month in the year 1875, from January 1st to June 1st inclusive, if so, please state it?

(Objected to as irrelevant, and not bearing upon the question of the payment or non-payment of the coupons.)

A. I am not.

Q. Is the W. H. Hays who testified under the commission issued by this Master, the same Hays who is referred to in the item of Duncan, Sherman & Co.'s account with the Mobile and Ohio Railroad Company, April 30, 1874: "Paid note W. H. Hays & Co., $40,000"?

A. He is.

Q. (Same question as to G. T. Bonner, as to entries of the same date): "Paid note $10,000 and $133.33"?

A. He is.

Q. What is the meaning of the following entry (page 59, part 2), November 26, 1874: "Interest on Tennessee Substitution Bonds $10,832 33." Was that an amount paid by the Mobile and Ohio Railroad Company, through your firm, to bondholders of that kind for interest due July 1, 1874, or January 1, 1875?

(Objected to as having no relation to the coupons now under consideration.)

A. It may have been a remittance on account of previous advances made on account of Tennessee Substitution Bonds, but without reference to the books I cannot answer definitely.

Q. Is not the G. A. Leete, named in the entry 30th and 31st December, 1874, the same Leete who is agent of Alexander Duncan, who proved certain coupons in this case?

A. He is the same George A. Leete who loaned the money there in stated and who proved the account.

Q. What is the meaning of the entry, December 31, 1874: "Interest collected on Company bonds, $1,021?"

A. Simply a counter entry, interest account having been previously charged with the amount. It represents the interest collected on the various securities of the Company, belonging to the Company.

Q. What charge per year or month, or otherwise, for forbearances of money did Duncan, Sherman & Co. make to the Mobile and Ohio Railroad Company?

A. That depended on the value of money at the time advances were wanted. It varied from simple interest to a higher rate. Sometimes it went as high as 1 per cent. a month. But at such times the Company could not have got the money at any rate, certainly not, except at a very much higher rate than that.

Q. Is not $75,000 of First Mortgage Sterling Bonds the entire interest of Alexander Duncan in the bonds of this road. If not, what is his interest in the bonds and what class of bonds?

(Question objected to as it relates to the present time, and therefore has no bearing on this controversy. The record in this case shows the amount of bonds proved by him and the date when proved.)

Objection sustained, the witness not obliged to answer, and answer excluded.

Ruling excepted to by Mr. Grandin.

Q. In your testimony taken in New York, contained on page 16, part 3, of the proceedings of this reference, you testify "a list of the coupons so acquired was also made and given to Mr. Alexander Duncan on transferring the coupons to him, the correctness of such list has been certified to by the Special Master, before whom the coupons have been proved by Mr. Alexander Duncan." When and by what instrument, and after notice to what attorneys, did the Special Master so certify?

A. The Special Master in New York received the coupons, compared the same with the list submitted, and the representative of Mr. Duncan made proof thereof before him.

Q. Please look at this book and state whether it is a correct copy of the "Proceedings of the Twenty-Sixth Annual Meeting of the Stockholders of the Mobile and Ohio Railroad Company, held in the city of Mobile, April 21, 1874"?

A. I believe it is. I was not present however.

Judge Grandin offers the book alluded to in evidence, and requests that the Master mark it as an exhibit and attach it to Mr. Duncan's evidence as an exhibit. He does not require the printing thereof.

Mr. Stewart, on behalf of Alexander Duncan, objects to the report as relating to matters which transpired before the originating of the subject of this controversy, and that it is irrelevant and immaterial to the determination of this issue and encumbering the record with voluminous and useless matter.

(Objection sustained, the report appears to have no relevancy to the objections filed by Mr. Belloni.)

Objection withdrawn, and the report is therefore considered in evidence subject to all legal exceptions.

Q. Was not the letter you addressed to the Master in reference to the objections to Alexander Duncan's coupons written after you had seen a copy of this circular. (Handing witness a circular as follows, and referring to a letter addressed to the Master certifying the objections of L. J. Belloni to the coupons of 1874, printed on page 5, part 1, of this testimony.)

Circular of Moran Brothers, H. Amy & Co. and others.

"Office of Mortgage Bondholders of the
Mobile and Ohio Railroad Co., November 24th, 1876.

To the Creditors of the Mobile and Ohio Railroad Company:

The undersigned, owners of First Mortgage Sterling Bonds of the Mobile and Ohio Railroad Company have duly considered a circular signed by Messrs. William H. Hays, William S. Pierson and T. Haskins DuPuy, accompanying a Plan of Reorganization of said Company, which has been submitted to us for our signatures.

The object of this Plan can only be, it appears to us, to further the interests of the inferior securities of the Mobile and Ohio Railroad, at the expense of the First and other Mortgage Bondholders. After a careful examination we believe it to be most unjust to our interests as holders of those Bonds, and we respectfully call the attention of all the parties in interest, to the following simple statement of facts, and the conclusions drawn from them by us. The facts are mostly taken from the records of the Courts having the present custody of the property of the Mobile and Ohio Railroad Company, and hence, cannot be denied.

Messrs. William B. Duncan and A. F. Elliot have been for several years Directors of the Mobile and Ohio Railroad Company. The former was the head of the banking house of Duncan, Sherman & Co. of this city, and the latter the New Orleans agent of that house. For about a year before the default of the Mobile and Ohio Railroad Company on the interest of the First Mortgage Bonds, Mr Duncan had been President of the Company, and still acts as such President.

In April, 1875, shortly before the default in the payment of interest, Messrs. Duncan and Elliot claimed to become trustees of the First Sterling Mortgage, Mr. Duncan, at the time, being already a trustee for the so-called Tennessee Substitution Bonds, and likewise for the Consolidated Mortgage Bonds. Immediately, upon the default, which transpired in May, 1875, the Directors surrendered possession of the entire property of the Mobile and Ohio Railroad Company to Duncan and Elliot, as trustees for the First Mortgage Bondholders. A few days afterwards, Duncan and Elliot filed a bill in the United States Circuit Court for Alabama, and were invested by said Court with the powers of receivers of the property. Since that time Duncan and Elliot have administered the property, through the agency of T. Haskins DuPuy.

The Floating Debt Claims.

On or about the 9th day of April, 1876, the Floating Debt creditors of the Company applied to the United States Court, for the sale of $550,000, (five hundred and fifty thousand dollars) of securities, belonging to the First Mortgage, and the application of the proceeds in liquidation of their claims.

W. B. Duncan and A. F. Elliot claiming to represent the First Mortgage Bondholders offered absolutely no opposition to this demand.

The sole defence of the interests of the First Mortgage Bondholders was made on behalf of Mr. Morris Ketchum, as surviving trustee of their mortgage, aided by some of the Bondholders. Without this timely action on the part of Mr. Ketchum, it is clear that the Court would have been led to grant the order in favor of the Floating Debt Claimants, which would, in effect, have appropriated our property for the benefit of other persons. Indeed, the lack of all opposition on the part of the First Mortgage Bondholders, other than as above stated, was urged on the Court as an acquiescence by the Bondholders generally, in this appropriation of their property. Fortunately, however, the scheme was entirely defeated, and the United States Circuit Judge sustained Mr. Ketchum in his opposition on our behalf.

The assets, amounting to more than half a million dollars of securities, thus saved for our benefit, we should seek to have applied to the payment of our over-due coupons. The strange proceeding of the Floating Debtholders, and the absence of all defence on our behalf by W. B. Duncan and A. F. Elliot, warn us of the necessity of a proper representation of the First Mortgage Bondholders.

ALEXANDER DUNCAN'S CLAIMS.

In their proceedings by bill filed in the United States Circuit Court, Messrs. Duncan and Elliot declare that the coupons of the First Mortgage Bonds which fell due in May and November of 1874, which had been paid to the Bondholders, were still out-standing and subsisting First Mortgage liens on our property. These coupons were presented and were paid in the same manner in which all previous coupons had been presented and paid. It was generally supposed, and every one had a right to suppose, when they were paid and surrendered, that they ceased to be a part of the First Mortgage. Nevertheless, it was claimed about the time of the default in 1875, that these coupons were out-standing liens on the property, and they now reappear mainly in the hands of Mr. Alexander Duncan, father of Mr. William B. Duncan, who claims them by assignment from Duncan, Sherman & Co., to the extent of nearly ($736,000) seven hundred and thirty-six thousand dollars. It is claimed that these coupons should participate in our Mortgage, and, to the same extent, reduce the value of our bonds. These coupons were paid in the regular and usual way, and they should not be paid again, at least with our consent. Dead and paid coupons cannot be revived in this way to eat up the Mortgaged property. If this should be submitted to, the payment of Mortgage interest can always be turned into a loan to the Bondholder, to be deducted from the amount of his Mortgage. We cannot consent to any Plan of Reorganization which proposes to take this three-quarters of a million dollars from the Mortgage Estate, as does the Plan offered under date of October 12th, 1876, which purposes to include all coupons "whose original due date named therein shall not be later than November 1, 1877."

THE TENNESSEE CLAIMS.

In the various proceedings before the United States Circuit Courts, W. B. Duncan and A. F. Elliot admit that certain claims called Tennessee Substitution Bonds, hold a priority over the First Mortgage Sterling Bonds, on the 118 miles of the main line running through the State of Tennessee. In addition, a distinct suit in the United States Circuit Court of Tennessee was instituted in the name of William B. Duncan, Adrian Iselin and R. T. Wilson, as Trustees for these Tennessee Substitution Bonds, to enforce in their favor a priority over the First Mortgage Bonds. The sole representatives of the First Mortgage Bonds served with notice of these legal proceedings in Tennessee, were Duncan and Elliot, who claim to represent the First Mortgage Bonds as Trustees. No defence, whatever, was made by them in this action, and the consequence was that a decree was obtained, by default, against the First Mortgage, and an order of sale of the Tennessee section of the road was entered for the benefit of the Tennessee Substitution Bonds, leaving the First Mortgage Bonds only such balance, if any, as might remain. The excuses offered by W. B. Duncan to palliate his conduct in this matter, and his efforts to avoid the effect of his laches, cannot countervail his express admissions in favor of these subordinate claims, and against the First Mortgage.

Now, in fact the First Mortgage is a first lien on the entire line, the lien formerly created to protect the advances made by the State of Tennessee to the Company having long since been satisfied by the return to the State of its Bonds to the full amount of the advances made by the State. It is true, there was an attempt to assign the State's lien, after its liquidation, to the holders of the Tennessee Substitution Bonds; but as these bonds were created long after the First Mortgage Bonds, and were issued only after the full liquidation of the advances of the State, and as they are entirely different in nature from the cancelled State Bonds, these new Substitution Bonds cannot obtain a priority over the First Mortgage Bonds, by any arrangement between the Company and its subsequent creditors.

But even assuming that the Substitution Bonds are entitled to the benefit of the satisfied and extinct lien of the State of Tennessee, the proposed plan of reorganization gives them an advantage over the First Mortgage Bonds, entirely unwarranted and unjust: The First Mortgage Bonds are for £225 Sterling each, payable in London, equal to $1,100 *Gold*, or $1,200 Currency. These Bonds are proposed to be admitted into the reorganization only for the sum of $1,000, and they are allotted only $440 in the new First Mortgage Bonds for each Sterling Bond; whilst the Tennessee Substitution Bonds, which cannot claim more than $1,000 *currency* under the State lien, are allotted $625 for each $1,000 bond. And the past due coupons of these Bonds are admitted into the proposed reorganization at $36 each, although only entitled to claim under the State lien $30 in currency.

In fact, these various proceedings are simply attempts to give an unjust priority over the paramount rights of the First Mortgage Bonds, to the following claims:

Floating Claims..................................	$ 536,000
Alexander Duncan's Claims....................	736,000
Tennessee Claims..............................	2,018,028
Total Loss to Mortgage Bondholders.........	$3,290,028

Those who favor or passively submit to the priority of these various claims over the First Mortgage Bonds, appeal to the current, well-founded, objection against litigation in the Courts. But, if litigation continues, on whom shall the blame fall? on those who defend their just rights, or on those who attempt to secure an undue and unjust advantage over prior liens? In all events, we shall, henceforward, take good care that the property and assets are fairly managed and applied for the benefit of the parties entitled to them.

In our judgment the property should be promptly taken out of the Courts and placed under the direct administration of the Mortgage Bondholders and their representatives; and we sincerely believe that an effort by the Bondholders to protect themselves against the foregoing claims, and to reorganize the property in their own interest, while treating all the various other interests with the utmost liberality, will meet with the same success that attended the resistance to the priority over the Mortgage Bonds sought to be obtained by the Floating Creditors.

In case of the sale of the road on foreclosure, it would probably not bring the amount of the First Mortgage. It therefore rests entirely with the First Mortgage Bondholders to determine the conditions on which they will admit the junior securities to participate in the purchase.

We suggest and recommend to our fellow-Bondholders, and to all other parties in interest, to unite with us, in order to effect

THE REORGANIZATION OF THE M. & O. R. R. CO.

on the following terms, which appear to us equally just to all the various parties in interest:

I. Obtain from the Court an order for the application to the payment of our overdue coupons, of the assets which it was lately attempted to apply to the payment of the Floating Debt Creditors.

II. Release the property from the hands of the Court, by the sale of the entire line, from Mobile, Alabama, to Columbus, Kentucky. At such sale the property to be purchased for the benefit of all the securities of the present company—and the purchasers to reorganize the company in accordance with this Plan.

III. The reorganized company to create and issue new securities as follows:

(*a*). Six per cent. Bonds, payable, principal and interest, in gold, secured by a First Mortgage on the entire line from Columbus, Kentucky, to Mobile, Alabama, and on all the property, rights, franchises and lands acquired by the purchase for account of the reorganized company; said Bonds to be issued in exchange for the First Mortgage Sterling Bonds, and for the Interest Bonds, and for the unpaid coupons on those bonds, which matured on and after the first of May, 1875. We propose to admit the Interest Bonds on the same basis with the First Mortgage Bonds, because the old First Mortgage coupons are held in trust for the benefit of the holders of the present Interest Bonds.

(*b*). First preferred Income Bonds bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the present Second Mortgage Bonds, and for unpaid coupons to March 1, 1878.

(*c*). Second preferred Income Bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the present convertible Bonds and unpaid coupons, to March 1, 1878.

(*d*). Third preferred Income Bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the Tennessee Substitution Bonds and unpaid coupons, to January 1, 1878.

(*e*). Fourth preferred Income Bonds bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the Consolidated Bonds.

(*f*). Surplus Income Bonds bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in settlement of Floating Debt.

COMMON STOCK.

To be issued to the amount of the present Common Stock, but to be held and voted on by the Trustees of the New First Mortgage until interest on all the above Bonds has been paid out of nett earnings for three successive years. Thereupon, the certificates to be assigned to the present stockholders or their representatives.

We are satisfied that the property is amply able to meet the amount of First Mortgage interest called for by the above plan, and that the charter rights will be unimpaired by a sale for our benefit.

The holders of all the securities other than the First Mortgage, who do not accede to this Plan within a time to be limited by the Purchasing Committee, will be debarred from participating in the purchase and reorganization.

In order to consummate the above Plan of Reorganization without unnecessary delay, we request all the creditors of the Mobile and Ohio Railroad Company to return signed, the accompanying Power, addressed to *Committee of Mobile and Ohio Railroad Bondholders*, 68 *William Street, New York.*

MORAN BROTHERS,
H. AMY & CO.,
ARENTS & YOUNG,
LOUIS J. BELLONI,
WILLIAM SALOMON, *Executor.*

POWER OF ATTORNEY.

The undersigned holders of securities of the Mobile and Ohio Railroad Company, now revoking all other powers, do hereby request and authorize Moran Brothers, H. Amy & Co., Arents & Young, Louis J. Belloni, William Salomon, to act on our behalf in the election of a Purchasing Committee, composed of two First

681 Mortgage Bondholders and one Second Mortgage Bondholder, who shall have the preceding plan carried into execution, by final decrees of the Circuit Courts of the United States, and by purchase and reorganization thereunder; and who shall take any and all proceedings deemed by them advisable in furtherance of said Plan, which shall not be effectual until approved by a majority of the First Mortgage Bondholders. After the reorganization on the foregoing basis, the possession of the road to be delivered to the directors who may be selected by a vote of the First Mortgage Bondholders controlling the stock of the Company under the foregoing Plan.

NAMES AND ADDRESS.	CLASSES OF CLAIMS.	AMOUNT.

N. B.—The Bondholders and other parties in interest may send this power to the signers of the above Plan, or to any other person they may desire to entrust with their interests."

A. The circular of Mr. Moran appears to be dated 24th November, and my letter to the Master was dated 10th November and filed the 15th, consequently before I had seen a copy of this circular.

Q. When did you first see a copy of Mr. Moran's circular?

(Objected to as irrelevant.)

A. Shortly after it was issued.

Mr. Grandin asks that the circular of Moran Bros., dated November 24, 1876, be attached to the evidence of the witness.

(Objected to as irrelevant, being of subsequent date to the transactions.)

Cross-examination by Mr. Stewart, counsel for Alexander Duncan.

Q. I believe you have heretofore testified that Duncan, Sherman & Co., on the 1st of May, 1874, and 1st November, 1874, were creditors of the Mobile and Ohio Railroad Company; was not such the case?

(Question objected to as not a cross-examination, and as asking the witness to testify to what he has already testified, and as encumbering the record unnecessarily and enhancing the cost of this proceeding.)

A. Yes.

Q. Were they also stockholders of the Company at those dates?

A. Yes.

Q. Were they also bondholders of the Company at those dates?

(Question objected to as not a cross-examination.)

A. They were.

Q. Was Alexander Duncan a bondholder on the 1st May and 1st November, 1874.

A. He was.

Q. Was Alexander Duncan a holder of the coupons in controversy for value paid by him?

(Question objected to, on the ground that it is not a cross-examination, and is asking witness to repeat answers already given by him, encumbering the record and swelling the expenses.)

A. He was.

Q. Was it for full and adequate value?

A. It was for the entire cost thereof.

Q. You have been asked as to the report of the proceedings of the Company of 1873, presented 21st April, 1874, please state if you had anything to do with the preparation of that report?

A. I had nothing whatever to do with the preparation of that report.

Q. Did you take any part in the management of the property of the Company as narrated in said report in 1873, and were you in Alabama during those proceedings?

(Objected to as no cross-examination.)

A. I did not in the active management. I was not in Alabama during that year.

Q. Please state how the note of $40,000 was paid, as referred to in the question as to Mr. Hays?

(Objected to as not a cross-examination, and on the ground that any evidence as to the payment of that note is totally irrelevant to this issue.

A. It was paid by a sale to Mr. Hays by the Company of $50,000 Convertible Bonds at eighty.

Q. (Same question as to note of Bonner.)

(Same objection.)

A. This note was paid in like manner, by a sale of Convertible Bonds at eighty.

Q. The question has been asked as to George A. Leete. Please state who holds the note referred to, and whether it has ever been paid by the Company?

(Same objection.)

A. The note which was an advance made to the railroad by Mr. George A. Leete was not paid by the Company, but was paid for account of the Company by Duncan, Sherman & Co., and forms a part of the balance still due by the Mobile and Ohio Railroad Company to Duncan, Sherman & Co.

Q. You have been interrogated as to advances on money and rate of interest charged by Duncan, Sherman & Co. Please state where those advances were made?

A. Invariably in the city of New York.

Q. Please state if you published this circular in reply to the circular of Mr. Moran?

Circular as follows:

"NEW YORK, Nov. 27th, 1876.

To the Creditors of the Mobile and Ohio Railroad:

I beg respectfully to submit the folllowing reply to the circular dated November 24th, 1876, and addressed to you by Messrs. Moran Bros. and others, but which may, however, with more propriety be called the circular of Mr. Charles Moran.

My apology for replying thereto is, that my motives and actions as trustee of the first mortgage are unjustly impugned in said circular, though it claims in its preamble to be simply a consideration of the agreement of reorganization, dated October 1st, 1876, under which Messrs. Hays, Pierson & DuPuy are constituted a committee, and under which you are requested to deposit your securities, subject to the control of such committee, for the purpose of carrying out the provisions of said agreement. Mr. Moran states that "the object of this plan can only be to further the interests of the inferior securities at the expense of the first and other mortgage bondholders," whereas the agreement itself was only perfected by the representatives of a large number and amount of the first mortgage liens, after careful consideration and subsequent conference with the representatives of the Tennessee Substitution bonds, the latter claiming a first lien on the 118 miles of the road in the State of Tennessee.

That I have been a director of the Mobile and Ohio Railroad for several years, and that Mr. Elliot, the resident partner of my late house in New Orleans, is also a director, is true; it is equally true that I have been the president of the Mobile and Ohio Railroad since 1874; and that, in April, 1875, the then trustees of the first mortgage, Messrs. Jackson & Young, having resigned, I and Mr. Elliot were appointed to fill their places, in strict accordance with, and in the manner prescribed by, the deed of trust of the first mortgage. Mr. Walsh, the remaining trustee, resigning, left Mr. Elliot and myself sole trustees.

It is also true that, as such trustees of the first mortgage, we demanded of the Company the custody of its property, in the manner and for the reasons provided for in the deed of trust, and that, in compliance with such demand, the property of the Company was delivered to us. Subsequently, in pursuance of our duties as trustees, we filed a bill in the United States Circuit Court for Alabama, and applied, under such proceedings, for the protection of the court, which was granted us, and we were constituted the receivers of said court and granted all the powers and protection which such an important authority could give to us.

It is also true that we have administered the property through T. Haskins DuPuy, who, in addition to his other duties in charge of the road, has acted as our attorney and agent.

I confidently assert that my action in the manner above described and its prompt execution rescued your interests from utter chaos then, and has since kept them intact, and your property in a state of constantly increasing efficiency,

The insinuations with reference to my action as trustee in the matter of the "Floating debt claims" are absolutely untrue. It is true that an application was made to the court by the holders of the floating debt. The application was previously made to me as receiver. In reply, I distinctly stated that I had no power in the premises, but consented, as was my duty, to refer their demand to the court, and ask its instructions. The amount of the floating debt was about $550,000. The court appointed a master to take proof as to its nature and lien. The master made his report in due course, the details of which I do not recollect; but in substance he recommended the court to authorize the settlement and compromise of so much of said debt as was unsecured at not exceeding twenty per cent. of its face value. A part of the floating debt is secured by a pledge of first and second mortgage bonds, the face value of which is largely in excess of the amount for which they are pledged. This he recommended should be compromised so as to prevent the sacrifice by forced sale of the securities, thereby increasing the amount of outstanding first liens without adequate consideration. The court heard all parties on this report of the master, and decided adversely to it.

Neither I nor my counsel had any question that the court would or could decide otherwise, except possibly with reference to the settlement of the debt secured by first and second Mortgage liens and so advised the counsel of the claimants. The latter, however, insisted on my submitting their demand for the decision of the court.

They appeared by counsel, who argued their case. Mr. Ketchum, did not appear; he was not a bondholder, and it had been decided. that he was not a trustee. Mr. E. L. Andrews appeared, I believe, for a bondholder. I do not think his argument influenced the court in the slightest, or changed its decision in the matter. I was personally present with my counsel, who did all needful to protect the interests of the Trust I represent.

There were no securities amounting to "$550,000 belonging to the first mortgage," which it was proposed to sell, unless reference is here intended to be made to the first and second mortgage bonds above mentioned, which were pledged long before the commencement of the proceedings, with power of sale to the holders in default of payment of the obligations which they secured. Neither the Company nor the receiver had any securities at their disposition or which they could sell.

The designating claims for unpaid coupons as "Alexander Duncan's claim," and the parading of his name in large type to attract attention, I refrain from noticing.

The bill filed by the trustees of the first mortgage states that the coupons for 1874 are outstanding which is in accordance with the facts as shown by the records and books of the Company. The court is open to all claimants equally in this as in other disputed claims to assert their own, or contest the claims of others.

The trustees of the second mortgage in their answer to the original bill have, at the instance of certain holders of the second mortgage bonds, entered their protest against these coupons; and lately, Mr. Belloni, one of the signers of Mr. Moran's circular, requested me, as trustee of the first mortgage, to protest for him against these coupons. I promptly did as requested by Mr. Belloni, and certified to the master and to the court his protest.

Mr. Moran states that if these coupons were paid and surrendered, they ceased to be a part of the mortgage; the converse must therefore follow, if they were not paid by, and not surrendered to the Company; and Mr. Moran's insinuations that these coupons have ever been even temporarily in the possession of the Company, and that they have been made to "reappear" and that they have been "dead and paid, and cannot be revived," are gratuitous and declared by the holders of the coupons to have no foundation in fact.

That Mr. Moran or any other person interested has a right to appeal to the court in this matter is no more true than that the holder of the coupons has also the right to maintain his claims, and to resist attacks upon them.

As to the "Tennessee claims," In the proceedings in the United States Court, the trustees of the first mortgage admit, with reference to the Tennessee lien, only what the deed of trust, under which they act does.

A bill was filed in the United States Court, in Tennessee, by the trustees of the Tennessee substituted bonds; this bill was intended as auxiliary to the bill in Mobile.

The decree referred to as having been obtained by default, is not a valid decree; it was obtained without my knowledge or consent; I obtained an immediate stay in its execution; I have made no "excuses;" I have committed no "laches;" and this decree, if persisted in, will have no other effect except temporarily to delay and impede.

The rest of Mr. Moran's remarks on the Tennessee lien may be all true, and yet they are strenuously denied by the holders of the Tennessee bonds, who are acting under the advice of the best and ablest counsel.

Mr. Moran finally foots up an imaginary loss of over $3,000,000, which he proposes to save, by wasteful, tedious and expensive litigation.

Among the most important questions to be settled before a decree, determining the rights of parties can be had, are:

1st. The claim of the Tennessee bonds to a first lien for principal and interest, amounting to say $2,000,000 upon the 118 miles within the State of Tennessee.

2d. The claim of the second mortgage trustees that the interest arrearage bonds do not have priority over the second mortgage, involving say $3,000,000.

3d. The claim of the second mortgage bondholders to priority over all the other mortgages, upon certain parts of the property of the Company.

4th. The claims of the holders of the unpaid coupons of 1874 to priority of payment, with interest; and numberless other minor claims and disputed questions.

Even if a decree of sale could be obtained before these conflicting claims can be determined (which is very improbable), no valuation can be placed upon any security of any grade, and therefore no sum can be fixed at which any particular security can be turned into court on account of the purchase money; and, therefore, the property will have to be sold absolutely for cash, and thus be at the mercy of speculators, and the meagre proceeds of the sale will have to remain for a long period undivided.

The question is put by Mr. Moran as to who "will be responsible for litigation?" Certainly not those who have proposed a scheme which substitutes compromise for litigation. On the other hand, the responsibility will fall upon those who reject compromise, and who propose a plan which, if practicable at any time, will become so only at the end of long and complicated law suits.

Mr. Moran's own question suggests the vital difference between the two plans. One is based upon the idea of compromise, and of keeping alive the present corporation, with its valuable privileges and exemptions, on which subject I understand the United States Supreme Court has recently rendered a very important decision. The other is based on the idea of giving everybody his legal rights—no more—no less. But before any one can have his legal rights, it must be ascertained what they are, and the process of ascertainment is necessarily costly and tedious, and often results in settling abstract principles with a total consumption of the substantial thing in dispute. What satisfaction will it afford first mortgage bondholders years hence to have established a rule of law at the expense of all practical advantages?

Mr. Moran says "in his judgment the property should be promptly taken out of the courts, and placed under the direct administration of the bondholders." This is the object of the plan of October 1st, 1876; and the question is, what are the most practicable means of accomplishing this desirable end? Continued litigation keeps the property in court; compromise takes it out of court.

Mr. Moran, while criticising in words the plan of October 1st, actually appropriates some of its leding features, while giving them different names. He contemplates the creation of an obligatory burden of $9,000,000 and upwards, in the shape of a first mortgage. The plan of October 1st, 1876, while making equally secure provision for the same classes of creditors, makes the obligatory burden of less amount, and thus affords additional guaranty against again falling into the hands of the court. He makes substantially the same provisions for floating debts which is made by the plan which he objects to.

The plan which is outlined in Mr. Moran's circular, the practical details of which he asks creditors to leave to his discretion, does not invite the co-operation of holders of detached coupons, nor of Tennessee Substitution Bonds. But any successful plan must be worked out, either through their friendly co-operation, or against their determined hostility. Mr. Moran's plan, omitting as it does, their co-operation, necessarily invites their hostility.

The plan of October 1st, 1876, disavows their hostility, and secures their co-operation, but involves no more sacrifice on the part of first mortgage bondholders than Tennessee bondholders, and first mortgage coupon holders think that they meet with equal sacrifices.

I have thus endeavored to hastily answer the statements and insinuations contained in the circular to which this is a reply. So far as the execution of my trust is concerned, I feel every confidence in submitting my actions to the closest scrutiny of parties interested. The conduct of the legal proceedings are under the management of my counsel, the Hon. John A. Campbell, of New Orleans, formerly one of the Judges of the Supreme Court of the United States, and of the Hon. Peter Hamilton, of Mobile, assisted by additional counsel at distant points, when exigencies may require. My aim, as an officer of the court, in the management of the property itself and its business, is to bring it to a state of efficiency, and maintain it in that condition, that when it shall be, by the action of the court, restored to its owners, it may be found in a much better condition than when I received it, and in a condition to enter at once upon a career of prosperity, which I feel confident will follow the settlement of the questions that have distracted the States through which it runs, and the restoration of business generally throughout the country.

Under the agreement of October 1, 1876, the committee inform me that First Mortgage and Tennessee hondholders have already become parties, and have transferred their bonds to the committee to the amount of over three millions, seven hundred and fifty thousand dollars, without estimating any unpaid and matured coupons.

I remain, respectfully yours, W. BUTLER DUNCAN."

(Objected to as not a cross-examination.)

A. I did.

Q. Please state whether the circular presented as issued by Mr. Moran, was changed and amended or corrected after the reply made by Mr. Duncan, and how it was changed?

A. My reply of November 27th was to the circular as handed to the Master. I have since that date seen circulars similar to the circular of November 24th, with several of the names of the parties, appearing on said circular, erased. Whatever other changes I don't know.

W. BUTLER DUNCAN.

Subscribed and sworn to before me this 3d April, 1876.

JAMES GILLETTE, Special Master.

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W. BUTLER DUNCAN.

Subscribed and sworn to before me this 3d April, 1876.

JAMES GILLETTE, Special Master.

James W. Holmes, a witness summoned at the instance of objecting bondholder, sworn and examined by E. H. Grandin, says:

Q. Were you a holder of First Mortgage Bonds Mobile and Ohio Railroad in 1874, and what amount?

A. I had eight of the Sterling Bonds and three Interest Bonds.

Q. Did you in May and November, 1874, present the coupons cut off of your bonds?

A. I did, and presented them in person.

Q. When did you last present your coupons?

A. At the last time they paid them.

Q. What is the oldest unpaid coupon on your bond?

A. I can't tell without looking at them.

The witness requested to examine his bonds and whatever books or records he has, and refresh his memory.

Q. Did you ever on presenting coupons to the Treasurer of the Mobile and Ohio Railroad Company, or at the office of the Mobile and Ohio Railroad Company, see any notice that the Company was not paying its coupons?

A. I never saw any such notice.

Q. Did you not believe when you delivered your coupons the last time when you presented coupons, that the same were paid and satisfied and ceased to be a First Mortgage lien on the property?

(Objected to by Mr. Stewart as involving the belief of the witness instead of the facts.)

A. I had no reason to believe anything else; I never made any inquiry. I thought the earnings of the road paid the interest.

Q. Were you ever notified in any manner at any time that you presented coupons for payment, that your coupons were not going to be paid, but were going to be purchased by somebody else for the Company?

A. I never had any intimation of that kind. I remember at one time the Treasurer, Mr. Willoughby, detained me some time, eight or ten days, and stated that the Company was pressed.

Q. When did you last present coupons for payment ?

A. November, 1874.

Cross-examined by Mr. Stewart :

Q. Have you any recollection of the particulars of the mode and manner of the payment of the coupons of the 1st May, 1874, and of the 1st November, 1874 ?

A. Nothing particular. I cut off my coupons and got my money.

Q. Did you collect coupons previous to the year 1874 ?

A. Yes ; I always collected them myself.

Q. Did you discover a difference in the mode of payment of 1874 from what had been practiced before that time ?

A. If there was I don't recollect ; there may have been some difference, I may have gone to the Bank of Mobile or to Mr. Miller ; I can't answer from memory.

Q. Previous to the year 1874, were you not paid by Mr. Willoughby at the office, either by money or by his checks on banks or bankers ?

A. I think it's more than probable I was. I can't recollect ; I did not charge my memory with it.

Q. Previously to 1874 did you not surrender to Mr. Willoughby at the office your coupons when he settled for them ?

A. Yes : I always left them there. I've no recollection of going any where else.

Q. Please state whether in 1874 Mr. Willoughby did not give you back your coupons in an envelope and direct you to go to the Bank of Mobile for payment and surrender them to Mr. Gale ?

A. I have no recollection of it. It may be so. I have no recollection of it. I got my money, but did not charge my memory with how I got it.

Q. Did you not take the coupons in an envelope to the Bank of Mobile and surrender them there, and there receive payment for them in the year 1874?

A. I am not able to answer that question, my memory fails to serve me.

Q. Are you prepared to say that in 1874, Mr. Willoughby paid you any money at the office?

A. I am not able to say, as I have no recollection.

Q. Are you prepared to say that in 1874 Mr. Willoughby or anybody at the office gave you any check on the Bank of Mobile, or any one else, for the payment of those coupons of 1874?

A. No, sir.

Q. Did you receive any gold on any of those coupons in 1874?

A. I had one gold bond. I don't think I received any gold, but that they calculated the price of gold and gave me the currency.

Q. Who made the calculation as to the value of gold, and when was it made, and was it not made by Mr. Gale as teller of the Bank of Mobile in 1874?

A. I can't say; I have no recollection.

Q. Can you say that as to the coupons of 1874, you did not deliver them to Mr. Gale at the Bank of Mobile?

A. I can't say I did not. I have no recollection.

Q. The result is, as I understand, that you have no particular recollection of the mode and manner of payment of the coupons of 1874?

A. Yes. J. W. HOLMES.

Subscribed and sworn to before me this 3d day of April, 1877. JAMES GILLETTE, Special Master.

Thereupon, on motion of E. H. Grandin, of counsel for Objecting Bondholder, the hearing was adjourned until Monday, April 16, 1877, at 11 A. M.

JAMES GILLETTE, Special Master.

MONDAY, April 16th, 1877, 11 o'clock A. M.

Session resumed pursuant to adjournment. Present, the Special Master, George N. Stewart, Solicitor for Mobile and Ohio Railroad Company and for Alexander Duncan, P. Hamilton, of Counsel for Trustees and Receivers, and E. L. Andrews, Solicitor for objecting bondholders.

E. L. Andrews, as Solicitor for Moran Brothers, moves for a Subpœna *duces tecum* to T. Haskins DuPuy as already granted in reference to the Tennessee Substitution claims. Page 7 of part 4 of these minutes will specify the Subpœna more particularly.

It appearing from the minutes of the previous session (page) that said Subpœna was issued and obeyed, and that E. H. Grandin, of Counsel for Second Mortgage, representing objecting bondholders, agreed with the other Counsel present that the Tennessee matter was *coram non judice* and therefore declined to proceed with the examination of the evidence brought by Mr. DuPuy, the Master declines to proceed further in said matter now, except it be shown that said consent was not on behalf of said objecting bondholders. And said Grandin stating in writing to the Master, that his waiver was intended only in his capacity as Counsel for Second Mortgage Trustees, and that he did not act in said matter as Counsel for objecting bondholders, Belloni and Moran, the Subpœna is granted returnable at 11 A. M. to-morrow.

E. L. Andrews moves that the minutes be so amended as to make it appear that a separate objection and exception was made by Counsel for objecting bondholders to each and every ruling of the Master. Amendment allowed.

E. L. Andrews moves that all questions put by Judge Grandin in respect of the coupons of 1874 on behalf of the Second Mortgage Trustees, be held and taken, with all the examination thereon, as if propounded by Counsel for contesting bondholders. Motion allowed.

Mr. Andrews—Motion for Subpœna *duces tecum* to T. H. DuPuy, to bring all the books and papers containing the resolutions passed in 1874, probably between March and May, 1874, surrendering all or nearly all the securities then held by the Mobile and Ohio Railroad Company to Duncan, Sherman & Co., or Wm. Butler Duncan, or W. H. Pratt, or any other person or persons acting on behalf of Duncan, Sherman & Co., or W. B. Duncan.

Objection by Mr. Stewart, on the ground that the books have already been gone through with by the Master and the resolutions shown.

Subpœna granted.

Exception taken by Mr. Stewart.

Mr. Andrews—Motion for a Subpœna *duces tecum* to W. H. Pratt, President of the Bank of Mobile, to produce all entries and extracts from the books and papers of the said Bank of the accounts with the Mobile and Ohio Railroad Company for the year 1874, in reference to deposits of moneys and warrants by the Mobile and Ohio Railroad Company, or any one acting for it, and also of charges against said deposits and warrants in course of account.

Mr. Stewart—Objected to, as Mr. Pratt has been fully examined as to his knowledge of the coupon matter, and has produced what was called for at the time.

Subpœna granted for the accounts called for either by original or attested copy.

Ruling objected to by Mr. Stewart.

Moses Waring called as a witness by Counsel for objecting bondholders.

Mr. Stewart objects to the examination of Mr. Waring, on the ground that he has been already examined on this reference and been discharged as a witness.

Witness sworn. Examined by E. L. Andrews.

Q. You acted in getting a number of holders of unsecured claims against the Mobile and Ohio Railroad Company to extend their time of payment of their clams in 1874?

Mr. Stewart—Question objected to for irrelevancy.

A. I got the floating paper extended.

Q. Was not that floating paper in part unsecured?

Question objected to for irrelevancy.

A. The paper holders had no security but the notes. I never heard of their having any security at that time.

Q. Did you not express to persons in the City of Mobile dissent or objection to the account of Duncan, Sherman & Co. rendered to the Mobile and Ohio Railroad Company, in which they charged as paid, some thousands of dollars, about twenty-five thousand, of notes or drafts in 1874, out of moneys remitted from the Mobile and Ohio Railroad Company, or obtained by Duncan, Sherman & Co.?

Mr. Stewart—The Counsel is called upon to state the object with which that question is put and the matter in issue which he expects to prove thereby.

Mr. Andrews states reasons.

Mr. Stewart asks if the question is for the purpose of impeaching the credibility of the witness.

Mr. Andrews—No.

Mr. Stewart—The question is objected to for irrelevancy and incompetency. Motion to exclude the answer.

S. M.—Objection sustained and answer excluded. Objection and exception to ruling entered for Mr. Andrews.

Q. Was there not an arrangement made by the Company with a large part of floating creditors of the Mobile and Ohio Railroad Company in 1874, whereby thay extended the time of payment of paper of the Company, and which extension was upon the faith and understanding with the parties so extending, that no payments of floating claims or paper of the Company should be made to any of the holders thereof?

Mr. Stewart—Objected to as vague, uncertain, indefinite, and irrelevant, and motion to exclude answer.

Objection sustained and answer excluded. Exception by Mr. Andrews.

Q. Did not Duncan, Sherman & Co., in violation of the arrangements made by the Company with the floating creditors, appropriate moneys received by them on account of the Mobile and Ohio Railroad Company to account of unsecured claims held by them in 1874?

Objected to by Mr. Hamilton and Mr. Stewart, because it assumes an arrangement or agreement of which there is no proof, and for irrelevancy and incompetency, and motion to exclude answer.

Objection sustained, answer excluded. Exception taken to ruling.

Q. Were you present at the annual meeting of the stockholders of the Mobile and Ohio Railroad Company for the year 1874?

A. I don't recollect.

Q. Were you elected a director of the Company at a meeting of the stockholders held April 23, 1874, or by the stockholders?

A. I was elected by the Board in January, 1874, to fill a vacancy, and at the next election by the stockholders, I think in April, 1874.

Q. Who voted a majority of the stock at the meeting of April, 1874?

Mr. Stewart—Objected to for irrelevancy and motion to exclude. Objection sustained.

Mr. Andrews objects and excepts to the ruling.

Q. Did not W. B. Duncan exercise control of the financial policy of the Mobile and Ohio Railroad Company in 1874, or were not his recommendations in reference thereto generally followed by the Finance Committee, and also his recommendations in respect of the disposition of the revenues and resources of the Company?

Objected to by Mr. Stewart as irrelevant and incompetent, and for vagueness and uncertainty.

A. Mr. Duncan was elected President in spring of 1874. He was not here at the time. His recommendations were generally followed after he was elected President and accepted. He did not accept until he had conditions about it.

Mr. Stewart—Answer objected to as evidence.

The same question as to between January 1, 1875, and May 8, 1875. Same objection as to last question.

A. His suggestions were generally adopted by the Board.

Answer objected to by Mr. Stewart as evidence.

Q. Can you state by what payments and to whom the floating debt of the Mobile and Ohio Railroad Company standing at $1,166,492.19 on December 31, 1874, was reduced from that amount on May 8, 1875?

Mr. Stewart—Objected to for irrelevancy and incompetency. Motion to exclude. Objection sustained and answer excluded. Ruling excepted to.

Q. Were not a part of those payments made to Duncan, Sherman & Co., and if so, what part?

A. I did not know of any part of the floating paper that I had anything to do with that was paid to Duncan, Sherman & Co. All I had to do with, was in Mobile; I had nothing to do with what was abroad.

Q. I did not ask you about payments on the paper which you had to do with. Were payments made to Duncan, Sherman & Co., or did they receive moneys of the Company and apply them on account of floating claims held by them in 1875 as above?

A. There was a resolution passed in 1874. I don't know what amount of money was paid to Duncan, Sherman & Co. after January, 1875. The directors don't examine the detailed business of the office.

Q. What were those resolutions passed in 1874, to which you refer?

A. I don't recollect the wording of the resolution, but

697 it's on the minutes. It's in regard to turning over the earnings and other things of the company to secure moneys already paid and to be paid.

Q. By whom and to whom paid ?

A. I can't recollect; the resolution passed by the Board will show that. I cannot recollect the wording of the resolution, whether it was Mr. Duncan, or Duncan, Sherman & Co. The resolution, I presume, sets the whole thing out.

Mr. Stewart—Answer objected to as not being the best evidence of the fact.

Q. What class of securities is referred to by the item in the report at the meeting of April 20, 1875, when you were director of the Company, to the following effect: "Paid on account of Floating Debt to prevent sacrifice of securities belonging to the Company."

Objected to by Mr. Stewart for irrelevancy, as we are not examining the transactions or accounts of the Company in their general business.

Objection sustained.

Ruling excepted to.

Q. Are you familiar with the prices M. & O. R. R. Co.'s 1st Mortgage Sterling bonds or certificated bonds ?

A. Never bought any, nor ever sold any. I don't know anything about them, except what I hear in the street.

Motion by Mr. Andrews for a subpœna *duces tecum* for T. H. DuPuy, for all books and papers Mobile and Ohio Railroad, including correspondence and telegrams in the year 1875, between January 1st and May 8th, with Duncan, Sherman & Co. or W. B. Duncan, or any one for them, in reference to the payments made to, or moneys had by, Duncan or Duncan, Sherman and Company, on account of notes or drafts, or any floating liabilities, of the Mobile and Ohio Railroad Company.

Mr. Stewart—The defendant calls upon the Counsel to state what facts he expects to prove by the documents called for.

Subpœna objected to. The books have been examined previously, and Mr. DuPuy has been examined and discharged. The motion appears to be in the nature of fishing testimony, and in the nature of a discovery, and therefore not revelant or proper.

Mr. Hamilton objects to the granting of the subpœna, for the reason that it is incompetent to inquire into the accounts and transactions of the Company the mortgagor in possession before the trustees entered into possession.

Subpœna granted.

Mr. Andrews—Same motion as to the books and papers of 1874.

Allowed.

Mr. Andrews—Motion for subpœna *duces tecum* for all books and papers containing entries relating to First Mortgage interest or coupons (Sterling bonds) between the Mobile and Ohio Railroad Company and Duncan, Sherman & Co. in 1874.

Mr. Stewart—Objected to, as the same is of a fishing nature, in the nature of a discovery, irrelevant, and that the same have been heretofore produced and examined by the Special Master.

Subpœna allowed.

Mr. Andrews—Same motion for 1875, from January 1, 1875, to May 8, 1875.

Objected to as before.

Subpœna granted for entries as to coupons of 1874.

Mr. Andrews—Same motion for books and papers of the year 1873, in reference to the payment of interest on Sterling bonds of First Mortgage.

S. M.—How are the books of 1873 relevant to the coupons of 1874?

Mr. Andrews—A large part of the revenues of 1874, as appears by the testimony before you, were applied to pay Duncan, Sherman and Company a claim on coupons falling due in 1873. We want to show whether those coupons of 1873 had not been already once paid to the bondholders.

Mr. Stewart—Objected to. The books required do not pertain to the matter in issue, being the objections made by Belloni.

Objection sustained.

Exception to ruling by Mr. Andrews.

Mr. Andrews—Motion for subpœna *duces tecum* for T. H. DuPuy, for stock register and ledger of 1874.

Subpœna refused. Exception by Mr. Andrews.

Motion for subpœna *duces tecum* to T. H. DuPuy, to bring any record of proxies to vote on stock of 1874.

Subpœna refused. Exception taken.

Motion for Stock Register of 1875.

Refused, and exception taken.

Same motion by Mr. Andrews as to proxies of 1875, and same ruling and exception.

Thereupon reference adjourned until to-morrow morning at eleven o'clock.

JAMES GILLETTE, Special Master.

SUBPŒNA.—In the Circuit Court of the United States, Fifth Judicial Circuit and Southern District of Alabama.

W. B. Duncan, et al., Trustees, vs. The Mobile and Ohio Railroad Company, et als.

To T. Haskins DuPuy:

You are hereby summoned to appear before the undersigned Special Master, in the above entitled cause, at his office, in the U. S. Court Room, in the City of Mobile, on Tuesday, the 17th day of April, at 12 M., then and there to testify, and the truth to say, according to your knowledge, in the matter of W. B. Duncan and A. F. Elliot, trustees, vs. The Mobile and Ohio Railroad Company and others, wherein Messrs. Moran Brothers, of New York City, have filed objections to the bonds known as Tennessee Substitution Bonds.

And you will bring with you "all the books and papers, with the minutes of the Board of Directors of said corporation defendant, in reference to the transaction whereby the said Company took up the bonds issued in aid of the construction of its railroad by the State of Tennessee, and substituted therefor its own bonds, commonly called Tennessee Substitution Bonds."

Attest this 16th April, 1877.

JAMES GILLETTE, Special Master.

Received Marshal's office, 16th April, 1877. T. Haskins DuPuy not found in my district.

GEORGE TURNER, U. S. Marshal.
By F. Y. ANDERSON, Deputy.

SUBPŒNA.—Circuit Court of the United States, Southern District of Alabama, In Equity.

Wm. Butler Duncan et al., trustees, vs. The Mobile and Ohio Railroad Company et al.

To Wm. H. Pratt, President of the Bank of Mobile:

You are hereby summoned to appear before the undersigned Special Master in the above entitled cause, at his office in the United States court room, in the Custom House, in the city of Mobile, at 11 A. M., on Wednesday, April 18, 1877, then and there the truth to say in the matter of the objections of L. J. Belloni, in the above entitled cause.

And you will bring with you all entries and extracts from the books and papers of the said bank (or copies of the same) of the accounts with the Mobile and Ohio Railroad Company for the year 1874, in reference to deposits of moneys and warrants of the Mobile and Ohio Railroad Company or any one acting for it, and also of the charges against said deposits and warrants in course of account.

Attest, this 17th April, 1877:

JAMES GILLETTE, Special Master.

Received Marshal's Office April 17th, A. D. 1877, executed upon the 17th day of April, 1877, by serving a copy of the within subpœna upon W. H. Pratt.

GEORGE TURNER, United States Marshal.
By F. Y. ANDERSON, Deputy.

TUESDAY, April 17, 1877.

The session resumed at 11 A. M., pursuant to adjournment. Present, the Master and Counsel, as of the days previous.

E. L. Andrews—Motion that evening sittings of this reference be held for the remaining four days of the time and that the sessions commence at 10 o'clock A. M., and that subpœna duces be returnable at 9 o'clock for the convenience of examining books. I make the above motion distributively.

Mr. Stewart—We object to it, having other matters to attend to.

The Master declines to make any order now, but will regulate the proceedings from day to day as the circumstances may seem to require.

E. L. Andrews—Motion for a subpœna duces to W. H. Pratt, President of the Bank of Mobile, to produce coupon accounts for 1874 of First Mortgage Sterling Bonds, of the Mobile and Ohio Railroad Company, with Duncan, Sherman & Co., and with the Mobile and Ohio Railroad Company.

Mr. Stewart—We deny the authority to make such order, but as it does not concern us we object only on account of the costs of this order.

Subpœna granted.

E. L. Andrews—Motion for subpœna duces to T. Haskins Du Puy, or A. L. Willoughby, or C. A. Wetton, to produce the original or orignal entries of the copy or purported copy of the account of the Mobile and Ohio Railroad Company with Duncan, Sherman & Co., commencing on the debit side of the account with April 16, 1873.

(Account referred to is Exhibit D to C. A. Wetton's testimony filed. See Part 4, last pages.)

Mr. Stewart—Objected to, because a copy under oath has been called for and furnished, and because the evidence would be incompetent and irrelevant, not within the issue on hearing.

Objection sustained.

Mr. Andrews offered a motion to the Master to state reasons. The Master declined to make other entry than that already made.

Mr. Andrews—Motion for subpœna duces to Mr. Willoughy and Mr. C. A. Wetton returnable forthwith, for the same papers and books called for by the subpœna to Mr. Du Puy as to the Tennessee matter, which subpœna has been returned not found as to him.

Mr. Andrews moves that all other subpœnas moved for to Mr. Du Puy, be made to apply to Mr. Willoughby and Mr. Wetton.

Mr. Stewart objects to the granting of said motion, the books and papers called for having already been produced.

Motion granted.

A. L. Willoughby, a witness, called at the instance of the objecting bondholders, being sworn, says in answer to questions by Mr. Andrews.

Q. If you desired to look at the books called for by the subpœnas for any purpose connected with the business of the railroad, could you not obtain access to them?

A. I could.

Q. You will please obtain such access to them and bring copies of the accounts?

A. I am forbid by Mr. Du Puy from making any copies or taking any books out of the office without his orders, as my superior officer. I am a subordinate officer. This is a standing rule.

Q. Is Mr. Du Puy in the city of Mobile?

A. I think not.

Q. Where do you think he is?

A. I think he is in New Orleans, as he told me two or three days ago that he expected to go there.

Q. When did he go there, or when did he leave Mobile?

A. I think he left on the morning train.

Q. Who represents Mr. Du Puy in his relations with the Mobile and Ohio Railroad during his absence from the city at the present time?

A. The General Manager being also absent from the city, no one represents him, and if he were here I do not think that Mr. DuPuy has delegated any powers.

Q. Are Duncan and Elliot, or either of them, in the City of Mobile?

A. Not to my knowledge.

Q. Are either of them along the line of the road.

A. Not to my knowledge.

Q. Do you think they are?

A. I do not. I have no knowledge.

Q. Mr. Willonghby, Mr. Duncan, and Mr. Elliot, and Mr. DuPuy, and the General Manager, being all absent, suppose you wanted instructions, which it was indispensable to have, without delay, to whom would you go in the City of Mobile to get those instructions?

A. I would not go to any one.

Q. Do I understand you, that if the business of the road were suffering for want of directions from any of its officials, and you could not otherwise get those directions, that you would not go to any one in the City of Mobile to get them?

A. In my department. I do not know of any one in the City of Mobile that I could get instructions from in my department.

Q. What books are kept in your department?

A. I keep the cash book as Treasurer, and the minute and stock books as Secretary of the Company.

Q. Then will you or not produce before this Master, at two o'clock to-day, the minute book containing the entries for 1874, and the cash book for the same time, it appearing by your own testimony that you are now the superior officer in the City of Mobile in charge of those books, if you are subpœnaed so to do?

A. I cannot do so for reasons already given.

Q. Who is the chairman of the Executive Committee of the Board of Directors of the Mobile and Ohio Railroad?

A. There is no Executive Committee.

Q. Who is next in order of the administration of the corporation after the Vice President?

A. I should judge that the chairman of the Finance Committee, who is W. H. Pratt.

Q. Who is next in rank under the present administration after the General Manager?

A. The heads of departments.

Motion by E. L. Andrews for subpœna *duces tecum* to Wm. H. Pratt and C. A. Wetton for the Tennessee Substitution papers called for in the subpœna heretofore granted to T. H. DuPuy. Subpœna granted.

On motion, recess taken for one hour, until 2 P. M.

SUBPŒNA.—Circuit Court of the United States, Southern District of Alabama.

Wm. Butler Duncan, et al., vs. The Mobile and Ohio Railroad Company, et al.

To Wm. H. Pratt, Chairman Finance Committee; and to C. A. Wetton, Auditor, M. & O. R. R. Co.:

You are hereby summoned to appear before the undersigned, Special Master in the above entitled cause, at his office, in the U. S. Court Room, in the Custom-house, in the City of Mobile, at 2 P. M. this day, then and there the truth to say, in the matter of the objections of Moran Brothers in the above entitled cause.

And you will bring with you "all the papers and books, with the minutes of the Board of Directors of said corporation defendant, in reference to the transaction whereby said Company took up the bonds issued in aid of the construction of its railroad by the State of Tennessee, and substituted its own bonds, commonly called Tennessee Substitution Bonds."

Attest, this 17th April, 1877.

JAMES GILLETTE, Special Master.

Received Marshal's office April 17, 1877, and executed same day by serving a copy on W. H. Pratt and C. A. Wetton. GEORGE TURNER, U. S. Marshal.

By C. B. JOHNSTON, Deputy.

2 o'clock P. M.

C. A. Wetton, witness called for objecting bondholders and sworn, testifies:

Q. Have you got the books and papers named in the subpœna with you?

A. I have not. They are not in my custody.

Q. Have you access to them, or any of them?

A. I have not.

Q. What books of the Mobile and Ohio Railroad have you access to?

A. General books; general ledger.

Q. Why have you not produced the general ledger containing entries as to this Tennessee Substitution matter?

A. I have no authority to produce any of the books in my office; they are simply in my care.

Q. By what right do you disobey the mandates of the Circuit Court of the United States by refusing to produce books in your care?

A. The subpœna served upon me calls for all the papers with the minutes of the Board of Directors. Such books, and papers and minutes are not in my care.

Q. You notice a comma after the word books; do you mean to say that you understood the subpœna to apply only to the minutes of the board?

A. No.

Q. What did you understand?

A. I understood it to mean all the papers and books with the minutes; none of those are in my care.

Q. Is not the General Ledger in your care; is not that a book?

A. It is, but it contains only the account—a transcript of which the Master has.

Q. Then it appears you did understand that the word hooks included a ledger?

A. I supposed it did not.

Q. You understand we want a ledger, and a general ledger, as well as particular ledgers, and we want the accounts of R. T. Wilson & Co., and R. T. Wilson and A. Iselin & Co. and A. Iselin with the Mobile and Ohio Railroad Company in the years 1870, 1871 and 1872.

A. I do.

Q. When will you produce before this Master those books or papers containing the original entries in these accounts, and such entries as may be made in those ledgers, or will you produce them at all?

Mr. Stewart—Question objected to. On a former occasion those books were produced here and accounts furnished. We recognize no right to have them called for again. The accounts having been already before the court, and for the further objection that there is no right to ask a witness what he will do on a future occasion. It will be sufficient time when a subpœna requires him to answer.

Special Master—Mr. Wetton, what we want is, all information in your custody or control relative to the Tennessee Substitution matter. You will therefore produce either the original entries and accounts or copies of the same—if copies, to be sworn to by you—at your earliest convenience.

E. L. Andrews moves, that the Master having instructed the witness that we need only produce sworn copies of the accounts, that the instruction be altered to require the original books and papers.

Motion refused.

Mr. Andrews—Exception and objection taken.

The Witness—I decline to answer what I will do in the future, as I am guided by the orders of my superiors.

The Master directs the witness to produce from his records, transcripts of all accounts and information pertaining to the transaction by which the bonds of the Mobile and Ohio Railroad Company were substituted for the bonds of the State of Tennessee, said accounts to be produced tomorrow at 12 M.

W. A. Garnett being sworn, examined by E. L. Andrews on behalf of L. J. Belloni, objector.

Q. You purchased Mobile and Ohio Railroad Sterling Bonds subsequent to November 1, 1874?

A. Yes.

Q. You recollect about what time in November?

A. I could not give specific dates.

Q. Have you purchased any subsequent to November, 1874?

A. Yes.

Q. Were the coupons which fell due on May 1 and November 1, 1874, attached to those bonds which you purchased after November 1, 1874?

A. My recollection is that they were not.

Q. Did you purchase any of those bonds on account of other persons?

A. Yes.

Q. If you have no objection, will you give me their names?

A. It would be almost impossible without looking at my books.

Q. Will you please look at those books and let us know to-morrow.

A. Yes.

Q. Do any of the persons for whom you purchased those bonds subsequent to those dates, now hold them?

A. I don't know.

Q. Can you find out?

A. I have no means.

Witness discharged until to-morrow.

Wm. H. Pratt duly sworn, examined by Mr. Andrews on behalf of objecting bondholders.

Q. Judge Jones informed the Master that you were going out of the city, will you have those accounts with Duncan, Sherman & Co. and with the Mobile and Ohio Railroad Company, called for by the subpœna, here to-morrow?

A. No. I won't furnish the accounts unless I am present. There is no one in the bank that can explain the accounts as truly as I can. I am satisfied there is no one in the bank who is capable of explaining them. The present cashier and book-keeper were not here at that time.

Q. We don't ask for any explanation of the accounts, 709 we merely wish the accounts themselves; with this understanding will you not have them to-morrow?

A. I will remain to-morrow, and on that condition will submit the account.

Q. Have you the books and papers called for by the subpœna of this date, in reference to the Tennessee Substitution matters.

A. I have not. I have no control over them.

Q. You sign checks in the absence of Duncan, Elliot and Du Puy, do you not?

A. I have signed checks very rarely, but it is not customary. I think in all the three years I have, perhaps, signed half a dozen. I may have signed one or two for Mr. Du Puy as agent for Duncan & Elliot, the receivers, only in the absence from the city of the agent of the receivers.

Q. You have access to these books?

A. I have not sought access to them. I suppose as a director I might have access to them, but I suppose even then the Vice President might refuse to show them even to a director, except to a committee appointed by the whole Board.

The witness states that, on further reflection, he will decline to furnish any accounts from the bank.

Q. At whose suggestion have you so suddenly changed your mind in reference to furnishing the accounts?

A. On my own. I have talked with no one. It did not occur to me at the time that the by-laws prohibited me from furnishing such accounts.

Q. Then you refuse to obey the subpœna?

A. To that extent I do.

E. L. Andrews moves the Master that he instruct Mr. Pratt to furnish the papers called for by the subpœna.

Thomas P. Miller, a witness called for L. J. Belloni, sworn and examined, says :—

Q. Did you purchase any of the First Mortgage Sterling Bonds Mobile and Ohio Railroad Company after 1st November, 1874?

A. Yes, as late as 1875.

Q. Those that you bought after November 1, 1874, did they have the coupon as late as November, 1874, attached to the bond?

A. Not usually. As a general rule they were cut off.

Q. Did you not buy them for other persons?

A. We generally bought them on orders, but rarely though.

Q. Can you remember the names?

A. We kept no particular record.

Q. Do you remember the price of Mobile and Ohio Railroad First Mortgage Sterling Bonds, without the coupons, for May and November, 1874?

A. They were about 90 in 1874—that's my recollection; they might have got under 90 toward the end of the year.

Q. What was the price of them in May, 1875?

A. After it became known that the road could not pay interest they fell down at first to 50, afterwards 45, then 40, and down as low as 30. It took about a year or a year and a half before they reached 30 after falling to 50.

Cross-examined by Mr. Stewart :

Q. Has there not been a terrible panic in the money market in this country of late, and about when did it occur?

A. It commenced in the fall of 1873.

Q. Was there not a general depreciation and great fall in stocks and bond markets of all kinds?

A. Yes.

Q. Was not the depression very great in 1875 and 1876?

A. My recollection is that there was a great reaction in 1874. The greatest depression was in 1873.

711 Q. Was there not a great depreciation in value of all kinds of stocks, bonds and values in 1875, from what they had been before?

A. My recollection is that there was no great depression in railroad bonds and stocks except the Mobile and Ohio Railroad. I remember, in the fall of 1873 the Mobile and Ohio Railroad bonds were down to about 70, and in 1874 they reacted favorably.

Q. Has there not been a great depression of late years in railroad bonds and stocks generally?

A. I think so.

Thereupon the reference adjourned until Wednesday, April 18th, 1877, at 11 A. M.

JAMES GILLETTE, Special Master.

WEDNESDAY, April 18th, 1877.

Reference resumed pursuant to adjournment. Present the Master and Counsel as of the day previous.

A. M. Phillipi, a witness called for objecting bondholders, sworn, testifies in response to questions by Mr. Andrews:

Q. Have you purchased Mobile and Ohio Railroad Sterling Bonds since Nov. 1, 1874, or since May 1, 1874?

A. I have no recollection; perhaps I might tell by looking at my books. I have looked at my books, and find I have purchased since 1874.

Q. Did the bonds which you purchased have attached to them the coupons of May and November, 1874?

A. No. I don't think they had any attached of 1874 at the time I purchased, which was March, 1875.

H. F. Wilson, a witness summoned in behalf of objecting bondholders, and sworn, testifies as follows:

Q. Did you purchase any First Mortgage Sterling Bonds Mobile and Ohio Railroad Company since Nov. 1, 1874?

A. Not on my own account.

Q. Then you did on account of others?

A. I acted as broker.

Q. Did those bonds have the coupons of May and November, 1874, attached?

A. As a rule I think they had all the coupons that were in default.

Q. About when did you purchase them?

A. I could not tell without looking at my books.

Q. What do you mean by saying that the bonds had all the coupons which were in default attached?

A. I mean that the unpaid coupons since the road ceased to pay interest were attached.

Q. What was the last coupon attached to the bonds?

A. I think it was May, 1875.

By Mr. Stewart:

Q. You don't know who paid the coupons of 1874, or under what circumstance they were paid?

A. No, I do not. H. F. WILSON.

Subscribed and sworn to before me this 18th April, 1877.
JAMES GILLETTE, Special Master.

John W. Miller, witness called on behalf of objecting bondholder, and sworn, testifies as follows in answer to questions propounded by Mr. Andrews:

Q. You presented coupons of the Mobile and Ohio Railroad Company for payment in 1874?

A. I presented them up to the time that the Company defaulted I think; I don't remember exactly when it was.

Mr. Stewart—We object to the examination of this witness, as he has been examined before and been discharged.

Q. Did you see any notice at the office of the Mobile and Ohio Railroad Company, in the City of Mobile, in November, 1874, in reference to the coupons of the Sterling Bonds?

Mr. Stewart—The question objected to, as the subject of presentation of coupons at that time has been previously the subject of examination of this witness.

A. I did not go to the office. We sent our coupons by same runner who took them to the office to be passed upon by Mr. Willoughby to see if they were correct, when we could get the money somewhere else.

Q. How did you know that you would not get the money for them?

A. We had the understanding that Duncan, Sherman & Co. were paying them through the Bank of Mobile. I don't know how I got the impression at the time. I suppose it was through my father.

Q. Did you hear a few moments ago said to you by Mr. Stewart, counsel here present, that you had better consult your lawyer before you furnished testimony requested by me?

A. Something to that effect. There were two persons speaking to me at the same time, and I did not catch the full sense of Mr. Stewart's remark. He said I had better consult some one.

Q. Messrs. H. Amy & Co., of New York, sent you coupons of Mobile and Ohio Railroad Company for May, 1874, for collection?

A. Yes.

Q. Is the letter now shown to you, which reads as follows:

(Copy) MOBILE, May 7, 1874.

Messrs. H. Amy & Co., New York:

Gents.—We have received your favor of the 30th with stated enclosures and note contents. The Mobile and Ohio Railroad are only paying $32.50 each gold, for ex-certificate sterling coupons.

In returns for 24 coupons, $32.50 each, $780 gold, we hand you our No. 18,497 on Germ. Am. Bank, $776 12
½ prem........ 3 88—$780
In returns for 3 coupons, $40 each.............$120 00
Less Express charges.................... 3 50—$116 50

We hand you our No. 18,502 on Germ. Am. Bank, $116.21, ¼ per ct. prem. 29, $116 50. Yours, truly,

(Signed) THOS. P. MILLER & CO.

a correct copy of a letter addressed by your firm to H. Amy & Co.?

Mr. Stewart—Objected to as relating to transactions between other parties, and not competent evidence in this transaction. We are not responsible for what may be written by outside parties to each other.

A. Yes.

JOHN W. MILLER.

Subscribed and sworn to before me this 18th day of April, 1877. JAMES GILLETTE, Special Master.

Mr. Stewart reserves the cross-examination until to-morrow.

C. A. Wetton, witness, called at the instance of objecting bondholder and sworn, says:

Q. Do I understand, Mr. Wetton, that you certify to the correctness of this paper (referring to the account marked D, to your testimony taken at previous session—Mobile and Ohio Railroad Company, in account with Duncan, Sherman & Co. for 1874)?

A. I do.

Q. Did you copy this account from the books?

A. I did not.

Q. Did you compare it with the books?

A. I did.

Q. Will you swear that all the items entered under date of December 31, 1873, are so entered under that date in the books of accounts, and if so, in which book of account?

A. They are. The General Ledger and Journal of the Mobile and Ohio Railroad Company.

C. A. WETTON.

Subscribed and sworn to before me this 18th April, 1877.
JAMES GILLETTE, Special Master.

Motion by E. L. Andrews—That under the decree in this cause, the Master requires the production to him of the various accounts and books for which he has already granted subpœna *duces* and which have not already been complied with.

715 Also, motion for subpœna *duces tecum* for the production of the telegrams and correspondence with R. T. Wilson and A. Iselin.

Also, roll with the numbers and series of Tennessee State Bonds that were deposited with the State.

And books and papers of the defendant corporation and minutes of Board of Directors, so far as the same pertain to the Tennessee matters.

Also, original accounts received from R. T. Wilson and A. Iselin.

Subpœnas granted for above and for all books, papers and records or information, so far as the same pertain to the Tennessee Substitution matters. Subpœnas returnable April 19th, at 12 M.

E. L. Andrews—Motion for the originals of the accounts transmitted by Duncan, Sherman & Co. to the Mobile and Ohio Railroad Company, in 1874 and in 1875, down to May 8th of that year.

Motion refused. Sworn transcripts of the accounts down to January, 1875, having been already furnished, the witness C. A. Wetton, Auditor of said railroad, is directed to produce sworn copies of the balance of the account to May 8, 1875, without further notice.

Wm. H. Pratt, witness summoned at the instance of objecting bondholder Belloni, appears in response to subpœna *duces tecum* with the coupon account required of him.

Q. Explain item, "November 13, by transferred from individual ledger $45,885.45."

A. That was an amount standing on the individual ledger to the credit of Duncan, Sherman & Co., deposited by the Mobile and Ohio Railroad Company, and transferred erroneously by the book-keeper to the coupon account on the general ledger. The amounts should have been held subject to the drafts of Duncan, Sherman & Co., of New Orleans. The error was corrected in the accounts sent to

Duncan, Sherman & Co. (Coupon account of Duncan, Sherman & Co. with the Bank of Mobile, filed with this testimony as Exhibit A.)

Q. You were chairman of the Finance Committee Mobile and Ohio Railroad Company throughout the months of May and November, 1874?

A. Yes.

Q. Was it intended by the directors Mobile and Ohio Railroad Company, in May and November, 1874, that any inability of the Company to pay the coupons for those periods on the First Mortgage Bonds should be publicly known?

A. I speak for myself. Of my own knowledge there was no intention to conceal it from the public. I believe it was intended it should be known.

Q. What was done (if it was intended it should be known) to make it publicly known by the directors Mobile and Ohio Railroad Company?

A. There was no publication by the press or any written notice that I am aware of.

Witness, of his own motion, states: I did advise parties who held coupons that Duncan, Sherman & Co. had authorized me to take up the coupons for account of whom it might concern.

Cross-examined by Mr. Stewart:

Q. Please state whether the bank was fully paid by Duncan, Sherman & Co. for all the coupons of those two months in 1874 taken up by the bank, and if any portion was paid by the Company?

A. The bank was provided with funds by Duncan, Sherman & Co. to pay the coupons, and none were paid by the Company.

Re-examination by Mr. Andrews:

Q. Please explain the items, "January 23, 1875, by transferred to account Duncan, Sherman & Co. $26,242.09."

A. That amount was for coupons paid, being the balance of the coupon account at that date which was charged to Duncan, Sherman & Company's private account.

Cross-examination resumed by Mr. Stewart:

Q. Please state whether the item of $45,885.45 mentioned as transferred from the Mobile and Ohio Railroad Company's account to the credit of Duncan, Sherman & Co., was for the payment of coupons, or to what business did it relate? Please explain the transaction.

A. It was not deposited for the payment of coupons. The bank had other means at hand to pay the coupons. At that very time the bank had in its possession certainly one hundred thousand dollars, if not more, of cash securities for sale for account of Duncan, Sherman & Co., with which to pay the coupons.

Q. Please state if it was not a general transfer to their credit, as frequently practiced in their accounts?

A. No. There was no other similar transaction.

Q. Please state whether it was correctly or erroneously made by the book-keeper?

A. It was erroneously made by the book-keeper.

W. H. PRATT.

Subscribed and sworn to before me this 18th April, 1877.

JAMES GILLETTE, Special Master.

Thereupon the reference adjourned until to-morrow, at eleven o'clock A. M.

JAMES GILLETTE, Special Master.

Dr. Messrs. Duncan, Sherman & Co. in Account with the Bank of Mobile. **Cr.**

COUPON ACCOUNT—CURRENCY.

Date		Amount
874.		
ay 7.—To	Coupons forwarded by Pres't, 2d May	$ 31,804 00
	do. do. do. 5th May	13,904 00
	do. do. (letter 2d inst.,)	257 07
9.—	do. do. President, May 8th	31,696 50
	do. do. do. do.	6,696 00
13.—	do. do. per express	10,988 50
14.—	do. do. do.	3,120 00
19.—	do. do. this day	1,770 00
23.—	do. do. per express	1,628 00
28.—	do. do. do.	1,773 00
ne 11.—	do. do. do.	5,000 00
18.—	do. do. do	2,833 00
ly 18.—	do. do- do.	1,100 00
p. 22.—	do. do. do.	488 00
ov. 6.—	Gold coupons paid 10 per cent. prem. $4,127.50—412.75	4,540 25
6.—	Old coupons Savings Bank	7,000 00
9.—	154 coupons at $40 each	6,160 00
	160 coupons at $40 each	6,400 00
11.—	M. & O. R. R. coupons paid to Saturday night, November 7th	39,527 75
	do. do. do. November 9th	8,833 00
	do. do do. do. 10th	4,555 00
12.—	Gold coupons paid 10¼ per cent. prem. on same, $3,607.50—369.77	3,977 27
14.—	M. & O. R. R. coupons	1,956 00
17.—	do. do.	1,648 00
18.—	Gold coupons paid 11 per cent. prem. on same, $1,690.00—185.90.	1,875 90
24.—	M. & O. R. R. charged	1,436 00
		$200,967 24
874.		
ov. 24.—To	balance this day	$ 19,809 37
ec. 3.—	Coupons M. & O. R. R. Co.	1,608 50
28.—	do. do.	1,015 50
28.—	Gold coupons and 12½ per cent. prem. on gold, $292.50—35.10	327 60
875.		
n. 4.—	Coupons M. & O. R. R. Co.	3,120 00
8.—	do. do.	288 00
8.—	Gold coupons and 12½ per cent. prem. on gold, $65.00—8.12	73 12
		$26,242 09
875.		
b. 19.—To	Coupons M. & O. R, R. Co.,	$ 476 00
	2 gold coupons at $32.50 each, and gold @14¾ pr ct. prem., $65—$9.58	74 58
ch. 8.—	20 do. do. do. do 15 do. $650—$97.50	747 50
	6 coupons at $40 each,	240 00
		$ 1,538 08

Date		Amount
1874.		
May 2.—By	C. V. Banta, Cashier Merchants Bank, May 2d,	$ 30,000 00
5.—	do. do. do. do.	10,000 00
8.—	do. No. 7,	15,000 00
9.—	Wm. H. Pratt, No. 8, on you	25,000 00
	do. No 9, do.	4,357 57
13.—	C. V. Banta, Cashier, No. 10	10,988 50
14.—	do. do. No. 11	3,120 00
16.—	error in coupons 1st and 2d May	120 00
16.—	error in 7 coupons 5th May at $3.50	24 50
18.—	error in coupons 8th May	7 00
19.—	13th favor C. V. Banta, Cashier,	1,770 00
23.—	15th do. do. do.	1,628 00
28.—	18th do. do. do.	1,773 00
June 11.—	Wm. H. Pratt on you	5,000 00
19.—	24th favor C. V. Banta, Cashier	2,833 00
July 18.—	26th, I. C. DuBose, President *pro tem.* on you	1,100 00
Nov. 4.—	currency per W. B. Duncan	20,000 00
13.—	transferred from Individual Ledger	45,885 45
19.—	deposit by Mobile and Ohio Railroad Co.	2,550 85
	Amount to balance	19,809 37
		$200,967 24
1875.		
Jan. 23.—By	transferred to account of Duncan, Sherman & Co.	$ 26,242 09
		$ 26,242 09
1875.		
Mch. 9.—By	Duncan, Sherman & Co.	$ 1,538 08
		$ 1,538 08

Filed as Exhibit A to testimony of Wm. H. Pratt, April 18th, 1877. JAMES GILLETTE, Special Master.

United States Circuit Court, Fifth Circuit, Southern District of Alabama, In Equity.

WILLIAM BUTLER DUNCAN, ET AL.,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET AL.

To T. Haskins Du Puy: You are hereby summoned to appear before the undersigned, Special Master in the above entitled cause, at his office, in the United States court room, Mobile, on Thursday, April 19, 1877, at 12 M., then and there to testify and the truth to say according to your knowledge in the above entitled cause, wherein Messrs. Moran Brothers, of New York city, have filed objections to the bonds known as Tennessee Substitution Bonds.

And you will bring with you all the books and papers of the Mobile and Ohio Railroad Company, with the minutes of the Board of Directors of said defendant corporation, "in reference to the transaction whereby the said Company took up the bonds issued in aid of the construction of its railroad by the State of Tennessee, and substituted therefor its own bonds, commonly called Tennessee Substitution bonds."

Also, "telegrams and correspondence with R. T. Wilson and A. Iselin, or their firms, or with W. B. Duncan or his firm, on same subject." Also, "roll with numbers and series of Tennessee State Bonds that were deposited with the State."

Also, "original accounts which were received from said Iselin or Wilson," and all books, papers or information in your custody or control, so far as the same pertain to the said Tennessee Substitution matter.

JAMES GILLETTE, Special Master.

April 18, 1877.

MOBILE, Ala., April 18, 1877.

The United States Marshal being absent from the city, Albert Ewing is hereby appointed Special Marshal to execute process.

JAMES GILLETTE, Special Master.

Received within subpœna this day at 3 P. M., and executed same at 4 P. M., by leaving copy with T. H. Du Puy.

ALBERT EWING, Special Deputy Marshal.

United States Circuit Court, Fifth Judicial Circuit and Southern District of Alabama, In Equity.

WILLIAM BUTLER DUNCAN, ET AL.,

vs.

THE MOBILE AND OHIO RAILROAD CO., ET AL.

To T. Haskins Du Puy: You are hereby summoned to appear before the undersigned at his office, in the United States court room, Mobile, on Thursday, April 19th, at 12 M., or as soon thereafter as practicable and not later than 3 o'clock P. M., then and there to testify and the truth to say according to your knowledge in the above entitled cause, wherein L. J. Belloni, Jr., of New York, has filed objections to the First Mortgage Coupons of 1874, held by Alexander Duncan and others. And you will bring with you—

1. The books and papers containing "the resolutions passed in 1874, probably between March and May, 1874, surrendering all or nearly all the securities then held by the Mobile and Ohio Railroad Company to Duncan, Sherman & Co., or Wm. Butler Duncan, or Wm. H. Pratt, or any other person or persons acting on behalf of Duncan, Sherman & Co.," or such portions of the same as relate to said matters.

2. Also, all books and papers containing "entries relating to First Mortgage interest or coupons (sterling

bonds), between the Mobile and Ohio Railroad Company and Duncan, Sherman & Co., in 1874." or such portions of same as relate to such matters.

And, also, any books, papers and records, in your charge or under your control, so far as the same pertain to the First Mortgage Coupons of the year 1874.

JAMES GILLETTE, Special Master.

Attest April 19, 1877.

MOBILE, Ala., April 19, 1877.

Received within subpœna this day and executed same at 11 A. M., by serving copy on T. Haskins Du Puy.

ALBERT EWING, Special Deputy Marshal.

THURSDAY, April 19th, 1877.

Reference resumed pursuant to adjournment. Present, the Special Master and Counsel, as of the days previous; also E. H. Grandin, of Counsel for Second Mortgage Bondholders and trustees.

N. Harleston Broun, a witness, summoned by E. L. Andrews, apppeared and was discharged.

John W. Miller, witness called yesterday and examined by E. L. Andrews, recalled and cross-examined by Mr. Stewart:

Q. In the letter produced by you we find the expression that "the Company are only paying $32.50 gold for the Ex-certificate Sterling Coupons." Do you undertake to say that the Company did pay any of the coupons due 1st May, 1874, and 1st November, 1874; and do you not know that those coupons were not paid by the Company?

Mr. Andrews—Objected to on the ground that it assumes that the witness has stated that the Company had paid the coupons, which he has not stated. He was called merely to identify a letter.

Answer taken subject to objection.

A. They were not paid by the Company; the Bank of Mobile paid those coupons for Duncan, Sherman & Co. They, Duncan, Sherman & Co., held the coupons as collateral for the payment, as I understood; I did not write the letter. I did not care to sit down and write the explanation to Amy & Co.

Q. I understand you to state that that was the information you had at that time?

A. Yes.

Q. Please state how you obtained that information, and from whom?

A. I had a conversation with the Teller of the Bank of Mobile, and asked him how he reimbursed himself for these coupons. He said by drawing on Duncan, Sherman & Co., of New York, and he sent them the coupons.

Q. Please state whether the house of T. P. Miller & Co., Bankers, at Mobile, did not pay a large sum in gold on those coupons of May and November, 1874, and if so, at whose instance and under what arrangement?

A. We agreed to furnish the Bank of Mobile so much gold to pay these coupons. When parties presented coupons to the Bank of Mobile, payable in gold, the teller of the bank gave his check on us for the gold. These coupons referred to above were paid in that way by check on ourselves.

Q. Was not that gold paid at your bank or office?

A. Certainly. As soon as these checks amounted to $3,000 or $4,000 they paid us back in currency.

Q. Was not Thos. P. Miller, your father, cognizant of the facts you have stated as well as yourself, and did he not have the same information?

A. He was. He made the arrangement with the Bank of Mobile to furnish the gold.

Re-direct examination by E. L. Andrews:

Q. Why did you not write the explanation, as you have called it, in answer to the question by Mr. Stewart, to Amy & Co?

A. We received Mobile and Ohio Railroad Company's coupons from thirty or forty different parties; I don't recollect how many. I did not care to write to all our correspondents this explanation, as it would take too much time.

Q. Then I understand you, that no such explanation was written by your house to any of the parties for whom you collected coupons?

A. I have no recollection of seeing any such letter. I usually saw pretty much all the letters that were written.

JNO. W. MILLER.

Subscribed and sworn to before me this 19th April, 1877.

JAMES GILLETTE, Special Master.

O. F. Cawthon, a witness called at the instance of objecting bondholder, and sworn, testifies as follows:

Examination by Mr. Andrews.

Q. You purchased First Mortgage Sterling Bonds Mobile and Ohio Railroad Company after November 1st, 1874?

Mr. Stewart—Objected to as irrelevant.

A. That is my recollection; it might have been in 1875.

Q. Did they have the coupons for November and May, 1874, attached to the bonds when you purchased them?

Mr. Stewart—Question objected to as irrevelant.

A. My recollection is that they did not.

Q. Do you still hold those bonds?

A. No.

Q. Who did you sell them to?

A. I don't know. I sold them through a broker, Mr. Garnett.

O. F. CAWTHON.

Subscribed and sworn to before me April 19, 1877.

JAMES GILLETTE, Special Master.

Testimony of George W. Dougherty, Charles E. Thorburn, J. N. Petty, and Caleb Oliver, witnesses on behalf of Objector Belloni, and of W. B. Duncan, witness in support of claim of Alexander Duncan, taken in New York city, before E. L. Owen, United States Commissioner, received by mail, published and filed.

T. Haskins Du Puy, a witness, summoned in behalf of objecting bondholders, Belloni and Moran, sworn and examined, says in answer to questions propounded by Mr. Andrews:

Q. Have you produced the books or any of them called for by the subpœnas *duces tecum?*

A. I have the minute books here, and will produce any other books and papers that bear upon the case as soon as I am informed what books and papers you want. And I would suggest, to facilitate the examination and to give you all the information you want, that if you will adjourn the examination to my office at the railroad, it will facilitate matters very much. The information called for from me is not in my own knowledge, having happened long before my connection with the road. I know nothing about many of the matters called for, and cannot find them in the mass of accumulated papers.

T. HASKINS DU PUY.

Minute book examined by E. L. Andrews and the witness, and extracts furnished as desired, being extracts for the years 1870, 1871, 1872, 1873, 1874 and 1875.

Extracts from the Minutes Mobile and Ohio Railroad Company.

Page 194. December 14, 1870.

On motion of Col. Dunn, the Board went into an election for one Director, to fill the vacancy occasioned by the death of James M. Muldon, whereupon Wm. Butler Duncan, of New York, was unanimously elected.

Page 195. December 14, 1870.

On motion of Col. Dunn, it was

Resolved, That the President and Col. R. W. Smith be appointed to meet and confer with Charles Walsh, Esq., in reference to a plan to retire the Company's debt to the State of Tennessee, and to report the result to this Board. At the suggestion of the President, Col. Dunn was added to the committee.

Mobile, December 14, 1870. **Page 195.**

Debt due the State of Tennessee. Committee to confer with Charles Walsh on the subject.

On motion of Col. Dunn, it was

Resolved, That the President and Col. R. W. Smith be appointed to meet and confer with Charles Walsh, Esq., in reference to a plan to retire the Company's debt to the State of Tennessee, and to report the result to this Board. At the suggestion of the President, Col. Dunn was added to the committee.

Mobile, February 8, 1871. **Page 202.**

Committee to confer with C. Walsh.

The committee who were appointed to confer with Chas. Walsh, Esq., reported that they had done nothing yet, that Mr. Walsh thought the time inopportune.

Mobile, April 21, 1871. **Page 219.**

Col. Dunn offered the following preamble and resolutions, which were adopted:

Regarding the debt due the State of Tennessee.

Whereas, Under and in pursuance of the laws of the State of Tennessee, said State is now vested with a lien on all that portion of the Mobile and Ohio Railroad lying and being within the limits of said State, to secure the payment by the said Company of an indebtedness of sixteen hundred and eighty-four thousand, eight hundred dollars ($1,684,800), for and on account of bonds of said State heretofore issued to said Company under and in pursuance of the laws thereof as aforesaid, and which said lien is in effect, and in fact, a first lien or mortgage on that portion of the road lying within the State of Tennessee, and

Whereas, This Company is authorized by the laws of said State to pay said indebtedness in the bonds thereof in such amount, and at such times as may be practicable, and are further authorized to issue bonds of the Company of equal amount and denomination with the bonds of said State as may be paid, and delivered up to the Comptroller thereof for cancellation in pursuance of said laws, which bonds of this Company so to be issued to be a lien according to said laws of Tennessee pro rata in account, and of equal validity and effect with the unretired part of said indebtedness to said State upon the railroad, and all the property, franchises, fixtures and material within the State of Tennessee.

Resolved, therefore, That for the purpose of raising the money necessary to purchase said bonds of the State of Tennessee, the President of this Company be, and he is hereby authorized for and in the name of the Company, to make and issue sixteen hundred and eighty-four bonds of this Company, bearing date the first day of May, 1871, to be signed by the President and Treasurer of the Company, and sealed with the seal of the Company. Each of said bonds to be for the sum of one thousand dollars, payable in the gold coin of the United States to the bearer thereof, at the office of the agents of the Company in New York, on the first day of July, 1896, with interest thereon at the rate of seven per cent. per annum, payable at the office of the agent of the Company in New York, in the gold coin of the United States, semi-annually, to-wit: On the first days of January and July of each year, until the maturity of said bonds, for which interest coupons, to be signed by or for the Treasurer, shall be attached to each of said bonds.

Resolved, Second, That to secure the punctual payment of said bonds and coupons, the President of this Company for, and in its name be, and he is hereby authorized to convey all that portion of the road with all its property, franchises, fixtures and materials derived from, or lying, or being within the limits of the State of Tennessee, to such person or persons as he may select, as trustees, with power to them, or any one, or more of them, upon default in the payment of said bonds or coupons, or any of them for six months after maturity, to sell said property or any part thereof, at public auction for cash, and apply the proceeds thereof to the payment first, of the expenses of said sale, and then of said bonds equally and rateably, and on any such default, the whole of said bonds shall become presently due and payable.

The true intent and meaning of said bonds and of said conveyance, being to create an indebtedness of said railroad company and to secure the same by a lien or mortgage in substitution for and in continuance of the existing indebtedness of said Company to said State of Tennessee, and of the lien of said State to secure the same.

The following preamble and resolution was unanimously adopted:

Page 223.

Regarding the issuing of Bonds in substitution of Tennessee debt.

MOBILE, May 25, 1871.

Whereas, At sundry times heretofore to enable this corporation to iron, equip and complete its line of railway through the State of Tennessee, said State of Tennessee, under and by virtue of its General Internal Improvement laws, and of other acts emanating and supplementary thereto, theretofore passed, and then in full force, loaned to this Company, or has advanced for its benefit, bonds of the said State of Tennessee, to the aggregate sum of one million, six hundred and eighty-four thousand, eight hundred dollars ($1,684,800.00) principal now due, to said State of Tennessee, whereof payment and of accruing interest was to be made by this Company as the same matured; and for the security of which, payments of principal and interest, a lien was reserved to said State upon the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the Company, as incident to, or necessary for its business, and all depots and depot stations, and all the property and assets attached thereto or belonging to said Company, lying within the State, with power to seize, and in default of payment of the principal, to sell in the nature of a mortgage lien, as appears by reference to the said Statutes of the State of Tennessee; and,

Whereas, By act of the said State of Tennessee, Chap. XXXVIII, passed at the second session of the Thirty-fifth General Assembly of the State, entitled "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, it is among other things enacted, "That any person or corporation may, with the consent of the Board of Directors of any railroad company so having received aid under said General Internal Improvement Law, passed 11th February, 1852, and the amendments thereto, pay off the indebtedness of such railroad company to the said State in the mode and manner therein provided, and with the consent of such railroad company upon such payment be subrogated to all the lien, or liens, which the State of Tennessee had, or has upon said railroad, or its property, and have the same right to enforce the same, which the State of Tennessee had.

Whereas, This corporation is desirous to avail itself of the provisions of said law, and return to the said State of Tennessee the like amount of bonds of said State as have heretofore been loaned to it, or advanced for its benefit, by an issue of its own bonds to be exchanged for said State bonds, with the holders thereof, and at the same time, to secure to the holders of said Substituted Bonds, in good faith, all the protection and security which the holders of said original State bonds might or could have by virtue of the laws of the said State of Tennessee, were no change made in the form of security held by them according to the true intent and meaning of the act passed February 25, 1869.

See alteration on page 234 in place of these lines.

Therefore, be it

Resolved, By the Board of Directors of the Mobile and Ohio Railroad Company, as follows:

First, The President of the Company is hereby authorized and empowered, to cause to be prepared and issued under the seal of this Company, bonds of this Company, to the amount of one million, six hundred and eighty-five thousand dollars ($1,685,000,) the same to be signed by the President, or in his absence, by one of the Vice Presidents, and countersigned by the Secretary and Treasurer.

Said bonds to be made payable in gold coin of the United States, in the city of New York, or in the city of London, at the option of the holders: to be each for the sum of one thousand dollars, or two hundred and five pounds sterling, and payable on the first day of July A. D., 1901. Said bonds to bear interest at seven per centum per annum, payable semi-annually on 1st January and July in each year, at New York or London, at the option of the holder, and for which interest coupons, or interest warrants, are to be attached to said bonds.

Second, That William Butler Duncan, Adrian Iselin and Richard T. Wilson, their survivors and survivor, are hereby declared the agents of this Company to effect the substitution of its said bonds, as above authorized, in place of said bonds of the State of Tennessee, for the purposes and objects declared in the preamble to these resolutions. And upon, and from and after such substitution, and as rapidly as the same is effected, the said Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, their survivors and survivor, and their successors, are hereby declared to be holders of said bonds, and are hereby authorized to defend and protect the rights conferred on the holders of said bonds by the said acts and laws of the said State of Tennessee, and hereby acknowledged and recognized. In case of the death, or resignation of any of said trustees, the vacancy shall be filled by the joint appointment of the remaining trustees, and the President of the Mobile and Ohio Railroad Company, with the approval of its Board of Directors, and if all become incapable of acting, new trustees are to be appointed by the Company.

Third, This Company does hereby declare, that it does and will at all times, acknowledge and recognize the bonds herein authorized to be issued, when so substituted in the room and place of the said bonds of the State of Tennessee, in manner herein and by said act provided, as entitled to, and in fact being a lien in the nature of a first mortgage upon all the property of this Company in the said State, the same precisely as is now declared to exist in favor of the said State of Tennessee under and by virtue of the Statutes thereof, in pursuance of which the said loan and advance of State bonds was made to the Company. And this Company does hereby covenant to, and with the said trustees, their survivors, survivor and successors, that it will in good faith do, and perform, all things, acts and deeds necessary, and proper, and which it may be reasonably requested to do, for the protection of the rights of the holders of said Substituted Bonds and of said trustees for their benefit, according to the true intent and meaning of the said acts and laws of the State of Tennessee hereinbefore referred to and of these resolutions.

And further, that this Company shall and will annually hereafter, from and after the 1st day of April, 1873, within three months thereafter, and during each year while said bonds herein authorized are running to maturity, provide, and set apart from the earnings of the Company, a fund of at least one per centum of the amount of said bonds, and will annually faithfully apply said sum of money to set apart as a sinking fund to the purchase and gradual retirement of said bonds, and on or by the 1st day of April, 1874, and every year thereafter till said bonds are fully retired, will furnish to said trustees evidence of the performance of this stipulation as may be agreed on.

Resolved, That the President of this Company be, and he is hereby directed, under its corporate seal, to execute and deliver to said William Butler Duncan, Adrian Iselin and Richard T. Wilson, as trustees aforesaid, its deed for the uses and purposes herein declared, and for the effectual protection and security of the holders of the bonds hereby authorized to be issued, according to the true intent and meaning of these resolutions.

Indenture with Messrs. Duncan, Iselin and Wilson, Trustees.

This INDENTURE, made this between the Mobile and Ohio Railroad Company of the first part, William Butler Duncan, Adrian Iselin and Richard T. Wilson, of the City and State of New York, their survivors and survivor, and successors, of the second part, and the holders of the bonds issued by said party of the first part, and herein described of the third part,

See amendment on page 234 in lieu of sentence included in brackets.

Witnesseth, That *whereas,* under the General Internal Improvement Laws of the State of Tennessee, passed 11th February, 1852, and the acts amendatory thereto, the party of the first part has become liable to the State of Tennessee in the sum of one million six hundred and eighty-four thousand eight hundred dollars ($1,684,800.00), being the amount of bonds of said State loaned to said party of the first part (or advanced for its benefit, and moreover is under obligation to provide for the payment of the interest upon said bonds as the same accrues, as well as for payment of the principal thereof); and *whereas,* by act of the said State of Tennessee, entitled "An act to liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25, 1869, the railroad companies to receiving aid from the State of which the party of the first part was one, are authorized to issue their own bonds to an amount equal to the bonds so received from said State, and are authorized to use said bonds as to retire, and return to said State, bonds of said State of Tennessee to an amount equal to that loaned to said Company or advanced for its benefit, for the security of which new issue of bonds, the holders thereof, it is by said act declared, shall, with the consent of such railroad company, be entitled to all the lien rights and privileges reserved to the said State for its own security and protection.

And whereas, The party of the first part has accepted the terms and provisions of said act, and has, for the purpose aforesaid, caused to be issued its bonds, dated to the extent of one million six hundred and eighty-five thousand dollars ($1,685,000), and numbered from one to sixteen hundred and eighty-five (1685) inclusive, each for one thousand dollars, payable in gold coin of the United States, at New York, or two hundred and five pounds Sterling payable in London, at the option of the holders, with interest at seven per centum per annum, payable semi-annually in gold coin at New York, or in sterling in London, as aforesaid, at the option of the holder, for which interest, coupons or warrants, payable as aforesaid, are attached to said bonds, with the said coupons attached, to Wm. Butler Duncan, and Adrian Iselin, and Richard T. Wilson, as agents of the party of the first part, to be substituted in place of the claim, and demand and liability, now held against the party of the first part by the said State of Tennessee, for which purpose of substitution the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, are hereby made and appointed the agents of the said party of the first part, and which substitution, under said agency, said parties of the second part are proceeding to make and perfect; and

Whereas, Under the laws of the said State of Tennessee, the said State has a lien upon the following named property of this Company, to-wit: the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructures and equipments, and all the property owned by the Company as incident to, or necessary for its business, and all depot stations, and all the property and assets attached thereto, or belonging to said Company within the State of Tennessee, which under the said act of 1869, upon the return of said State Bonds to the said State of Tennessee, by any person, or corporation, with the consent of such indebted railroad corporation, shall enure to the benefit and for the security of the person or corporation so paying of the said indebtedness or liability of such corporation to the State, or returning to it its said bonds.

Now then, know all men by these presents, that in consideration of the premises, and of the sum of five dollars to said party of the first part paid by the said parties of the second part, and to make good and secure the rights of the holders of the said bonds herein described, and now issued by the party of the first part, and who are in fact the payers of the said indebtedness of the said party of the first part, to the State of Tennessee, within the meaning of said act of February 25th, 1869, and to the extent thereby authorized.

The said party of the first part doth herewith consent, that the said parties of the second part shall pay, and satisfy to the said State of Tennessee, the debt and liability due by the said party of the first part to the said State, and doth hereby approve such payment, and doth also hereby consent, that upon the payment aforesaid being made, or to the extent that it shall be made, and as it is, or may be from time to time made, said parties of the second part shall, in pursuance of terms and provisions of the act last above herein referred to, be vested with, and shall have, and hold all the lien, or liens, which the State of Tennessee had or has upon the property of the said party of the first part herein before described in the State of Tennessee, and shall have the same right to enforce the same, which the State of Tennessee had, and that said parties of the second part shall be, and are hereby, placed in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payments, and with full power to enforce the same. To have and to hold the rights, powers and privileges hereby consented to, and which arise under the said act of the State of Tennessee, with the consent and approval of the said Mobile and Ohio Railroad Company to them, the said parties of the second part, their survivors and survivor, and their successors: Upon trust, however, for the use, benefits, advantage and security of the holders of the bonds herein described, issued by said Mobile and Ohio Railroad Company, parties of the third part to these presents, and their assigns; and it is hereby declared, that in case of the death or resignation of the said parties of the second part, the said party of the first part shall appoint new trustees in their place and stead, and in case any one or two of said trustees die or resign, such vacancy shall be filled by the joint appointment of the remaining trustee or trustees, and the President of the Mobile and Ohio Railroad Company, with the approval of the Board of Directors thereof.

And the said party of the first part doth agree and covenant to, and with the said parties of the second part, their survivors and survivor, and their successors, that it, the said party of the first part, will in good faith, and at all times hereafter, do and perform all things necessary and proper for the protection and security of the said parties of the third part, and the said parties of the second part and their assigns as the same, may be reasonably required of it, to make good and effectual the lien and security of said parties about the payment of their said debts and demands, and secure the enforcement of their remedies for the payment of said bonds and the interest accruing thereon, in case default be made in the payment of said bonds and coupons, or any part or portion thereof, or default be made in the performance of the covenant herein contained, providing for the creation and application of a sinking fund, for the gradual retirement of the bonds herein described, according to the true intent and meaning of these presents, and of the said acts herein before referred to, of the General Assembly of the State of Tennessee.

And the said party of the first part does further covenant to, and with the said parties of the second part, and of the third part hereto, and their assigns, that on the first day of April, 1873, and on the first day of April of each year thereafter, said party of the first part will, from the nett earnings of said road, set aside an amount equal to one per cent. of the amount of bonds issued and outstanding under the provisions hereof as a *Sinking Fund*, for the redemption of the bonds secured by these presents, and that it will invest said sinking fund, and the interest accruing thereon, in the purchase of the bonds herein secured, at a rate not exceeding ten per cent. above par and accrued interest.

The bonds so purchased shall be immediately registered, stamped and endorsed as irrevocably belonging to said sinking fund, and not further transferable, and said bonds and coupons so purchased and assigned to the sinking fund by such registration, stamping and endorsement, shall be ever void, and cancelled for all other purposes.

In case bonds hereby secured cannot be purchased at or under the rate above named, within three months after the setting apart of such money for account of said sinking fund, then such other good securities as may be agreed on by the parties of the first and second part shall be purchased and assigned to said sinking fund, and all such securities shall be placed with such depository, and in such manner as said parties of the first and second part may from time to time agree upon, and the interest accruing upon said sinking fund shall be collected by the party of the first part, and invested as herein provided.

And all securities assigned to, or purchased for said sinking fund, shall be and hereby are irrevocably pledged for the security and ultimate redemption of the principal and interest of the bonds herein before described, and issued by the said party of the first part, for the uses and purposes herein declared: and said parties of the second part are hereby released from executing the bond required of trustees under Section 1974 of the Code of Tennessee. And the said parties of the second part do hereby accept the agency and trust herein and hereby imposed upon them, and do promise and agree faithfully, and to the best of their ability, to perform the duties hereby provided to be done and performed by them.

It is understood that the acts of any two of the said trustees hereunder, shall be valid and effectual in the performance of the duties hereby declared, the same as if all had joined therein; that said trustees may in all cases act by an agent duly appointed, over their hand and seal, except in such matters as are by law required to be performed in their proper person; that they shall be fully indemnified and repaid by the said party of the first part, including a reasonable compensation, or out of the trust funds which may come into their hands for their reasonable costs, fees and expenses by them incurred about the performance of the acts and things herein and hereby required of them, and shall not be required to act in the execution of the trust herein declared, except at their own option, unless the party or parties requesting them so to proceed shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing.

In testimony whereof, the said party of the first part has hereto set its corporate seal, and the hand of its President, by authority of a resolution of its Board of Directors duly given.

And the said parties of the second part have hereunto set their hands and seals.

Page 224.
Approval of alterations in resolutions passed May 25th, 1871.

MOBILE, June 19, 1871.

The Vice-President stated that the meeting was called for the purpose of approving certain alterations which have been suggested in the preamble and resolutions adopted by the Board at its meeting, held May 25th, 1871, said alterations and amendments being contained in the following resolution:

Resolved, That the preamble and resolutions heretofore adopted, recorded on page 224 by the Board at its meeting of 25th May, 1871, be so amended, that in place of lines numbered 12, 13, 14, 15, as recorded, the following be substituted:

"The said State of Tennessee held for its protection and indemnity against loss and damage by reason of its said loan to the said Mobile and Ohio Railroad Company, by virtue of the loan of the said State, were no change made in the form of security originally held by said State, according to the true intent and meaning of the act passed 25th February, 1869."

And also resolved, That the indenture recorded on page 226 be so amended as to read as follows:

"And, moreover, is under obligation to pay to the State of Tennessee semi-annually an amount equal to the amount of the semi-annual interest upon the said bonds so loaned, as well as an amount of money equal to the principal of said bonds so loaned to the party of the first part, when and as the same become due and payable."

On motion of Colonel Dunn, the above resolutions were unanimously adopted.

Page 246.
Iselin & Co.

MOBILE, 21st November, 1871.

The President informed the Board that Messrs. Iselin & Co. had written, giving notice of their readiness to take 420 bonds, as per agreement.

Page 256.

MOBILE, 10th January, 1872.

Our Tennessee negotiation has been closed, but the statements and accounts furnished me are, to my mind, so confused that it is impossible for me to understand them fully until explanations asked for are received.

Page 246.

MOBILE, Ala., November 21st, 1871.

A letter from Mr. W. B. Duncan was read, and it was resolved: That Messrs. Duncan, Sherman & Co., of New York, be authorized as early as they may receive funds for the purpose, to give notice and pay the face of this Company's Second Mortgage Coupons, which matured March, 1871.

Page 242.

W. D. Dunn offered the following preamble and resolution, which was unanimously adopted:

Whereas, this Company has a large unadjusted claim against the Government of the United States, which is now being presented before the proper officers of the Treasury Department for settlement of the same:

Resolved, therefore, That the President be, and he is hereby, fully authorized and empowered to pledge and hypothecate said claim for the purpose of raising funds to pay the debts and liabilities of the Company, to such person or persons as may make advances to them, upon such terms, and for such time, as the President may deem expedient, and for the interest of the Company.

Page 342. April 18th, 1873.

The following preamble and resolutions were unanimously adopted:

Whereas, The question of increase of capital stock of this Company was presented by the Directors to the stockholders at their annual meeting held in the City of Mobile, on the 15th of April inst., and was in the following words:

Whereas, The Directors report that a large amount of the property of the Mobile and Ohio Railroad Company, consisting of lands, investments, and improvements of the road, and its equipments, and of the acquisition of branch roads, is not held as stock; and

Whereas, It is deemed advisable that a portion of such corporate property should be apportioned as stock among the stockholders; and

Whereas, In making such apportionment it is advisable to raise in money, for the present use of the road, one-fourth of the par value of the stock proposed to be issued; therefore,

First, Be it Resolved, That the Directors be, and are they hereby, requested to issue additional stock to an amount equal to the present paid up and issued stock; such new stockto be apportioned pro rata among the stockholders, or their assignees, holding certificates of stock; each stockholder to pay twenty-five per cent. on the amount apportioned to him, the remaining seventy-five per cent. of said stock to be the representation of the aforesaid undistributed earnings and property of the road.

Second, Be it further Resolved, That any person failing to take his allotment of stock within such time, and upon such terms for time of payment, as shall be prescribed by the Directors, shall be held to have refused to take the same, and that all such untaken stock shall remain as corporate property, subject to the disposal of the Directors in their discretion.

Page 367. February 10th, 1874.

The letter of W. B. Duncan, of February 6th, upon the subject of a consolidated bond as a financial plan for placing the Company on a sound basis, was read; and the President was instructed to telegraph Mr. Duncan that his suggestions are approved by a unanimous vote.

APRIL 27, 1874. Page 389.

An election for President was held. Wm. Butler Duncan, of New York, received an unanimous vote.

The Chairman announced that Wm. Butler Duncan was unanimously elected President of the Company for the ensuing year.

An election for Vice President was held.

John J. Walker received 6 votes.

A. Murdock received 1 vote.

On motion, the election of J. J. Walker as Vice President was declared unanimous.

Maj. Walker assumed the Chair.

On motion, it was resolved that a committee be appointed to notify Mr. Duncan of his election as President, and of the organization of the Board. Messrs. Pratt, Hall and Gillespie were accordingly appointed committee.

The following resolutions, offered by the Vice President, were adopted:

Resolved, That the system of organization embodied in the By-Laws and the Rules and Regulations of the Company, be referred to a committee, who, after consultation with the President, shall report to the Board such alterations and amendments as may be deemed advisable.

Resolved, That in the meantime, and until the report of said committee is made and approved by the Board, the President be and he is hereby authorized to make at once such changes in the system of organization or mode of operating the road, as will, in his judgment, increase the efficiency of the same, and secure co-operation and harmony in all departments.

Resolved, That the President be invested with full discretion over the available securities held and owned by the Company in "Consolidated Bonds," "Convertible Bonds," "First and Second Mortgage Bonds" and "Stock," old and new, and is fully authorized to dispose of the same by sale, hypothecation or otherwise, for the settlement and adjustment of debts, and providing for the financial wants of the Company on such terms and conditions as he may deem advisable. Page 390.

JUNE 6, 1874. Page 394.

1st *Resolved,* That the President be authorized to procure an office in the city of New York and employ such clerical assistance as may be required to conduct the business of the Company transacted there under his supervision, and that the expenditure necessary for that purpose be left to the discretion of the President.

Adopted.

Resolved, That so far as the present rules of organization conflict with the duties, powers and requirements of the officers lately elected by the Board at the meeting of Directors held on the 27th of April, 1874, the same be, and are hereby suspended until a revised Code of Regulations are adopted by the Board. Page 395.

The President announced the resignation of Alexander Jackson and George H. Young, Trustees (appointed by Substitution), under the deed of mortgage and trust executed November 1, 1853, whereupon the following preamble and resolutions were unanimously adopted;

Whereas, Alexander Jackson, of the State of Tennessee, who was appointed by Substitution a Trustee, to act under the deed of mortgage made by the Mobile and Ohio Railroad Company to Morris Ketchum, John Palmer and William R. Hallett, on the first of November, 1853, has tendered his resignation as such Trustee, which has been accepted by the acting President of this Company on the twelfth day of March, 1875.

Now, therefore, be it Resolved, By the President and Directors of said Company, that the said acceptance of said resignation so made be ratified and confirmed by this Board, and that the said resignation be entered of record on the minutes of this Company.

And be it further Resolved, That the thanks of this Company be and the same are hereby tendered to the said Alexander Jackson, for the services he has rendered to this Company as Trustee while he continued to act as such, and that the said Company holds itself bound to the said Alexander Jackson, his heirs, executors, administrators and assigns, to save him and them harmless and fully indemnified from all claims and demands and all responsibility which he may have incurred, while in the proper discharge of the duties of said office of Trustee, in all matters and things relating to said trust and to the transactions of the said Company, so that he shall stand released and fully discharged from any future responsibility, claim or damage, charges or costs, in this behalf.

Resolved furthermore, That a copy of these resolutions be forwarded by the Secretary to the said Alexander Jackson, under seal of the Company.

Whereas, George H. Young, Esq., of the State of Mississippi, who was appointed by Substitution a Trustee, to act under the deed of mortgage made by the Mobile and Ohio Railroad Company to Morris Ketchum, John Palmer and William R. Hallett, on the first day of November, 1853, has tendered his resignation as such Trustee, which resignation has been accepted by the acting President of this Company on the 12th day of March, 1875.

Now, therefore, be it Resolved, By the President and Directors of said Company, that the said acceptance of said resignation so made, be ratified and confirmed by this Board, and that the said resignation be entered of record in the minutes of the Company.

And be it further Resolved, That the thanks of this Company be and the same are tendered to the said George H. Young for the service he has rendered to this Company as Trustee, while he continued to act as such, and that the said Company holds itself bound to the said George H. Young, his heirs, executors, administrators and as-

signs, to save him and them harmlsse and fully indemnified from all claims and demands and all responsibilities which he may have incurred, while in the proper discharge of the duties of said office of Trustee, in all matters and things relating to said trust and the transactions of the said Company, so that he shall stand released and fully discharged from any future responsibility, claim or damage, charges or costs, in this behalf.

Resolved furthermore, That a copy of these resolutions be forwarded by the Secretary to the said George H. Young, under the seal of the Company.

The following resolutions, appointing William Butler Duncan and Andrew Foster Elliot as Trustees to fill the vacancies occasioned by the resignation of Alexander Jackson and George H. Young, were unanimously adopted:

Resolved, That the appointment of William Butler Duncan and of Andrew Foster Elliot, as Trustees, to fill the vacancies occasioned by the resignation of Alexander Jackson and George H. Young as Trustees, under the deed of trust and mortgage of the 1st November, 1853, is approved, and declared to be the act of the Mobile and Ohio Railroad Company, jointly with said Charles Walsh, and the same is ordered to be spread on the minutes of this Company, together with this resolution.

Whereas, The Mobile and Ohio Railroad Company did, under the power and authority of its charter, make at Mobile, on the first day of November, in the year eighteen hundred and fifty-three, a certain deed of mortgage and trust, which is duly recorded in the office of the Probate Court of Mobile County, whereby said Company did convey to Morris Ketchum, John J. Palmer, and William R. Hallett, as Trustees, their survivors or successors, the Mobile and Ohio Railroad, with its appurtenant property, and also the lands granted by the Congress of the United States in aid of said railroad, &c., &c., all which property so conveyed is described and specified in said deed, and which property so conveyed was made thereby subject to the condition that certain bonds, not exceeding six thousand bonds of two hundred and twenty-five pounds Sterling, or one thousand dollars each, and the interest thereon, should well and truly be paid, all which will also appear by reference to the said deed.

And whereas, The said Ketchum, Palmer and Hallett did accept the said trust, and did enter upon the duties prescribed by said deed, and have since ceased to be such Trustees, two of them having died. and that Charles Walsh, Alexander Jackson, and George H. Young afterwards have succeeded them, and did also accept the said trust, and did act as such Trustees until the twelfth day of March, 1875, when two of said substituted Trustees, that is to say, the said Alexander Jackson and George H. Young, having tendered to said Company their resignation as such

Trustees, which was on that day accepted, by which means a vacancy was created in the Trustees provided to execute the said trusts in said deed specified—

Wherefore it has become necessary and proper that two new persons be named and duly appointed to succeed said Jackson and Young as Trustees, to act with the said Charles Walsh in the further execution of the trusts by said deed provided.

Now therefore, Under the stipulations and provisions of the said deed, and in order to fill said two vacancies caused by the resignation of said Alexander Jackson and George H. Young, the said Charles Walsh, and the said Mobile and Ohio Railroad Company, acting jointly under the special provisions of said deed of the 1st November, 1853, have this day nominated and appointed, and do hereby nominate and appoint William Butler Duncan and Andrew Foster Elliot, and each of them, to be Trustees, to act under the powers and authority of said deed, and do hereby invest them, and each of them severally, with all the powers, authority, title and right of every description, which appertains to them as such Trustees, and the full right to exercise all duties thereof as such Trustees duly appointed by substitution, as specified in said deed.

In witness whereof, the said Charles Walsh, sole remaining Trustee in power, and the said Mobile and Ohio Railroad, have hereunto set their hands and seals, on this 19th day of April, in the year 1875.

(Signed) CHARLES WALSH.
J. J. WALKER, Vice-President.

Page 447. JACKSON, Tenn., March 9th, 1875.

George N. Stewart, Esq.,
General Solicitor Mobile and Ohio Railroad Company:

Having carefully considered the foregoing communication of Mr. Charles Walsh, and coinciding with his views, I hereby join in requesting that you will forward my tender of resignation as Trustee to the President of the Company, coupled with the request, that in accepting my resignation all proper proceedings may be had necessary to exempt and relieve me from future responsibility as Trustee.

Respectfully, yours,
ALEX. JACKSON.

Witness present: GEO N. STEWART,
HOWELL E. JACKSON.

WAVERLY, Miss., March 10th, 1875.

George N. Stewart, Esq., Mobile and Ohio Railroad Company:

Dear Sir—On consideration of the views expressed by Mr. Chas. Walsh, and concurred in by Dr. Alexander Jackson, as within stated, I have to say that I fully concur with them in the opinion, that it would be better for the interest of the Company, its bondholders, and of my own, that I should also resign the position of Trustee of the deed of trust within referred to, and I therefore request that you tender my resignation as such Trustee to the President of the Company, and I also make the request, as made by Mr. Alexander Jackson, that such proceedings be had that I shall be relieved from all future responsibility on account of said trust. (Signed) GEO. H. YOUNG.

Witness: GEORGE N. STEWART,
JOHN W. YOUNG.

MOBILE, March 12, 1875.

John J. Walker, Esq.,
Vice-President Mobile and Ohio Railroad Company:

Dear Sir—The present is to make known to you that Alexander Jackson, Esq., of the State of Tennessee, has, by an instrument under his hand and duly witnessed (as herewith shown), directed and requested me on his behalf to tender his resignation as one of the Trustees appointed by substitution under the deed of mortgage and trust executed by this Company on the first of November, 1853, originally to Messrs. Palmer, Hallett and Ketchum, for the purpose of securing the payment of an issue of Sterling Bonds of the Company, in consequence of which I now tender his said resignation, according to his desire and by his authority, in order that the same may be duly recorded.

Your obedient servant,
(Signed) GEO. N. STEWART, General Solicitor.

MOBILE, March 12, 1875.

John J. Walker, Esq., Vice President M. O. & R. R. Co.:

Dear Sir—The present is to make known to you that George H. Young, Esq., of the State of Mississippi, has, by an instrument under his hand and duly witnessed (as herewith shown), directed and requested me on his behalf to tender his resignation as one of the Trustees (appointed by Substitution, under the deed of mortgage and trust executed by this Company on the first of November, 1853, originally to Messrs. Palmer, Hallett and Ketchum, for the purpose of securing the payment of an issue of sterling bonds of the Company, in consequence of which, I now tender his said resignation according to his desire and by his authority, in order that the same may be duly recorded. Your obdt. servt.,

(Signed) GEORGE N. STEWART, Gen'l Sol.

APRIL 21, 1875.

The acceptances of Wm. Butler Duncan and Andrew Foster Elliot as Trustees for the benefit of the First Mortgage Bondholders, in place of Messrs. Alexander Jackson and George H, Young, was read; on motion of A. Murdock, their acceptances were received and ordered to be spread upon the minutes.

Page 448.

MOBILE, April 20, 1875.

To John J. Walker, Esq., Vice President M. & Ohio R. R. Co.:

Sir—I have been officially notified by the Secretary of the Mobile and Ohio Railroad Company that A. Foster Elliot, Esq., and myself have been appointed by the conjoint action of Charles Walsh, Esq., continuing Trustee, and the said corporation (in place of Messrs. George H. Young and Alexander Jackson, who have resigned,) Trustees for the benefit of the holders of the First Mortgage Sterling Bonds and coupons of said Company, issued by the said corporation under the terms of a certain deed of mortgage and trust, originally executed by said Mobile and Ohio Railroad Company to Morris Ketchum, J. J. Palmer and Wm. R. Hallet, on the first day of November, 1853, to secure the payment of the bonds and interest in said deed described, with authority to take possession of the properties and estate conveyed by said deed upon the happening of the contingencies therein named.

This is to inform the Mobile and Ohio Railroad Company, through you, that I accept the appointment so made of Trustee under the said deed of trust of November, 1853, upon the terms and conditions therein set forth, and agree and promise to perform the duties and trusts therein and thereby created.

Very respectfully,

(Signed) WM. BUTLER DUNCAN.

Page 449.

MOBILE, April 20, 1875.

John J. Walker, Esq., Vice President M. & O. R. R. Co.:

Sir—I have been officially notified by the Secretary of the Mobile and Ohio Railroad Company that William Butler Duncan and myself have been appointed by the conjoint action of Charles Walsh, Esq., continuing Trustee and the said corporation (in place of Messrs. George H. Young and Alexander Jackson, who have resigned,) Trustees for the benefit of holders of the First Mortgage Sterling Bonds and Coupons of the said Company, issued by the said corporation under the terms of a certain deed of mortgage and trust, originally executed by the said Mobile and Ohio Railroad Company to Morris Ketchum, J. J. Palmer and Wm. R. Hallett, on the first day of November, 1853, to secure the payment of the bond and interest in said deed described, with authority to take possession of the properties and estate conveyed by said deed upon the happening of the contingencies therein named.

This is to inform the Mobile and Ohio Railroad Company, through you, that I accept the appointment so made of Trustee, under the said deed of trust of the first of November, 1853, upon the terms and conditions therein set forth, and agree and promise to perform the duties and trusts therein and thereby created.

(Signed) ANDREW FOSTER ELLIOT.

April 23, 1875. Page 452.

An election was then held. Mr. Wm. Butler Duncan having received a majority of the votes, was elected President for the ensuing year, and, on motion, was declared unanimously elected.

W. P. Halliday offered the following resolution, which was unanimously adopted (said resolution to be embodied as a circular and presented to the bondholders.) Page 452 to 454.

Credit Foncier, London,
Mobile, April 23, 1875.

The Direction of the Mobile and Ohio Railroad Company beg to inform the holders of their bonds that the unexampled falling off in earnings resulting from business depression general throughout the country and which will probably continue till another crop is assured, deprives the Company of the ability to meet the May interest at its maturity.

All the earnings of the past business season have been applied to arrears of pay rolls, to current supplies, to necessary improvements of the road, and to other matters which are strictly in the interest of the bondholders. All our labor and current supply bills are now paid as far as practicable in cash.

The Directors recognize the fact that the bondholders have the first claim on the property, and that it is imperative upon the Direction to apply all the earnings of the road to the interest in the strict order of equity.

With this assurance, the Directors invite the confidence of the holders of the mortgage liens to enable them to make some acceptable proposition upon a substantial basis, which will permit the continued development of the property in the interest of all concerned.

For details of the application of the earnings of the past year, the Directors beg leave to refer to the annual report of the Company.

The following resolution, offered by W. P. Halliday, and seconded by W. H. Pratt, were unanimously adopted, each member voting "aye":

Whereas, By reason of depression in business, from causes beyond the control of this Company, the resources of the Company have, during the past two years, been greatly lessened, so that the Company has been unable to meet and discharge the semi-annual interest coupons due upon its First Mortgage Bonds in May and November, 1874, and the interest coupons upon its Tennessee Substitution Mortgage in July, 1874, and January, 1875, and the interest coupons upon its Second Mortgage due in March, 1875, which said coupons remain unpaid, and may at any time be enforced against the Company by the holders thereof; and

Whereas, The Company will be unable to pay the next interest upon its First Mortgage debt; and

Whereas, In the course of its business the Company has contracted certain unsecured liabilities, known as Floating Debt, which it has been unable promptly to discharge at maturity, upon which suits are pending; and

Whereas, The business and property of the Company extend through four States of the Union, and are subject to the jurisdiction of courts acting under distinct governments at the suit of the creditors of the Company, some of whom have already commenced proceedings for the recovery of judgments, and to obtain execution upon their claims, whereby the property so pledged in the mortgages will be exposed to seizure and sale, and other complications may arise and sacrifice of property may be made, which property, if cared for, will suffice for the payment of all the just debts of the Company, without detriment to the just rights of the mortgage creditors of the Company.

And whereas, By its deed of mortgage and trust first made, and which was executed the 1st day of November, 1853, the faith of this Company is pledged to put the Trustees, of the holders of the bonds issued under authority of said deed, in possession of the property conveyed thereby, on demand in default of payment of interest on said bonds, as therein covenanted for security against loss upon their said debts and demands; and

Whereas, The contingency of defaults in payments of interest, provided for therein, has occurred:

Resolved, By the Board of Directors of the Mobile and Ohio Railroad Company, That the existing Trustees of the First Mortgage and deed of trust of this Company, executed the 1st day of November, 1853, to-wit: Wm. Butler Duncan and Andrew Foster Elliot be placed in possession of the property conveyed by said deed in trust for the security of holders of the bonds and coupons described in said mortgage or deed of trust.

And it shall be the duty of the Vice-President of said Company to place, and he is hereby instructed to place, the said Trustees in full and actual possession and control of all the property of every name and kind, and each and every parcel thereof, and of each and every article thereof, described in or embraced in, or conveyed or covered by the said deed of trust and mortgage, executed as aforesaid, to be by said Trustees held, used, managed and applied as Trustees aforesaid, to and for the objects, purposes and trusts disclosed or described in said deed of trust and mortgage upon their demand.

And the Vice-President, upon so placing said Trustees in possession as herein directed, will take from them, and their agents, and servants, full inventory of all the property of every kind so received by them under this resolution;

And from and after the delivery to said Trustees as aforesaid, it shall be the duty of each and every officer, agent, employee and servant of the Company to account to, and in all respects to obey the instructions, orders and directions of said Trustees, or their officers, agents, employees and servants, for the purpose of maintaining the possession so delivered to said trust.

And in order to protect and to secure the possession of the said Trustees, and to obtain the aid and assistance of the judicial tribunal of the United States, or of the States through which the railroads of the Company have been constructed, and in which the property of the Company is situated; it is further

Resolved, That the said Trustees be empowered and requested to bring suitable suits for the settlement of the affairs of the Company, and be authorized to apply for such additional powers as Receivers and as Trustees administering trust property, and funds, as may be entirely adequate to attain the objects of these resolutions, and to preserve the rights of the mortgage creditors and stockholders respectively.

And it is further Resolved, That in case possession be taken, and that the administration of the property be so conducted, the Vice-President of the Company shall be authorized and empowered to accept service of all process against the Company in any such suit, and that service of process upon him shall be valid and sufficient service, and also that he perform all acts as President of this Board whenever it may be necessary for the Company, and the Board of Directors to act adversely to, or concurrently with the Trustees.

C. A. Wetton, witness called for objecting bondholders yesterday, appears with transcripts of accounts required of him in relation to the Tennessee bonds. Papers marked Exhibits E1 and E2, and filed.

Mr. Hamilton, counsel for Trustees and Receivers, protests against any examination into the Tennessee Substitution Bonds, as the Trustees are not here, and the matter is *coram non judice;* but inasmuch as the Master has admitted evidence without waiving his protest, he propounds the following questions by way of cross-examination on the Tennessee matter:

Q. What is your profession?

A. Railway Accountant and Auditor.

Q. Are you skilled in accounts and book-keeping?

A. I am generally so regarded.

Mr. Andrews—Before this examination proceeds further, 746 I would ask the Master to take this request from me as counsel for Moran Brothers:

I request to know from the counsel, Mr. Hamilton, who is now examining the witness on the Tennessee Substitution claims, for whom he appears in making such examination.

Mr. Hamilton—I am here for the complainants in this suit.

Question to witness by Mr. Hamilton: You yesterday produced accounts of R. T. Wilson & Co. and Iselin & Co. in relation to Tennessee Substitution Bonds?

A. I did.

Q. Have you analyzed that account so as to ascertain how the balance—the cash balance—shown by it was applied?

A. I have.

Q. Have you an analysis with you of that account, or balance to that effect?

A. I have.

Q. Is that a correct statement of the results of that examination?

A. It is.

Q. It shows the purpose to which the money was applied?

A. Yes.

[Paper attached as Exhibit E3 to testimony of C. A. Wetton.]

Cross-examination by E. L. Andrews:

Q. You swear, Mr. Wetton, that everything in this analysis, so called, is true in point of fact?

A. Yes, as the result of my examination as the account stands. I did not apply the money myself. The account is the result of my examination of the books of the Mobile and Ohio Railroad Company.

Q. You have inserted this language in your explanatory analysis of the Tennessee account: "December 30th—Repayment through Duncan, Sherman & Co. of advances made by them, to provide for the First Mortgage interest due November 1st, 1871." Do those words appear on the account you presented yesterday before this Master?

A. They do not, but the amounts to which they had reference do.

Q. Why did you not make the statement contained in the account you presented yesterday?

A. Because I was only required to make transcripts of the accounts.

Q. Did you not swear a few moments ago that this letter was a transcript from the accounts?

A. I think not, and request the Master to read the evidence. [Evidence read.]

Q. Then the transcript of the account you furnished yesterday was not the result of your examination of the books?

A. The account I furnished yesterday is a correct transcript of the accounts of the Mobile and Ohio Railroad Company with R. T. Wilson & Co. and A. Iselin & Co., and are the results of my examination and comparison of the books for the purpose of testing the accuracy of the transcripts made.

Q. And that was an accurate transcript?

A. It is.

Q. Now then, Mr. Wetton, I understand you to say that this transcript is an accurate copy of the accounts of the Mobile and Ohio Railroad Company with R. T. Wilson & Co. and A. Iselin & Co. Now, if that be accurate, how can a letter signed by you, in which you use this language: "In accordance with your request I send you herewith a transcript from the books of the accounts of R. T. Wilson & Co. and A. Iselin & Co. with the Mobile and Ohio Railroad Company," and which contains the following, "repayment through Duncan, Sherman & Co. of advances made by them to provide for the First Mortgage interest due November 1, 1871," and which is not contained in this transcript of account which you swore is correct. Now, which one of these two statements is correct, both purporting to be transcripts of the same accounts?

A. They are both correct. The transcript of account, as well as the letter containing the analysis of the account, which letter was forwarded to Mr. DuPuy with the transcript.

Q. What do you mean by the item in your letter, "Reimbursement to Duncan, Sherman & Co. for advances made on the above account"?

A. Payments on First Mortgage interest account.

Q. Is it not true that Adrian Iselin was at the time, December 12th, 1871, a Director of the Gallatin National Bank of New York?

A. I have no knowledge on the subject.

Q. Here is an item: "December 12—Payment by their check for $64,610.89 for interest which matured January 1st, 1872, on the Tennessee Substitution Bonds." Whose check do you mean by "their check"?

A. Iselin & Co.

Q. I want to ask you whether the last above stated item would not give Iselin & Co. the benefit of eighteen days' interest on that amount of money?

A. Not in that case, because the $64,610.89 was for Sterling exchange, to be transmitted to London.

Question by E. H. Grandin: What does this account contain that this letter of explanation does not contain, and what was the object and purpose of this letter of explanation?

A. The transcript of account is a copy of the entries on the books, and shows the application by account. My letter of analysis to Mr. DuPuy conveys the information as to the final application of the funds, and was sent to him for his information.

Q. Why was your letter of analysis reserved for Mr. Hamilton to use in cross-examining you?

A. It was not reserved to my knowledge.

Cross-examination resumed by Mr. Hamilton:

Q. In your letter to Mr. Du Puy, of April 16th, you speak of sending a transcript from the books, did that letter contain any other document separate from the letter itself?

A. Yes. A transcript of the account of the Mobile and Ohio Railroad Company with R. T. Wilson & Co. and A. Iselin & Co., the same as the one produced yesterday.

Q. Then the further statement of account contained in the letter, what relation had it to the transcript enclosed?

A. It was an analysis of the transcript.

By Mr. Andrews:

Q. The deed of trust executed by the Mobile and Ohio Railroad Company, July 1, 1871, calls for sixteen hundred and eighty-five bonds, but your account contains only the following item: "December 30th, to proceeds of one million six hundred and eighty thousand dollars of bonds." Where is the account of the other five bonds, if there is any account of them?

A. I have not examined any further than as to the accounts furnished.

Q. Did not W. B Duncan and his co-trustees under that deed, retain the other five thousand dollars of those bonds under a claim of services for signing the issue of bonds?

A. I have no knowledge as to the facts.

C. A. WETTON.

Subscribed and sworn to April 19, 1877.

JAMES GILLETTE, Special Master.

Upon motion of counsel for objecting bondholders, that they desired Thursday, April 26th set apart for the argument before the Master. So ordered.

E. H. Grandin offers on behalf of the Trustees of the Second Mortgage, a certified partial transcript of the record and proceedings had in a certain cause heretofore pending in the Honorable Court of Chancery, held at Mobile for the First District of the Southern Chancery Division of the State of Alabama, wherein the Mobile and Ohio Railroad Company, a body politic and incorporate, was complainant, and Morris Ketchum, Trustee, defendant, transcript marked Exhibit O.

Mr. Stewart objects to said transcript as not relating to a question at issue in this investigation, as being a part of the record and to establish matter, of which the Master, on this issue, cannot take cognizance.

Mr. Hamilton—Objected to on the part of complainant, because it pertains to no matter, question or inquiry, which this Master is authorized to make by the order of reference in this cause. On the face of the offer it is declared to be a partial transcript, and it is objected to on that ground; and because, if it is evidence at all, it is to be addressed to the court in the trial of the cause between the parties, and does not tend to throw any light on any matter of debt, lien, mortgage or priority of rights of lien as between the creditors, holders of the securities of the Company in this case, which alone is the subject of reference before this Master.

Judge Grandin offers in evidence a sworn copy of the original bill, addressed to the Hon. N. W Cocke, Chancellor, referred to in Exhibit O, upon which the decree in that exhibit was based (marked Exhibit P, as completing the transcript).

Also, letters (1) dated Mobile, March 5, 1875, addressed to George N. Stewart, Esq., General Solicitor Mobile and

Ohio Railroad Company, and signed Charles Walsh; (2) addressed to same, dated Jackson, Tenn., March 9, 1875, signed Alexander Jackson; (3) dated Waverly, Miss., March 10, 1875, addressed to the same, signed George H. Young; (4) dated Mobile, March 12, 1875, signed Charles Walsh; and (5) dated Mobile, April 20, 1875, addressed to J. J. Walker, Esq., Vice President, signed Charles Walsh; all as Exhibits Q.

Also, certified copy of a bill in Chancery, filed by Wm. H. Hays and others, in the Chancery Court of Mobile, against the Mobile and Ohio Railroad Company and others, filed April 6, 1877, marked R.

Also, the records in the case of Morris Ketchum, Trustee, vs. The Mobile and Ohio Railroad Company, W. B. Duncan, A. F. Elliot, and others, that is to say, the following parts thereof: The bill, special plea in bar, demurrer and decree overruling demurrer, marked S.

Also, copy (certified) of writ of injunction in the same cause, served upon me (Judge Grandin), marked T.

Judge Grandin—Copies of these papers will be furnished the Master to-morrow.

Mr. Stewart—Objections are reserved until the papers are produced.

Mr. Hamilton—Complainants object to each and every of the papers, documents and testimony, as propounded by Judge Grandin, proposed to be offered by him, as utterly irrelevant to the matters at issue on this reference before the Master. If competent proofs at all in the cause, they must be produced as evidence before the court at the hearing of the cause. This objection is made to each and singular and all of the offers so above named.

Mr. Hamilton—I move they be rejected by the Master and excluded.

After argument, the Master sustains the objections, and on the grounds stated in said objections, rejects and ex-

752 cludes the records and papers offered as testimony by Judge Grandin; and on the further ground, that the matters offered are excluded by the decree of Judge Woods, of March 28, 1877, limiting the present inquiry to the opposition of Belloni and Moran.

Thereupon the reference adjourned to meet at the office of the Mobile and Ohio Railroad Company to-morrow morning, at 10 o'clock.

JAMES GILLETTE, Special Master.

[EXHIBIT D2 to testimony of C. A. Wetton.]

bile and Ohio Railroad Co. in Acc't with Duncan, Sherman & Co. CR.

est on renewal note with			
& Co. of $8.000.00		218 66	
wal note with Burnham,			
		232 33	
Mess. Norfolk & Morris to			
per Cuba)		171 00	
O., January 12		13 55	
		9 78	
bet. Bank of Mobile & us:			
	4 70		
	6 08		
	6 55—	17 33	
penses of cables, etc. in			
& O. R. R. Co.		300 00	
		69	
note of $8,000.00 renewed			
ms & Co.		218 66	
of $2,400.00 renewed		193 20—	1,375 20
newal of note for $2,400 00		193 20	
renewal of note of $47,700		3,211 80	
	13 41		
	69		

1875.				
Feb'y 27.—	By exchange allowed on the following amounts deposited in the Bank of Mobile:			
	On $17,000 00	$53 29		
	3,000 00	3 76		
	4,500 00	11 29—	68 34	
	This amount renewing note with the Springfield Iron Co., it having been charged to interest account 29th December; also charged to interest account through them 31st December, being a double charge, and this entry is made to correct that error		485 76—	554 10
Mch. 2.—	Deposit in the Bank of Mobile		1,500 00	
3.—	Amount received for postal service		10,925 08	
	Deposits in the Bank of Mobile, as follows:			
	March 4th	$4,000 00		
	"	4,000 00		
	March 5th	1,500 00		
	March 6th	4,000 00	13,500 00	25,925
April 26.—	Proceeds of $22,056 70 gold, for special gold account, at 116⅛ pr. ct.—⅛ brokerage		25,585 77	
	March int. to cover amount unclaimed & com. ⅛ pr. ct.		216 88	
27.—	Salary of W. B. Duncan, Pres't, for month of January, which was sent him by the Treasurer in a check		566 66	26,369

[EXHIBIT E1 to testimony of C. A. Wetton.]

the General Books of the M. & O. R. R. Co. of the Accounts of R. T. Wilson & Co., and A. Iselin & Co. in the matter of the Tennessee Substitution Bonds.

R. T. Wilson & Co. in Account with the Mobile and Ohio Railroad Company. Cr.

of $1,680,000 bonds, at 82½		$1,386,000 00
interest on $420,000, 154 days	12,404 40	
interest on $1,260,000, 167 days	40,354 54	

1871.		
Dec. 30—	By Purchase of 1513 Tenn. State Bonds with coupons attached equal in par value of $1,684,800 at 66½	$1,070,481
	Amount paid Nat'l Bank Note Co.	
		$1,685,000 00

Accounting Department—M. & O. R. R., April 18th, 1877.

C. A. WETTON, Auditor.

752 cludes the records and papers offered as testimony by Judge Grandin; and on the further ground, that the matters offered are excluded by the decree of Judge Woods, of March 28, 1877, limiting the present inquiry to the opposition of Belloni and Moran.

Thereupon the reference adjourned to meet at the office of the Mobile and Ohio Railroad Company to-morrow morning, at 10 o'clock.

JAMES GILLETTE, Special Master.

[Exhibit D2 to testimony of C. A. Wetton.]

Dr. Mobile and Ohio Railroad Co. in Acc't with Duncan, Sherman & Co. Cr.

Date				
1875.				
Feb'y 2.—To	payment of 8 per cent. interest on renewal note with Burnham, Parry, Williams & Co. of $8.000.00		218 66	
19.—	payment of interest on renewal note with Burnham, Parry, Williams & Co.		232 33	
27.—	payment of passage 6 Jan. of Mess. Norfolk & Morris to England. 152.00 gold @12½ (per Cuba)		171 00	
	express charges and tel. to N, O., January 12		13 55	
	telegrams		9 78	
	Sundry tel'ms & express ch'ges bet. Bank of Mobile & us:			
	August 3, 1874	4 70		
	December 10	6 08		
	September and October	6 55—	17 33	
	payment of W. M. Clark, expenses of cables, etc. in Europe, negotiating for M. & O. R. R. Co.		300 00	
	Post		69	
	payment of interest 14 Jan. on note of $8,000.00 renewed to Burnham, Parry, Williams & Co.		218 66	
	payment of int. Jan. 6, on note of $2,400.00 renewed		193 20—	1,375 20
Mch. 3.—	payment of int. Feb. 20, for renewal of note for $2,400 00		193 20	
	pay't of int. to Iselin & Co. for renewal of note of $47,700		3,211 80	
23.—	payment of telegram Feb 12,	13 41		
	payment of postage, Feb. 13,	69		
	payment of express on P. K. maps	3 50	17 60	
31.—	payment of draft due 20th April, 1874		12,000 00—	15,422 60
Apl. 26.—	March 5, postage 12c; Telegram, March 12, 6.37		6 49	
	cost of sundry cables, etc., to and from Europe from Feb. 6 to March 6, of $500.00 at 114½		572 50	
	payment of telegram, 8th April		6 15	
	½ per cent. comm. on acct for 3 mos. ending 31st March,.		168 28	
	7 per cent. interest on account to March 31,		196 32	
	exchange on remittance in March		28 07	
	7 per cent, interest on 7,000.00 (coupons 1873)		210 97	
	payment to C. A. Wetton, April 3		150 00	
	payment to C. A. Wetton, April 6		50 00	
	payment of coupons 1873		7,000 00	
30.—	paid copy Lacey's Digest		10 00—	8,398 78
	April 26th, cable dispatches $232.10 gold @115½		267 38	
	April 17, payment of interest on $8,000.00, note renewed with Burnham, Parry, Williams & Co.		218 66	
	payment of bal. on 3 notes Springfield Iron Co. Nos. 1548, 1549, 1550,		3,003 00	
	Salary of W. B. Duncan, Pres't, for 8 mos. service in 1874		4,533 36	
	Payment of salary to W. B. Duncan, Pres't, for 4 months, January to April		2,266 64	10,289 04
				$35,485 62

Date				
1875.				
Feb'y 27.—By	exchange allowed on the following amounts deposited in the Bank of Mobile:			
	On $17,000 00	$53 29		
	3,000 00	3 76		
	4,500 00	11 29—	68 34	
	This amount renewing note with the Springfield Iron Co.. it having been charged to interest account 29th December; also charged to interest account through them 31st December, being a double charge, and this entry is made to correct that error		485 76—	554 10
Mch. 2.—	Deposit in the Bank of Mobile		1,500 00	
3.—	Amount received for postal service		10,925 08	
	Deposits in the Bank of Mobile, as follows:			
	March 4th	$4,000 00		
	"	4,000 00		
	March 5th	1,500 00		
	March 6th	4,000 00	13,500 00	25,925
April 26.—	Proceeds of $22,056 70 gold, for special gold account, at 116½ pr. ct.—½ brokerage		25,585 77	
	March int. to cover amount unclaimed & com. ½ pr. ct..		216 88	
27.—	Salary of W. B. Duncan, Pres't, for month of January, which was sent him by the Treasurer in a check		566 66	26,369 31

Accounting Department—Mobile & Ohio R. R. Co.,
April 19th, 1877.

I hereby certify this to be a correct transcript of the above entitled account from the books of the Mobile & Ohio R. R. Co.

C. A. WETTON,
Auditor.

[EXHIBIT E1 to testimony of C. A. Wetton.]

Transcript from the General Books of the M. & O. R. R. Co. of the Accounts of R. T. Wilson & Co., and A. Íselin & Co. in the matter of the Tennesses Substitution Bonds.

Dr. R. T. Wilson & Co. in Account with the Mobile and Ohio Railroad Company. Cr.

Date	Dr.		
1871.			
Dec. 30—To	proceeds of $1,680,000 bonds, at 82½		$1,386,000 00
	7 per cent. interest on $420,000, 154 days	12,404 40	
	7 per cent. interest on $1,260,000, 167 days	40,354 54	
	proceeds of 3 coupons, being surplus of debt paid State of Tennessee	50 74	52,809 68
			$1,438,809 68
	To Balance to debit of R. T. Wilson & Co.		$302,406 57

Date	Cr.	
1871.		
Dec. 30—By	Purchase of 1513 Tenn. State Bonds with coupons attached equal in par value of $1,684,800 at 66½	$1,070,481 98
	Amount paid Nat'l Bank Note Co., $2,085.91; Legal opinion, $250.00 Stamping, $1,686.97; notarial fees, postage, etc.	4,077 97
	Interest and commissions	61,843 22
	Balance to debit of R. T. Wilson & Co.	302,406 57
		$1,438,809 68
	By Balance transferred to debit of A. Iselin & Co.	$ 302,406 57

Dr. A. Iselin & Co in Account with the Mobile and Ohio Railroad Company. Cr.

Date	Dr.	
1871.		
Dec. 30—To	balance transferred from debit of R. T. Wilson & Co.	$302,406 57
	the following amount credited to A. Iselin & Co., special account	80,000 00
		$382,406 57

Date	Cr.		
1871.			
Dec. 31—By	the following amounts charged to Duncan Sherman & Co.:		
	For payment by R. T. Wilson & Co., Oct. 31, 1871	$20,000 00	
	do. do. Iselin & Co., November 1, 1871	20,000 00	
	do. do. do. do	40,000 00	
	do. do. do. December 18, 1871	20,000 00—	$100,000
By	following am't charged to A. Iselin & Co., spec'l acc't:		
	For payment 28th November, 1871		80,000
By	the following amount charged to Walsh, Smith, Crawford & Co.:		
	For payment M. & O. R. R. Co's note due December 18, 1871		20,000
By	the following amount charged to Bills payable:		
	For paym't of M. & O. R. R. Co's note to Gal. Nat'l Bank, Dec. 12, '71		33,000
By	the following amounts charged to Union Bank of London:		
	For remittance 12 Dec., 1871, £12,089.17-6 at 109¾ and 109 9-16		64,610 [illegible]
By	the following amount charged to Interest account:		
	Interest on general account to 28th Dec., 1871, and coms. 2 per cent.		1,460 35
By	the following amount charged to A. Iselin & Co., special account:		
	For interest on 2d Mortgage Bonds paid 738 coupons	30,825 60	
	For expenses for advertising	7 00	
	For commissions, ¼ per cent. on $30,825.60 coupons	77 06—	30,909 66
By	the following amount charged to Duncan, Sherman & Co		49,090 35
By	the following amount charged to profit and loss:		
	For am't of A. Murdock, Pres't, check in favor R. T. Wilson & Co. for expenses of Tenn. Bonds, cancellation, &c., paid by them to Comptroller of the State of Tennessee		1,991 21
By	the following amount charged to Walsh, Smith, Crawford & Co.:		
	For bal. paid by A. Iselin & Co. to Walsh, Smith, Crawford & Co.		1,144 11
			$382,406 57

Accounting Department—M. & O. R. R. April 18th, 1877.

C. A. WETTON, Auditor.

[Exhibit E2 to testimony of C. A. Wetton.]

Transcript of the results as shown by the General Ledger of the M. & O. R. R. Co., of the substitution of "Tennessee Substitution Bonds" for "Tennessee State Bonds."

TENNESSEE STATE BONDS.

Dr.		Cr.	
1871.		1871.	
Dec. 30—To credit of 7 per cent. Sinking Fund Gold Bonds	$1,296,000 00	Dec. 30—By Sundries..........................	$1,296,000 00
	$1,296,000 00		$1,296,000 00

STATE OF TENNESSEE.

Dr.		Cr.	
1871.		1871.	
Dec. 30—To credit of 7 per cent. Sinking Fund Gold Bonds	$388,800 00	Dec. 30—By Sundries..........................	$388,800 00
	$388,800 00		$388,800 00

SEVEN PER CENT. SINKING FUND GOLD BONDS.

		1871.	
		Dec. 30—By Tennessee State Bonds	$2,396,000 00
		State of Tennessee	388,800 00
		Profit and Loss............	200 00
			$1,685,000 00

Accounting Department—M. & O. R. R., April 18th, 1877. C. A. WETTON, Auditor.

[Exhibit E3 to Testimony of C. A. Wetton.]

M. & O. R. R.—Accounting Department,
Mobile, Ala., April 16th, 1877.

T. Haskins DuPuy, Esq., Attorney & Agent, etc., etc.,

Dear Sir—In accordance with your request I send you herewith a transcript from the Books of the accounts of R. T. Wilson & Co., and A. Iselin & Co., with the Mobile and Ohio Railroad Company.

On the final rendering of the account of R. T. Wilson & Co. as of December 30th, 1871, there was a balance to his debit resulting from the transaction in "Tennessee Bonds" of $302,406.57. This was transferred on the same date to the debit of A. Iselin & Co.

On November 28th, 1871, Iselin & Co. appears to have advanced the Railroad Company $80,000 to pay the interest due in March of that year on the 2d Mortgage Bonds; a corresponding amount, however, was charged back on December 30th, 1871, to Iselin & Co., when interest on the amount ceased.

The debit to Iselin & Co. as of December 30th, 1871, of $302,406 57 is accounted for as follows:

	Payments by Iselin & Co. on Interest Account:	
Dec. 30—	Repayment through Duncan, Sherman & Co. of advances made by them to provide for the 1st Mortgage Interest due November 1st, 1871, as follows:	
	Advanced by R. T. Wilson & Co., Oct. 31	$ 20,000 00
	" Iselin & Co., Nov. 1	20,000 00
	" " " "	40,000 00
	" " " Dec. 18	20.000 00
Dec. 30—	Reimbursement to Duncan, Sherman & Co., for advances made on the above account	49,090 34
12—	Payment by their check for $64,610.89 for interest which matured Jan. 1, 1872, on the Tenn. Sub. Bonds	64,610 89
30—	Payment of $30,909.66 balance of amount due for 2d Mortgage coupons due March, 1871,	30,909 66
	Payments by Iselin & Co. on Miscellaneous Account:	
Dec. 18—	Deposit of $20,000 with W., S., C. & Co. to take up a note of the Railroad Co.	20,000 00
12—	Payment to Gallatin Nat'l Bank of $33,000.00 for note of Railroad Co., relieving 41 £ bonds,	33,000 00
30—	Payment to W., S., C. & Co., for account of the Railroad Company	1,144 11
	Interest and expenses	3,651 57
	Total,	$302,406 57

Yours respectfully,
C. A. WETTON,
Auditor.

[Exhibit E4 to testimony of C. A. Wetton.]

917—Bond Exchange Account

To Sundries.

917—R. T. Wilson & Co.

For 1513 Tennessee State Bonds with coupons attached, equal par value of $1,684,800 @66¼	$1,070,481 92		
Expense for stamping, $1,686.97; copying papers, $10.00	1,696 97		
Notary Public, $3.00: National Bank Note Company, $2,085.91	2,088 91		
Printing Pamphlets, $38.75; Boxing Press, 75c.; Telegrams, $2.59	42 09		
Chas. Tracy legal opinion, $250.00; interest and comm'ns, $61,843 22	62,093 22	$1,136,403 11	
243—Profit and Loss—			
For balance this amount		302,206 57	$1,438,609 68
918—A Iselin & Co.			
917—To R. T. Wilson & Co.—			
For Transfer of Balance		302,406 57	302,406 57

I hereby certify the above entries to be correct copies from the General Journal of the M. & O. R. R. Co.

April 20, 1877.

C. A. WETTON, Auditor.

The foregoing Exhibits D2 and E1 to E4 filed with testimony of C. A. Wetton, April 19th and 20th,, 1877.

JAMES GILLETTE, Special Master.

FRIDAY, April 20, 1877.

Reference proceeded at the office of the Mobile and Ohio Railroad Company pursuant to adjournment. Present, Special Master and Counsel, as of the days previous; also the witness T. Haskins Du Puy, with the books and records of said Company as called for by the subpœnas.

The letter books Mobile and Ohio Railroad Company, containing letters written from the President's office, commencing with November 1, 1869, and ending February 14, 1872, produced and examined in presence of counsel, in reference to the Tennessee matters called for by E. L. Andrews, Solicitor for Moran Brothers.

Letters received for the years 1870, 1871 and 1874, also produced.

Mr. Andrews—How many days would it take to examine the files of letters received to ascertain the correspondence during 1870 and 1871 in reference to Tennessee claims?

A. There are thirty-two packages. I can't tell how long it will take. I will go over them now.

Q. How long would it take to examine the letters received from Duncan, Sherman & Co. and W. B. Duncan in 1874 and in 1875 to May 8th, to ascertain from the files what the correspondence with them was during 1874 and 1875, down to May 8th.

A. I could put a clerk at it, I think, and have it done in a week or ten days. By putting a special clerk at work at the matter, I suppose the Tennessee and the coupon correspondence could be overhauled inside of two weeks.

A. L. Willoughby, Treasurer Mobile and Ohio Railroad Company, called by Mr. Andrews. In answer to subpœna for a roll showing numbers and series of Tennessee Substitution Bonds, and for a receipt said to have been given by the State of Tennessee, and other papers in reference to said matter, says he has searched in his office and can find no such papers as are called for and no records whatever pertaining to the Tennessee Substitution matters.

C. A. Wetton, Auditor Mobile and Ohio Railroad Company, called by E. L. Andrews, produces General Journal of said Company for the year 1871. Book examined by the witness and counsel for objecting bondholders.

Q. What is the entry under the head of Bond Exchange in the Journal for 1871?

A. Debit entry of $5,000 for five bonds, "paid to trustees."

(The witness here produced in response to further request from Mr. Andrews, Journal C for the year 1874, of the books of account Mobile and Ohio Railroad Company. Journal examined by counsel with witness as to the accounts with Duncan, Sherman & Co.)

The Tennessee Substitution matter being resumed, the witness produced certified copy of entries from the General Journal Mobile and Ohio Railroad Company, the same being called for by Mr. Andrews. Copy marked Exhibit E4, and filed. (See minutes of 19th.)

By Mr. Hamilton, of counsel for Trustees:

Q. What does this purport to be?

A. It purports to be a copy in part of the Tennessee Bond Exchange Account,

Q. Is it the same account that was exhibited yesterday?

A. No. The accounts submitted yesterday were the accounts current of R. T. Wilson & Co. and A. Iselin & Co., in relation to the Tennessee bonds.

Q. What is this account?

A. This account is an exact copy of the entries on the general books of the Mobile and Ohio Railroad Company.

Q. This shows a balance to profit and loss of $302,206.57, and which was transferred to the debit of R. T. Wilson & Co. Please explain that?

A. The credit to profit and loss of $302,206.57, is erroneous. The income account was benefited by the general result with the debit to R. T. Wilson & Co. of $302,-

406.57, and it was applied in liquidation of the liabilities of the Company for interest and miscellaneous indebtedness, as by reference to Exhibit E1. The results of the transaction or its influence upon the general accounts of the Company is shown by Exhibit E2.

By Mr. Andrews:

Q. Is not that last your own opinion of the matter?

A. It is not. I am willing to have it passed upon by a jury of the ablest railway auditors of the country.

Q. You stated yesterday that the item of December 30th, reimbursement to Duncan, Sherman & Co. for advances made on the above account $49,090.34, was for First Mortgage interest. Is that so?

A. It is the result of an examination of the books for the purpose of ascertaining the application of the disposition of the profit of the Tennessee transaction.

By Mr. Stewart:

Q. Please state whether the two accounts you have filed between the Company and Duncan, Sherman & Co., show all the state of indebtedness between them, and whether or not the Company did not owe to Duncan, Sherman & Co. in 1874 and 1875, large sums of money outside of those accounts?

A. The Mobile and Ohio Railroad Company was largely indebted to Duncan, Sherman & Co. on current account during 1874, and in 1875 the balance in favor of D. S. & Co. had decreased. In the statements furnished from January to April, 30, 1875, the interest on general account is only stated to March 31st. And in the account subsequent to this for May, some items were brought in which had evidently been omitted, and which would still have shown a balance in favor of Duncan, Sherman & Co., had they been charged up.

Q. Was not the Company afterwards heavily indebted in that same year to Duncan, Sherman & Co. for advances, and were they not under heavy liabilities for that Company?

A. Yes.

Q. How much was due to Duncan, Sherman & Co. on the 8th of May, 1875?

A. I am unable to state exactly, but I believe the balance in their favor was about ten thousand dollars.

C. A. WETTON.

Subscribed and sworn to before me this 20th April, 1877.

JAMES GILLETTE, Special Master.

Oliver S. Beers, a witness, summoned at the instance of objecting bondholders, sworn and examined by Mr. Andrews, says:

Q. Were you not the Auditor of the Mobile and Ohio Railroad Company?

A. I was.

Q. From what time to what time were you the Auditor?

A. As near as I can recollect, from 1858 to 9th or 10th of January, 1875.

Q. What were your general duties as Auditor?

A. The duties involved in that office, the auditing of the accounts of the road. At first it simply involved the auditing of superintendent's accounts. It finally assumed greater proportion and became the Comptroller's office of the road.

Q. You had general superintendance of the books of account?

A. Yes, for the last ten years.

Q. Will you look at this paper now shown to you, and state whether it is a correct copy, or substantially so, as far as it extends—the entry in the books of account of the Mobile and Ohio Railroad Company in reference to the purchase of Tennessee State Bonds?

A. I made these entries in pencil. I made all the entries in that transaction. It strikes me it is correct.

Q. You are familiar with the transactions with the Mobile and Ohio Railroad Company in the Tennessee State Bonds about the year 1871, and during that year?

A. I was at the time, and am, I think, still.

Q. Did you not obtain the data to make, or have made, the entries in this account from an account current sent to the Mobile and Ohio Railroad Company by R. T. Wilson & Co.?

Mr. Hamilton, without waiving his protest to this proceeding, objects to the question in that form.

Mr. Andrews—The account referred to has been called for, and reported as not found.

A. I did.

Q. Will you explain the first item on that account, which reads as follows: "For 1513 Tennessee State Bonds with coupons attached, equal par value of $1,684,800.00 at 66¼, $1,070,481.92"?

Mr. Stewart—Objected to, because it appears that this account is a copy entered on the books of the Company from an account rendered by R. T. Wilson & Co., and that it must therefor speak for itself, and be held for what it purports, and cannot be changed, varied or explained by the witness. This objection made on the part of the Mobile and Ohio Railroad Company.

[The witness suggests that the original papers may be found in the vouchers for entries or memorandums filed.

The Auditor and Treasurer report that they cannot find said papers.

The Vice-President, Mr. DuPuy, proposes that Mr. Beers the witness shall himself search for the papers, which is consented to.]

1½ P. M.—On motion of Mr. Andrews, a recess is taken for half an hour.

2.20 P. M.—Reference resumed.

The witness, Mr. Beers, returns, and states he cannot find the papers searched for, being two accounts current, one with A. Iselin & Co., and one with R. T. Wilson & Co.

A. It is the cost of Tennessee honds purchased by R. T. Wilson & Co. for account of Mobile and Ohio Railroad Company for use in the settlement with the State of Tennessee.

Q. What does the item mean under the account of R. T. Wilson & Co., which reads as follows: "Interest and commission $61,843.22"?

Mr. Stewart—Question objected to, as it is not the act of the Company, but an account rendered to the Company, according to its terms, an explanation cannot now be given which the Company did not have, having acted upon the account itself according to its terms. [Answer taken subject to exception.]

A. Interest on the amount of money advanced to purchase Tennessee bonds $1,070,481.92, and commissions for said advances.

Q. Money advanced by whom?

A. By R. T. Wilson & Co., and as I understood by A. Iselin associated with them.

Q. Commission paid to whom?

A. R. T. Wilson & Co., Iselin and Duncan. I mean W. B. Duncan.

Q. During all the time that you were an officer of the Company, more than four years after this entry, was this statement of the account ever objected to by the Mobile and Ohio Railroad Company?

A. It was not.

Q. Look at the account now shown you as the account of the Mobile and Ohio Railroad Company with Duncan, Sherman & Co. for a portion of the year 1875. Will you compare it with this Exhibit No. 3, on page 58, part 2 of these minutes, and explain why this account does not balance?

A. This account was made after I left the road.

Q. What is the difference between the debit and credit side of the account?

A. $17,362.87 balance on the credit side of the account The balance on the preceding account is $17,023.69 on the debit side, making a net credit balance of $339.18.

Q. Does not that show that Duncan, Sherman & Co. had drawn from the Mobile and Ohio Railroad Company the last dollar of their claim in account current of the Company?

A. I should say so.

Q. Please explain the items: "April 26—Payment of coupons 1873, $7,000," and under the same date in Duncan, Sherman & Co.'s account, "7 per cent. interest on $7,000 coupons 1873, $210.97." Now tell us how those items could get into the account of April 26, 1875?

A. I really don't know, unless they paid $7,000 of 1873 coupons, and charged interest for paying them. The account itself shows that the money was not advanced, there was a balance due.

Q. In connection with the last question, I call your attention to this last entry in the account of the Bank of Mobile with Duncan, Sherman & Co.: "November 6—Old coupons, Savings Bank, $7,000.". Were not the old coupons last above mentioned the same $7,000 of coupons of 1873 mentioned in the account of Duncan, Sherman & Co. with the Mobile and Ohio Railroad?

A. I remember the coupons held by the Savings Bank amounted to $7,000, which were coupons of November, 1873, held by the Savings Bank as security for loan of $7,000 used in taking up those coupons. The debt to the Savings Bank was paid in the fall of 1874, so I understood, and I believe through this entry of November 6, charged by the Bank of Mobile. I believe that this $7,000 in the account of Duncan, Sherman & Co. represents the same coupons.

Q. Then those coupons were presented at the Bank of

Mobile, were received by the Bank of Mobile, came into the possession of Duncan, Sherman & Co. under a claim of ownership, and while they, Duncan, Sherman & Co., claim that the Mobile and Ohio Railroad Company had assigned them the coupons of 1874, they took these $7,000 of coupons of 1873 so presented at the Bank of Mobile in November, 1874, and afterwards compelled the Mobile and Ohio Railroad Company to pay those old coupons of 1873 which had so come into their possession. Is that so?

Mr. Stewart—Question objected to, because it assumes by the language of the counsel, facts with coloring which do not appear, wherefore the question is improper, and because the whole subject is irrelevant to the inquiry before the Master, and also because the question is leading.

(Answer taken subject to exception.)

A. The accounts before me show that the Bank of Mobile paid to the Mobile Savings' Bank, on the 6th of November $7,000 for coupons of November, 1873, and that on the 26th April, 1875, Duncan, Sherman & Co. collected of the Mobile and Ohio Railroad $7,000 coupons of 1873, with $210.97 interest, and I presume and believe the two coupons items are identical in the two accounts.

(Mr. Stewart objects to the answer as the presumption and belief of the witness, and moves it be stricken out.)

Q. Mr. Andrews—Mr. Beers, you went to Nashville, Tenn., to examine State bonds which were surrendered by the Mobile and Ohio Railroad Company to the Tennessee, as an officer of the Company?

A. I did.

Q. Will you state how many of the bonds so surrendered were bonds of the State of Tennessee, issued in aid of the Mobile and Ohio Railroad Company?

A. I think there were just sixteen of one thousand dollars each.

Q. Did you take their numbers?

A. I procured a certified list from the officers of the State of Tennessee of all the bonds paid in by the Mobile and Ohio Raillroad, and filed that list in the office of the Company

Cross-examination by Mr. Hamilton, solicitor of plaintiffs in this suit, (without waiving the protest.)

Q. Did you deliver personally to the officers of the State of Tennessee, the Tennessee State bonds that were taken up?

A. I did not.

Q. Who did deliver them?

A. I have heard the name of the party, but forget it. He was an agent appointed by R. T. Wilson.

Q. Who is R. T. Wilson?

A. He was the agent of the Company to purchase the Tennessee bonds and to settle the debt due the State of Tennessee.

Q. What other relation did he hold to the holders of the Tennessee Substitution bonds?

A. One of the Trustees associated with Adrian Iselin and Wm. Butler Duncan for the Tennessee Substitution Trust, and also one of the syndicate associated with the same parties to dispose of those bonds for the road.

Q. At what time did he deliver these State bonds to the State of Tennessee?

A. I think it was somewhere about September, 1871, but I am not certain as to the date.

Q. How had those State bonds been obtained?

A. By money advanced by R. T. Wilson & Co.

Q. Is that the money which was mentioned in the account which was inspected by you this morning?

A. That's the money.

Cross-examination by Mr. Stewart:

Q. I understand you to say that balancing the two accounts of which you have spoken (the accounts of the railroad company with Duncan, Sherman & Co.), that computing the balance of one account against the balance of the other, of which you have spoken, you find a balance of $389.19 in favor of the railroad company. Please state when these two accounts commence and when they end?

A. They commence 30th April, 1874, and end on 30th April, 1875.

Q. Do you know if these accounts contain all the transactions between these parties up to the 30th April, 1875?

A. I know that the accounts to the 1st December, 1874, are correct from partial examination. The December entries I am not entirely familiar with, and believe they are correct up to the last week in December. From about the 25th December, 1874, to the 30th April, I have had no opportunity to examine the papers, and therefore know nothing of their correctness.

Q. I have not asked as to the correctness of the accounts, but whether those accounts contain all the transactions and indebtedness of the parties up to 30th April, 1875?

A. I make the same answer then, substituting the words transaction and indebtedness. I don't know.

Q. Do you know anything of the transactions after 30th April, 1875, between these parties?

A. I do not.

Q. You have spoken in relation to the two items of $7,000 in the accounts. Have you any certain knowledge that these items relate to the same coupons and indebtedness, or is it your inference merely?

A. I have no certain knowledge, but as the identity is very strong, from my knowledge of the preceding transactions of the Company and as an accountant looking over the accounts, I should presume them to be the same.

Q. Have you any knowledge in that respect other than that you knew the Savings Bank held the $7,000 coupons, and that you see those two items charged in the accounts?

A. I have only this: The claim of the Savings Bank was a peculiar one. It had been reduced by partial payments prior to it, leaving exactly $7,000 due on coupons redeemed by them, amounting to more than $7,000. It was an old debt, frequently spoken of, and attracted my attention. The statement of $7,000 called up at once the recollection. It would be very difficult to throw together any number of sterling coupons, so that the amount should be exactly $7,000.

Q. Have you any knowledge that these coupons for $7,000 are now held or claimed to be a part of the unpaid coupons for 1874?

A. The accounts show that they are paid.

Q. Have you any knowledge that they are claimed as being unpaid?

A. I have never heard of their being claimed.

Re-direct examination by Mr. Andrews, solicitor for Moran Brothers.

Q. You have stated that State bonds of the State of Tennessee were delivered by the agent of the Mobile and Ohio Railroad Company to the State of Tennessee in September, 1871. Now will you state when the new bonds, issued by the Mobile and Ohio Railroad Company, which have been called here before the Master Substitution bonds, were issued?

A. There were $420,000 of these bonds sold on the 1st or 2d December, 1871. On the 14 or 15th December, $1,260,000. And there were $5,000 paid to the Trustees about the same time, making $1,685,000.

OLIVER S. BEERS.

Subscribed and sworn to before me this 20th April, 1877.

JAMES GILLETTE, Special Master.

E. H. Grandin, a witness called for objecting bondholder Belloni, being sworn, says as follows (in reference to the First Mortgage coupons of 1874):

In the year 1874 I was the holder of First Mortgage Bonds of the Mobile and Ohio Railroad Company as the executor of the estate of the late John A. M. Battle. I also held some of the same bonds as my own individual property. I hold three of the bonds yet; my own individual bonds. The bonds belonging to the estate I was fortunate enough to dispose of before what I call the first default of the payment of the interest coupons of First Mortgage Bonds of this Company. In the year 1874 the coupons of all the bonds in my hands, held by me in the capacities that I have named, were paid. I don't think, I am not positive, that I ever visited this office, the office of the railroad company, and presented any of those coupons. I know that some of them were deposited by me in the Bank of Mobile, in this city, and in a bank or banking house in New York, and they were paid, or at least I never heard of them again. I have an indistinct recollection that on one occasion, in 1874, I saw Mr. Willoughby, and learned from him that the Bank of Mobile was paying the coupons.

I state most positively, that I never had any idea, and never had any reason to suppose, that the Mobile and Ohio Railroad Company made default in the payment of its First Mortgage coupons, either on the 1st May or 1st November, 1874. On the contrary, I had reason (what I considered to be the best reason) to believe that there had been no such default on the 1st May, 1874, because on my expressing to one of the Directors of the Company, near about the 1st May, 1874, my doubt as to the ability of the Company long to continue to pay its interest on its bonded debt, he assured me that I need have no doubt about it. This Director was Mr. Wm. H. Pratt. I had very strong doubts about the solvency of the Company, and expressed those doubts to parties in this city, and this Director came to me and asked why I was depreciating the securities of the Company, or something to that effect. It was then I expressed my doubt and received his assurance. The first time that I ever heard, in any way, shape, manner or form, that this Company had made default, or proposed to make default, in the payment of any of its interest, was when it issued its circular of 1st March, 1875, to its Second Mortgage bondholders, announcing that it would be compelled to pass the payment of its coupons, or something to that effect. As a matter of course, I then looked for the default in the First Mortgage coupons on the 1st May, 1875. The circular referred to is on page 12, part 2, of these minutes.

Mr. Stewart—This evidence is objected to as irrelevant and incompetent. Objection is also made to those portions of the evidence which give the opinions of the witness and his conclusions, and also to any statement by a Director of the Company to him, and to any statement of Wm. H. Pratt, unless to impeach his veracity as a witness.

Cross-examination by Mr. Stewart:

Q. Please state whether Mr. Wm. H. Pratt did not announce to the Commissioner yesterday that he intended to leave for New Orleans that night?

A. I heard no such announcement. Did not see Mr. Pratt before the Commissioner, and did not know, and don't know whether Mr. Pratt left or not. I heard something said in the Master's office yesterday about an account that it was desirable to obtain from Mr. Pratt, because he was going to leave town. But it made no impression on me. If he has left town, I am sorry, as I could desire he should be here and hear my testimony.

Q. Please state whether Mr. Pratt did not announce to the Commissioner, on the day before yesterday, or the day before, that it was necessary that his testimony should be taken as soon as possible, as he was about to leave for New Orleans?

A. I do not know. I was not present at either of the sittings. E. H. GRANDIN.

Subscribed to before me this 20th April, 1877.

JAMES GILLETTE, Special Master.

The letter books of 1874, one being from November 26, 1873, to April 28, 1874, and one from February 12, 1874, to April 16, 1874, produced by T. Haskins DuPuy, in answer to demand of Mr. Andrews, and examined. Letters and telegrams of the President of the Company to W. B. Duncan, read by the witness. The witness states they are all the letter books for 1874 he knows of.

Q. Are the two letter books which you have produced covering the period of 1874 between January 1 ahd April 28th, the only letter books of 1874 in your possession?

A. They are the only ones I have any knowledge of.

Q. From January 1 to May 8, 1875, what letter books have you?

A. I have my own from 26th April to 8th May. There's nothing about the coupons of 1874 in them.

[The witness produces his letter book.]

Q. Have you no other letter book for 1875 than the one from which you have just read, commencing from April 28th of that year?

A. I have no knowledge of any letter book of 1875 other than my own.

Witness reads the letters and telegrams from the books produced by him, and furnishes copies of such as are requested by counsel for objecting bondholders. Copies marked F herewith:

Exhibit F—Extracts from Letter Book of Presidents of Mobile and Ohio Railroad Company, 1874.

MOBILE, February 12, 1874. Page 4.

Wm. B. Duncan, Duncan, Sherman & Co.:

Received yours. Papers for stock exchange were left with Chairman of Committee. Bonner introduced me to him and knows all about it.

(Signed) A. MURDOCK, President.

Page 80. **FEBRUARY 25, 1874.**

Wm. Butler Duncan, New York:

Dear Sir—I have your despatch of this date, as follows: "Send written approval of our action, pledging Convertible Bonds in accordance with resolution February 17th."

Said resolution of February 17, 1874, authorized the pledge of Convertible Bonds belonging to the Company in such manner as Duncan, Sherman & Co., with the approval of the President of this Company, may suggest and determine.

In accordance with terms of said resolution and the power vested in me, I hereby approve of such disposition and pledge of said bonds as Messrs. Duncan, Sherman & Co. may suggest and determine.

(Signed) A. MURDOCK, President.

Page 138. *Wm. Butler Duncan, Esq.:*

Dear Sir—By the mail, Mr. Beers sends you the papers asked for in your favor of February 25th, for application to stock exchange. The name of the Registrar is left blank for you to fill up, as I have forgotten the given name of Mr. Hays or the bank he represents. There is also wanting a letter to Registrar, asking him to furnish the amount of stock registered; please ask Col. Walker to address Mr. Hays the necessary note. We have, of course, been rather busy in getting up an elaborate and accurate statement and one which I think will meet your expectations. We are pressing the mortgage as fast as possible, the recording in all the counties in the four States is a job, but we are pushing it vigorously and will send it to you at the earliest moment.

(Signed) A. MURDOCK.

Page 156. **MARCH 11, 1874.**

Wm. Butler Duncan, Esq., New York:

Dear Sir—Yours of 5th reached me this morning. The Trust in hand of Col. Crawford, as you properly remarked, was created by the Board and not by contract or agreement with any other party, consequently it is competent for the Board to return it to the treasury; as to the Second Trust in the hands of Mr. Rushing that is stipulated in the mortgage, and it is now in the shape of bonds, a full statement of which will be made and the bonds cancelled; in fact, most of them have been cancelled long since. We shall have this fund fully settled and report thereof made. Mr. Rushing has no moneys in his hands, it is all in bonds. Your information is incorrect as to any halting in requiring creditors to extend with curtailment, the opposite is the fact and rigidly adhered to.

I have made no calculation upon any negotiations you may make best—am proceeding upon the basis that our earnings are our resources; hoping, however, that something better may happen, as I

cannot see how it is possible to pay May interest from our resources here—curtailment keeps us very hard up all the time, and will continue to do so.

Stock, of which there is little on the market, is gradually improving, and I am told is quoted at 23—no quantity could be purchased at that. The papers necessary to put it on the Stock Board are sent you some days, and I hope were found complete. As the planting season is upon us, business of course falls off; but the energy being used for a greater production along the line was never so great, while immigation is looking towards us more than ever before. Our agents are now in the counties getting the Mortgages recorded.

(Signed) A. MURDOCK.

MARCH 21, 1874. **Page 218.**

Wm. Butler Duncan, Esq.:

Dear Sir—There is a strong disposition to invest in our Stock here, There are those here, and along the line, who have idle means to a greater or less extent, who regard the Stock as a good investment. A day or two since a gentleman came here from the interior with the money to purchase 50 shares at 25; he got it at 21½, and told me he should have given the 25. Orders went from here yesterday, through a broker, to purchase in New York at 22½, what amount I do not know.

There is none of consequence offered here, and if the slightest activity, or even inquiry in New York for the Stock, it would advance at once. I am told that convertible Bonds have been quoted from New York to our Brokers here at 92½. If the Stock was advanced. of course the Bonds would follow. Not knowing your plans, I am saying and doing nothing, only to say that the Stock is worth more than it is selling for. Your Mr. Sherman will be with you before this reaches, and from him you will learn of the destructive floods of rain, in our section. Our line was exempt from the almost general damage, and the only loss to us is the difficulty of getting to and from our stations, and consequent loss of business.

(Signed) A. MURDOCK.

Questioned by Mr. Stewart:

Q. Please state whether the paper I hand you now contains a true statement of the number of bonds issued and outstanding by the Company, and of the amounts proved before the Special Master under the order of the court, and of the amounts transferred to and now held by the committee of reoganization, and in possession of the said committee and under their power and control, of which committee you are one?

Mr. Andrews—Question objected to on the ground that the amount of bonds which may be owned by any committee or any one else, has no bearing whatsoever upon the question which we are here to try—whether Alexander Duncan's coupons and the Tennessee claims are valid, subsisting liens or not.

Judge Grandin objects to the paper as swelling the record unnecessarily and increasing the expense; and Judge Grandin moves to exclude it.

Mr. Stewart—The paper is offered, inasmuch as Judge Grandin has testified that he has represented two or three hundred thousand dollars; the present paper is offered to show that it may be that some of those very bonds are now held by the committee of reorganization.

Special Master—Objection sustained as to relevancy and paper excluded.

C. A. Wetton recalled by Mr. Stewart, testifies as follows:

A careful examination of the books of the Mobile and Ohio Railroad Company showed that it was largely indebted to Duncan, Sherman & Co. in November and December, 1871, for payment of First Mortgage interest and the payment to them by Iselin & Co. of $49,090, was in re-inbursement of payment of the coupons as stated.

The $302,206.57 carried to the credit of profit and loss account on the books of the Company, as shown by the entries previously filed, is an erroneous and improper entry and calculated to mislead.

The Bond Exchange account is a fictitious account and a misnomer. The liability accounts were reduced to the amount of the profit resulting from the transaction of the Tennessee bonds.

The result of the entries filed would be to show that the accounts were apparently benefited to the extent of $604,613.14, which is a direct result of using a fictitious account such as the Bond Exchange account in a general balance.

Cross-examination by Mr. Andrews:

Q. Why did you not tell us all this the other day when we were examining this account, and you were asked about it?

A. Because I had not made the examination of the general results as applied to the general accounts of the Company, but only as to the current accounts of R. T. Wilson and A. Iselin & Co. with the Mobile and Ohio Railroad Company.

C. A. WETTON.

Subscribed and sworn to this 20th April, 1877.

JAMES GILLETTE, Special Master.

Oliver S. Beers recalled by Mr. Andrews:

Q. You heard the testimony of Mr. Wetton that the item December 30th reimbursement Duncan, Sherman & Co. for advances made on the above account $49,090.34, was for First Mortgage interest. Is that so?

A. It is not so, and about as reliable as Mr. Wetton's statement about my profit and loss entry. The item refers to Second Mortgage interest and was lodged with Mr. Duncan to carry out a pledge of the Company to pay all matured coupons of Second Mortgage bonds matured March 1, 1871, and a large part of it was subsequently returned by Duncan, Sherman & Co. to the Company not claimed.

OLIVER S. BEERS.

Subscribed and sworn to before me this 20th April, 1877.

JAMES GILLETTE, Special Master.

Mr. Andrews moves for the production, under the subpœna already issued, of the letters received by the Mobile and Ohio Railroad Company in 1870 and 1871 on the subject of the Tennessee claims, and in 1874 and 1875 to May 8th on the subject of the coupons, interest, earnings and assets of said Company, according to the scope of the subpœna.

Mr. Stewart objects, on the ground that the application is too late; that the letters were produced, but that there has not been time to examine them and seperate them from the mass of others which have been exhibited to the parties. That the parties have had ample time heretofore for the making of this motion. That now, at this late hour, it cannot be carried out.

Mr. Andrews—This subpœna was granted several weeks ago. This last day of the reference is the first opportunity that we have had to ascertain anything concerning this correspondence, or concerning its voluminous character, and the length of time it would take to place it in shape for presentation to the Master. We have therefore availed ourselves of our rights at the earliest possible moment.

Mr. Hamilton—In answer to that, I produce the subpœna to Mr. DuPuy.

Special Master—The objections are sustained, and the motion of Mr. Andrews refused.

7½ P. M.—Recess taken until nine o'clock P. M., when the hearing will be resumed at the Master's office, in the U. S. Court Room.

9 P. M.—Reference resumed. Present, the Master and Messrs. Hamilton and Stewart, counsel.

The Master having received notice from the counsel for objecting creditors, that they have concluded to forego the evening session, and no additional evidence being offered, and no motion made,

Ordered that the evidence on this reference, be and the same is hereby closed. It is further ordered, no one objecting to the minutes, that the same hereby stand approved.

JAMES GILLETTE, Special Master.

United States Circuit Court, Southern District of Alabama.

WILLIAM BUTLER DUNCAN, ET AL.,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY.

On the petition of the Rogers' Locomotive and Machine Works, it is hereby ordered that the counsel for the Second Mortgage Trustees have two days further time to adduce evidence before the Special Master, to sustain the answer of the Second Mortgage Trustees, the time to include Wednesday, April 25, 1877.

April 21, 1877. W. B. WOODS, Judge.

United States Circuit Court, Fifth Judicial Circuit and Southern District of Alabama, In Equity.

WILLIAM BUTLER DUNCAN AND A. FOSTER ELLIOT,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY.

MOBILE, Ala., April 23, 1877.

To Messrs. P. and T. A. Hamilton, Solicitors of Trustees and Receivers; Geo. N. Stewart, Esq., representing Alexander Duncan, and Solicitor Mobile and Ohio Railroad Company; E. H. Grandin, representing Rogers' Locomotive Works, or to E. L. Andrews, representing said Grandin:

Please take notice that in pursuance of an order of Hon. W. B. Woods, Circuit Judge, this day received allowing "two days further time to adduce evidence before the Special Master, to sustain the answer of the Second Mortgage Trustees, the time to include Wednesday, April 25, 1877," I will be in attendance in the United States Court Chambers, in Mobile, this day at 1½ o'clock P. M., for the purpose of the reference under said order, at which time and place you can attend if you see proper.

JAMES GILLETTE, Special Master.

Received Marshal's office, April 23, A. D., 1877, and executed upon the same day by serving a copy of the within subpœna upon Peter Hamilton, George N. Stewart and E. L. Andrews.

GEORGE TURNER, U. S. Marshal.
By F. Y. ANDERSON, Deputy.

MONDAY, April 23, 1877.

Pursuant to the foregoing order and notice the hearing before the Master was resumed at 1½ o'clock P. M. Present, P. Hamilton, representing Trustees and Receivers, complainants; George N. Stewart, representing Mobile and Ohio Railroad Company, and Alexander Duncan and E. L. Andrews appearing for E. H. Grandin, solicitor for Trustees Second Mortgage.

E. L. Andrews offers as evidence, under the answers of the Second Mortgage Trustees:

Certified transcript of the record and proceedings in the case entitled "In Chancery, at Mobile, Mobile and Ohio Railroad Company vs. Morris Ketchum," numbered 2480 of the files of said court. Transcript marked Exhibit O, and filed.

A further offer of the letters as follows:

1. Chas. Walsh to Geo. N. Stewart, Esq., General Solicitor Mobile and Ohio Railroad Company, dated Mobile, March 5, 1875.

2. Alexander Jackson to same, dated Jackson, Tenn., March 9, 1875.

3. George H. Young to same, dated Waverly, Miss., March 10, 1875.

4. Charles Walsh to same, dated Mobile, March 12, 1875.

5. Charles Walsh to J. J. Walker, Vice President Mobile and Ohio Railroad Company, dated Mobile, April 20, 1875.

Letters (copies) filed and marked Exhibit Q.

A further offer of the resolutions of the Directors Mobile and Ohio Railroad Company, for the appointment of W. B. Duncan and A. F. Elliot. Resolutions dated April 19, 1875, marked, P, and filed (resolutions printed page —, this testimony).

A further offer of a certified copy of a bill in equity in the United States Circuit Court, Southern District of Alabama, entitled "Morris Ketchum, as surviving trustee, &c., against Mobile and Ohio Railroad Company, W. B. Duncan, Andrew F. Elliot, and others:" Also the demurrer of Wm. Butler Duncan to the aforesaid bill, and the plea of the Mobile and Ohio Railroad Company thereto; also the decree of the United States Circuit Court of the Southern District of Alabama, overruling plea and demurrer.

All of the foregoing offered as evidence in support of the answers of Second Mortgage Trustees.

Mr. Stewart, as Solicitor Mobile and Ohio Railroad Company, objects to all the portions of the record offered in the case of "Morris Ketchum vs. The Mobile and Ohio Railroad Company" as being irrevelant, and because purporting to be only portions of the record in said cause, omitting the proceedings towards rehearing of said decree, and the answers of the Trustees and the Mobile and Ohio Railroad Company filed in such cause, and because no final decree in said cause is shown.

Mr. Hamilton, for Trustees and Receivers, complainants in this cause, makes the same objections, and the further objection that the whole proceeding is between different parties altogether.

Mr. Hamilton offers, in case the other portions of the record are admitted, all the record and proceedings in the said case of "Morris Ketchum vs. The Mobile and Ohio Railroad Company," as they now stand in this court.

Objections to the introduction of the record in the case of Morris Ketchum vs. Mobile and Ohio Railroad Company sustained.

Mr. Andrews, on behalf of Judge Grandin, for Second Mortgage Trustees, excepts to the ruling.

Mr. Andrews also offers the record, "In Chancery at Mobile, No. 3594, Wm. H. Hays vs. Morris Ketchum, Wm. Butler Duncan, A. Foster Elliot, the Mobile and Ohio Railroad Company, and others," also the writ of injunction restraining Morris Ketchum from proceeding in this Court, for the protection of the rights declared by the decrees herein before mentioned.

Mr. Andrews, besides offering the proceedings in the last stated case as a record, offers them as an admission.

Mr. Stewart objects to the papers offered as irrelevant, and tending to increase the costs of this reference unnecessarily.

Mr. Hamilton objects to the admission of the record offered, because it is a mere bill filed against certain other parties who are not parties to this record as complainants or defendants.

Mr. Andrews—It is claimed to be filed in behalf of $3,211,000 under the deed of trust in question. The position of the complainants in respect to this controversy has been permitted to be proved and spread in full on the record before the Master in this cause. It contains admissions of the Mobile and Ohio Railroad Company defendant herein, besides admissions of the *cestui qui trust.*

Ruling—Objections to the introduction of the records in the case of Wm. H. Hays and others, against Morris Ketchum and others, are sustained.

Mr. Andrews, on behalf of the Second Mortgage Trustees, excepts to the ruling.

Motion by Mr. Andrews, to notify T. H. DuPuy to examine the letters received by the Mobile and Ohio Railroad Company in 1870 and 1871, in relation to the Tennessee matters, and in 1874 in relation to the coupons of First Mortgage Bonds, and for the production of them when found.

Motion granted, returnable at 11 A. M. Wednesday.

Thereupon the reference adjourned until Wednesday, April 25th, at 11 o'clock A. M.

JAMES GILLETTE, Special Master.

Exhibit O—Evidence offered under Answers Second Mortgage Trustees.

In Chancery at Mobile, No. 2480.

MOBILE AND OHIO RAILROAD CO. } [COPY.]
vs. } *Bill of Complaint.*
MORRIS KETCHUM. }

To the Hon. N. W. Cocke, Chancellor of the Southern Chancery Division of the State of Alabama, presiding at Mobile:

1. The Mobile and Ohio Railroad Company, a body politic and incorporate, chartered by the laws of Alabama, and also by the States of Mississippi, Kentucky and Tennessee, respectfully shows to your Honor, that by virtue of its powers so granted by said States respectively, it has constructed a line of railway from Mobile to the mouth of the Ohio river, and is now running and operating the same.

2. The said Company further shows, that under and by virtue of purchases, and by grant from the Congress of the United States of America, it has obtained title to, and possession of, a large quantity of land and real estate. Among this property so owned by the Company is a large quantity of vacant land in the States of Alabama and Mississippi, which this Company obtained from the source above named, for the purpose of aiding said Company in the construction of said road.

3. The said Company further shows, that to enable it to proceed and complete its said railway, said Company has been compelled to borrow large sums of money for the payment of said loan, and also in some instances in payment for work and materials furnished the Company by sundry parties, it has issued its bonds for the sum of two hundred and twenty-five pounds of the currency of Great Britain, each, which are commonly known in the market as Sterling Bonds. These bonds are made payable in London, England, in the year 1883, at the office of George Peabody & Co., and bear interest at the annual rate of six per cent., which is payable semi-annually at the place aforesaid, on the first days of May and November. Six thousand of these Bonds have been executed, amounting to the sum of thirteen hundred thousand, six hundred and fifty pounds sterling, English currency.

4. Further, your complainant respectfully shows to your Honor, that on the first day of November, 1853, said Mobile and Ohio Railroad Company, by its deed of that date, conveyed to Morris Ketchum and John J. Palmer, of the City and State of New York, and to William R. Hallett, of the City of Mobile, and State of Alabama, the better to secure the payment of the bonds herein before described, and every part thereof, with the interest accruing thereon, the following described property, to-wit: All the said Mobile and Ohio Railroad lying between its respective termini, constructed and to be constructed, together with all and

singular the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned, and which may hereafter be owned, by said Company, including the said lands donated by the Congress of the United States, that is, 419,528 56-100 acres of land in the State of Alabama, and 737,130 36-100 acres of land in the State of Mississippi—total 1,156,658 92-100 acres, saving and excepting therefrom so much as lies in township 4 south, range 1 west, of lands subject to entry in the St. Stephen's Land Office, being 692 78-100 acres, more or less; saving and excepting also the lots and tracts in the county of Mobile, outside of the line of the railway, outside of its depots, and outside of the corporate limits of the City of Mobile, being lots and lands derived by private purchase not yet fully paid for, and not included in the list of lands in Mobile county derived under and by the act of Congsess, and saving and reserving the rights and liens that may attach to the roadway and construction thereon in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that State, in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz: One hundred and eighteen miles, not exceeding ten thousand dollars per mile. All which will more fully appear by reference to said Deed, which is on record in the office of the Judge of Probate of Mobile, and a copy whereof, in print, is herewith filed as an Exhibit to and part of this bill.

5. Said deed was executed to said Ketchum, Palmer and Hallett, their survivor or successor, for the benefit, security and advantage of the person, or persons, or corporations, or any other party, who shall or may be holders of the before described bonds, or any of them, in Trust for that purpose, and with certain powers over said property in said deed fully set forth.

It was therein provided, that of the said 1,156,658 97-100 acres of lands donated by the said Congress, the said Trustees should be deemed to be in immediate possession, with authority to devise and determine rules of management, of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the payment of said bonds, said Trustees to render annually, on 1st January of each year, to the said Railroad Company, accounts of their doings in the matter of the Trust, said Trustees were authorized to appoint an agent to attend to said land business, but that no sale of said lands should be made so long as said grantor was not in default on any obligations connected with said bonds, except by and with the advice and consent of said Company. The other property named in said Deed was to remain under the control of said Company, unless said Company became in default for the payment of said Bonds or interest.

6. Your orator further shows to your Honor, that said deed also contains a provision, that if either of the said Trustees should at any time, or times thereafter, die, or become from any cause incapable of acting in the premises, or resign his said office, the said Company, and the surviving or continuing Trustees should select some other person to fill the vacancy occurring, and should thereupon make, execute and deliver such other instruments or assurances as might be necessary to enable such selected person to act in the premises.

7. Your orator shows that said Trustees assented to said deed, and took upon themselves the burthen of its execution; that since then two of said Trustees have departed this life, to-wit: Wm. R. Hallett, of Mobile, who died in July, 1860, and John J. Palmer, who died before the said Hallett, and that the only surviving Trustee is the said Morris Ketchum, and that said Ketchum is a resident citizen of the State of New York, and is an alien enemy of the Confederate States of America.

Your orator shows that, at sundry times before the 15th of April, 1861, your orator, in pursuance of the terms of said Deed of Trust, applied to the said Ketchum to unite with your orator in the appointment of Trustees to fill the vacancies occasioned by the death of said Hallett and Palmer, but said Ketchum has refused to unite in the appointment of such Trustees, and the places of said deceased Trustees still remain vacant.

8. Your orator charges that said conduct on the part of said Ketchum is a breach of the spirit and letter of said Trust Deed, and that it has proceeded from selfish and interested motives on his part—and that he has pursued a course of conduct in relation to the Trust that has embarrassed and operated to the injury of your orator.

Your orator shows that no provision is made in said Deed for compensation to the Trustees, except in event of a forfeiture thereof, which has not occurred, and which your orator hopes will not occur. No services have been rendered by said Trustees beyond the simple acts of signing the mortgage bond and a few other papers directing and authorizing the sale of a small portion of the lands, said Trustees have not made any of the annual reports called for by the deed. It was the duty of the Trustees to have directed the sale of lands, but they have failed to do so except to a small extent, hereinafter named. Such plain duties they have designated, whereby great injury has been done to your orator, and to the bondholders, retarding and preventing the sale of lands, and thereby impairing the market value of the bonds which were to have been received in payment for lands.

The said Hallett, before his death, resided in Mobile, but when applied to he declined acting, stating that the active management of the Trust was with his co-Trustee, Ketchum, always referring your orator to said Ketchum, and professing to refer all communications to him. Thus having the active management of said Trust business, the said Ketchum has used his power oppressively to your orator, and for selfish purposes.

When said bonds herein described were signed, the said Ketchum, in the name of himself and co-Trustees, retained eighteen of said Bonds, of the par value of eighteen thousand dollars, on the pretence of compensation for signing said Bonds; and thus, against the wishes of your orator, and notwithstanding the protest of your orator, which was then made, and been repeatedly renewed, said Bonds, with all the coupons for interest thereon, have been withheld from your orator. Said Ketchum has, in addition, also demanded regular salaries at high rates, while your orator would not object to reasonable compensation for actual services, it has refused to accede to the demands, because they were exorbitant, and could not be yielded to without submitting to gross wrong. Since the death of his said co-Trustees, said Ketchum has refused to unite in the appointment of new Trustees, except on condition that he shall retain what he has already obtained, and also have a fixed salary at some high rate, to begin about the year 1855, and continue 'till the maturity of the Trust in 1883. Said Ketchum also claims the right to move the management of the land department from Mobile to New York, and then to organize it by committing it to the officers appointed by himself, and has notified the President of this Company of his having appointed the chief agent or Superintendent thereof. Your orator, to induce said Ketchum to consent to the appointment of new Trustees, has obtained the request of a majority of the bond-holders for that purpose, but without avail, said Ketchum has still persisted in his refusal to unite in the appointment of such new Trustees.

Your orator charges that these actings and doings of said Ketchum are in violation of his duties as Trustee, and that he is an unfit person to continue in his position of Trustee.

9. Your orator further shows, that by a writing under date of 10th January, 1855, the said Ketchum and other Trustees advised and directed the sale of lands embraced in the Trust, not exceeding 100,000 acres, on such terms as to price and time of payment as said Company, by its Board of Directors, should approve, and promised to ratify such sale and execute proper deeds to the land so sold. In pursuance of said authority, orator has sold a large quantity of land to sundry purchasers, who have complied with the terms of sale and paid most of the purchase money. Orator has made due reports of said sales to said Ketchum, and has in all things performed the conditions on which such sale was to be made, and called for deeds for the purchasers from him as Trustee holding the legal title, but he has refused to ratify the sale, and has failed to make deeds for the purchasers. Said purchasers have demanded of your orator deeds

for their lands, and one has filed his bill in this Honorable Court to compel the specific performance of the contract with him. Others of said purchasers are threatening to pursue a similar course, and so your orator has been subjected to annoyance and costs, and is likely to be still further injured by the misconduct of said Ketchum in said office of Trustee.

These matters have been urgently presented to said Ketchum by your Orator, but he has given no heed to their applications, and not even acknowledged its reports to him, and when personally applied to, refused to execute the necessary deeds except on condition of his demands for past compensation and future salary being complied with.

10. Your Orator shews that it is highly important that further sales of land should be made; that such was originally intended to be made, for the purpose of completing said road, and it was expressly declared that the said sterling bonds so issued by the Company should be received in payment of lands to be sold.

This can only be done by the agency of the Trustees, under said deed of trust. That the lands lie in the States of Alabama and Mississippi, and their management should be confided to persons who can and will superintend their management, in those States and in the city of Mobile where the Trust deed was executed, where the chief business of your Orator has necessarily to be executed, and where the Trust will have to be executed, and that the removal of the control and direction of this business would be to the manifest detriment and injury of your Orator and all others concerned.

It shews that the security of the bondholders requires the active agency of suitable and a full Board of Trustees to look after their interest in this property, and that interests so large should not be left in the control of one person alone; that the deed was originally to three; and good faith to the creditors of your Orator, the *cestui que trust* requires that the office should be full.

Your Orator charges that said Ketchum has proved himself an improper person to manage this property as Trustee thereof; that he has been unfaithful to said Trust. It also charges that said Morris Ketchum is an alien enemy, said property is wholly in the Confederate States, and consists of real property and franchises, and personal property, whose chief value arises from its connection with the realty, and can be properly managed only by resident citizens of these Confederate States.

11. Your Orator prays that said Morris Ketchum may be removed from his said position as Trustee under the said Deed of Trust herein described; that the vacancies created by the deaths of John J. Palmer and William R. Hallett may be filled, and that some suitable person be also appointed Trustee in the place of said Morris

Ketchum, and that said Trustees so to be appointed be clothed with all the powers conferred by said deed upon the said Ketchum, Palmer and Hallett.

Your Orator prays that said Morris Ketchum be made a party hereto, and that publication be made as provided by the Statute in the case of application for the appointment of Trustees, and for such other and further relief as may be consistent with equity and the nature of its case, and as in duty bound, will ever pray, &c.

HAMILTONS & OWEN, Solrs. Complt.,
GEORGE N. STEWART, Solr. for Complt.

Comes Milton Brown who, being duly sworn, saith he is President of the Mobile and Ohio Railroad Company, that said Morris Ketchum is of mature age, and is a resident citizen of the State of New York, in the United States of America, and further that he, said affiant, has read the foregoing Bill of Complaint, and the allegations thereof are true to the best of his knowledge, information and belief. MILTON BROWN.

Sworn to and subscribed before the undersigned this 3d January, A. D., 1862. T. M. BRINDLEY, J. P., M. C.

(Copy.)

Whereas. Wm. R. Hallett and J. J. Palmer, two of the Trustees under our First Mortgage, executed to secure our sterling bonds, have departed this life; and *Whereas*, Morris Ketchum, the surviving Trustee, has attempted and so far as in his power, practiced gross fraud on this Company and the bondholders; and *Whereas*, said Ketchum is a citizen of the State of New York, and an alien enemy, and in all respects disqualified and unfit to act as a Trustee.

Therefore, Resolved, That our counsel be instructed to apply to the Chancery Court, or such court as may be most suitable to have three Trustees appointed to act under said mortgage, with power to order sales of land, directing, if they deem it best, the taking of sterling bonds in payment, and to make deeds for lands already sold and to be hereafter sold, and to do all and everything necessary and proper to be done in the due execution of said Trust; and

Be it further Resolved, That we recommend the appointment of Charles Walsh of Alabama, George H. Young of Mississippi, and Alexander Jackson of Tennessee, said Trustees, under said mortgage.

I certify the foregoing to be a true copy of a resolution passed by the Board of Mobile and Ohio Railroad Company, at a meeting of said Board on the 5th December, 1861.

SEAL
M. & O. R. R. Co.

January 6, 1862. J. P. RUTLAND, Secretary.

MOBILE, January —, 1862.

I hereby acknowledge myself Complainant's security for the costs in this cause. M. H. BLOODGOOD.

(Endorsed)

Filed January 6, 1862. JNO. M. TAYLOR, Register.

A true copy of the original bill.

Attest: JOSEPH HODGSON, Register.

Mobile, March 14, 1876.

A partial transcript of the record and proceedings held in a certain cause heretofore pending in the Honorable Court of Chancery held at Mobile, for the First District of the Southern Chancery Division of the State of Alabama, wherein the Mobile and Ohio Railroad Company, a body politic and incorporate, was complainant, and Morris Ketchum, Trustee, defendant.

ORDER OF PUBLICATION.

At Rules, Register's Office, Mobile, Ala., January 6, 1862.—This day being a regular Rule day of the Court of Chancery, held at Mobile, for the First District of the Southern Chancery Division of Alabama, the following order was made by the Register of said court in this cause, to-wit:

MOBILE AND OHIO RAILROAD CO.
vs.
MORRIS KETCHUM, TRUSTEE.
At Rules, Register's Office, January 6, 1862.

In this cause it appearing that the defendant Morris Ketchum, Trustee, is of mature age, and that he resides beyond the limits of the State of Alabama, to-wit: In the city and State of New York, in the United States of America.

It is ordered, that he answer or demur to the allegations of the Bill of Complaint on file, on or before the first day of March next.

It is further ordered, that this order be published once a week for four consecutive weeks in the Mobile Daily Tribune.

Attest: JOHN M. TAYLOR, Register.

DECREE PRO CONFESSO.

At Rules, Register's Office, Mobile, Ala., March 30, 1863.—This day being a regular Rule day of the Court of Chancery aforesaid, the following order was made and entered by the Register of said court in this cause, to-wit:

MOBILE AND OHIO RAILROAD CO.
vs.
MORRIS KETCHUM, TRUSTEE.
At Rules, Register's Office, Mobile, March 30, 1863.

In this cause complainants by their solicitor presents the printed notice of publication heretofore made against the defendant Morris Ketchum, and makes proof by affidavits thereto attached, that said publication was regularly made, published once a week for four consecutive weeks in the Mobile Daily Tribune (a newspaper printed and published in the city of Mobile), and that a copy thereof was posted up at the Court House door of Mobile county, all within twenty days of the date of this order of publication, and it appearing that the defendant has failed to appear and plead, answer, or demur to the allegations of the Bill of Complaint in this cause, it is ordered that the allegations of the same be taken as confessed against him.

Attest: JNO. M. TAYLOR, Register.

DECREE REMOVING TRUSTEE.

At a Special Term of the Court of Chancery aforesaid, held in the city of Mobile on the first Monday of April, 1863, and being the sixth day of said month, Hon. Nathaniel W. Cocke, Chancellor of said court present and presiding, and on the 7th day of April, 1873, the same being a regular day of said Special Term, the following decree was rendered and enrolled in this cause, to-wit:

MOBILE AND OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

This cause was submitted on the bill, exhibits and decree is to appoint Trustees under a certain Deed of Trust, exhibited by the complainant, of the date of 1st November, 1853, a copy of which is attached to the bill, in place of Wm. R. Hallett and John J. Palmer who are dead, and also to remove the surviving Trustee Morris Ketchum for breaches of duty as Trustee, and also because he is an alien enemy and incompetent to act.

The court is satisfied of the death of said Palmer and Hallett, and of the fact that said Ketchum is an alien enemy, it is therefore ordered, adjudged and decreed, that said Ketchum be removed from the said Trusteeship; and further, that the prayer of the bill be granted for the appointment of Trustees in place of said Ketchum, Hallett and Palmer.

And the said complainant suggests as proper persons to be appointed in place of the former Trustees, Charles Walsh, George H. Young and Alexander Jackson, all citizens of the Confederate States, it is accordingly referred to the Master to ascertain and report whether the above named parties be suitable persons to receive the said appointment of Trustees aforesad.

FINAL DECREE.

And on the 9th day of April, 1863, the same being another day of said Special Term of said court, it was further decreed in this cause, as follows, to-wit:

MOBILE AND OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

In this cause the Master, in pursuance of the former order of this court, having made his report at a former day of this term, and the same having been read in open court more than one day and no exceptions being filed, it is ordered that said report be in all things confirmed. It is thereupon ordered, adjudged and decreed, that said Charles Walsh of Alabama, George H. Young of Mississippi, and Alexander Jackson of Tennessee, who consent thereto, be appointed Trustees under the deed described in the Bill of Complaint, in room and in place of William R. Hallett and John J. Palmer, former Trustees deceased, and of Morris Ketchum, former Trustee, who has been and is removed by decree of this court, It is further ordered, adjudged and decreed, that said Trustees hereby appointed be clothed with all the rights, powers and privileges named in said Deed of Trust, and that they be charged with all the duties by said deed imposed upon the Trustees, in the same manner and to the same extent as if they were the original appointees, and that they proceed and execute the Trusts declared in said deed according to the terms and provisions thereof, and as to all other matters of complaint and prayers in said bill contained, it is ordered that said bill be dismissed without prejudice to complainant's right to relief therein, or to any matter of account.

It is ordered that the complainant pay the costs of this proceeding.

THE STATE OF ALABAMA,
FIRST DIST., SOUTHERN DIVISION, } *In Chancery, at Mobile.*

I, Joseph Hodgson, Register in Chancery for the First District of the Southern Division of the State of Alabama, do hereby certify that the foregoing six pages and eight lines contain a true and complete transcript of certain orders and decrees, to-wit: "Order of Publication," "Decree Pro-Confesso," "Decree Removing Trustee," and "Final Decree," made and enrolled in a certain cause heretofore pending in the Court of Chancery, for the District and Division aforesaid, wherein the Mobile and Ohio Railroad Company, a body politic and incoporate, was complainant, and Morris Ketchum, Trustee, &c., was defendant, as the same remains of record in my office.

{ SEAL. } In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Chancery, this 7th day of March A. D., 1876.

JOSEPH HODGSON, Register.

Filed as Exhibit O, April 23, 1877.
JAMES GILLETTE Special Master.

Exhibits Q to Proceedings of April 23, 1877.

[Letter No. 1.] MOBILE, March 5, 1875.

George N. Stewart, Esq.,
General Solicitor Mobile and Ohio Railroad Company:

Dear Sir—In reply to your request that I shall execute a power of attorney, jointly with the two other Trustees of the Mortgage by the Mobile and Ohio Railroad Company on the first of November, 1858, or to an agent or agents in New York, to enable the Company to do what may be there needed in respect to the management of the interests of the Company, and also for the prosecution and defence of such proceedings as may arise in the court there, to execute bonds when necessary to protect the property of the trust, &c., I have to say that I have fully considered of the subject, and I have come to the conclusion that neither the interests of the Company nor mine would be benefited by my so doing.

I suppose it is probable that, under the present difficulties of the road, as well as of all other roads at this time, that intricate litigations will arise, and when commenced I cannot foresee how long it will be before they can be closed. I am not myself in a situation to attend personally at New York or elsewhere to the complicated questions which may arise in adjusting the rights of all the conflicting trusts; and, to tell the truth, I do not feel willing to empower others to act for me in such matters on my responsibility. I prefer to resign the position of Trustee, so that Trustees in New York, on the spot, may be appointed, who can act promptly, and furnish such affidavits and bonds as may be needed in judicial proceedings, which I am not in a condition to do. I have reason to believe that my course would not be considered injurious to the parties interested. As the matter now stands, the Trustees are scattered, never can act together, and their action cannot be very prompt or effectual. At all events, I prefer to tender my resignation as a Trustee, which I will thank you to forward to the President of the Company. I regret to have to take this course, but believe it best for all parties under present circumstances.

Your obedient servant,

(Signed) CHARLES WALSH.

[Letter No. 2.] JACKSON, Tenn., March 9, 1875.

Mr. George N. Stewart,

General Solicitor Mobile and Ohio Railroad Company:

Dear Sir—Having carefully considered the foregoing communication of Mr. Chas. Walsh, and coinciding with his views, I hereby join in requesting that you will forward my tender of resignation as Trustee to the President of the Company, coupled with the request that, in accepting my resignation, all proper proceedings may be had necessary to exempt and relieve me from future responsibility as Trustee.

Respectfully, yours,

(Signed) ALEX. JACKSON.

Witness present: GEO N. STEWART,
HOWELL E. JACKSON.

[Letter No. 3.] WAVERLY, Miss., March 10, 1875.

To George N. Stewart,

General Solicitor of the Mobile and Ohio Railroad Co.:

Dear Sir—On consideration of the view expressed by Mr. Chas. Walsh, and concurred in by Dr. Alexander Jackson, as within stated, I have to say that I fully concur with them in the opinion, that it would be better for the interests of the Company, its bondholders, and of my own, that I should also resign the position of Trustee of the Deed of Trust within referred to, and I therefore request that you tender my resignation as such Trustee to the President of the Company, and I also make the request, as made by Dr. Alexander Jackson, that such proceedings be had that I shall be relieved from all future responsibility on account of said Trusts.

(Signed) GEO. H. YOUNG.

[Letter No. 4.] MOBILE, March 12, 1875.

George N. Stewart, Esq.,

General Solicitor Mobile and Ohio Railroad Company:

Dear Sir—When I addressed to you my request that you should tender my resignation as Trustee under the Deed of Mortgage and Trust made by the Mobile and Ohio Railroad Company, on the 23d of November, 1853, I did so with the great desire to be relieved for the future from the duties and responsibilities of said Trust; such is now still my earnest wish, but it was under the full belief that it would cause no injury or inconvenience to the Company, but rather advance its interests.

I have now, however, been shown that the two other Trustees having also resigned, the result is that the Mortgage is left without any Trustee to represent the interests of the beneficiaries, and that the Trust, for want of a Trustee, cannot be made effectual without application to a Court of Chancery, which would require much time, and the duty has been pressed on me that at least one Trustee may be maintained. Under this pressure on me, in view of the consequences, and upon urgent solicitations of friends, I have been induced to say to you, as my determination to resign has not yet been presented by you for acceptance by the Railroad Company, that you will withhold it, and consider it revoked until further instructions from. me.

This course seems now a duty on my part under the circumstances, although I had hoped to be relieved from the Trust, and such it is still my desire to effectuate so soon as future events will permit.

Please consider my instructions to you in this respect as revoked and annulled. Your obedient servant,

(Signed) CHARLES WALSH.

[Letter No. 5.] MOBILE, April 20th, 1875.

John J. Walker, Esq.,

Vice-President of the Mobile and Ohio Railroad Co.:

Sir—I have heretofore, in a letter to Geo. N. Stewart, Esq., expressed my desire to resign my position of Trustee under the Deed of Mortgage and Trust executed by the Mobile and Ohio Railroad Company, dated November 1st, 1853, known as the First Mortgage of said Company, but at your suggestion the said resignation has not been presented. I have since that time, at the request of the Company, and in accordance with what seems to be my duty under said deed, united with the Company in the appointment of Trustees in place of Messrs. Young and Jackson, Trustees, whose resignations as Trustees under the same Deed have been accepted.

I now renew my intention of resignation, and request that I may be immediately relieved of all further duty and responsibility in the Trusteeship by the acceptance of this my resignation, and that proper resolutions be adopted by the Company for my security and protection.

Your obedient servant,

(Signed) CHARLES WALSH.

Filed as Exhibit Q, April 23, 1877.

JAMES GILLETTE, Special Master.

WEDNESDAY, April 25, 1877—11 A. M.

Reference resumed pursuant to adjournment. Present, the Master and Counsel as of the day previous; also, E. H. Grandin.

T. H. DuPuy, witness called on behalf of Second Mortgage Trustees, and examined by E. H. Grandin:

Q. Did you issue this notice or your Committee, and publish the same in the Mobile Register?

BANKING AND FINANCIAL.

To the Bondholders of the Mobile and Ohio Railroad:

The Agreement of October 1st, 1876, having been signed by a majority of the First Mortgage Indebtedness and Tennessee Sub-Bondholders, has become binding on the subscribers thereto. Any other plan of reorganization predicated upon obtaining the consent of the majority of the First Mortgage Indebtedness Holders has now become impracticable, and it is therefore the interest of the yet outstanding Bondholders to join the party which will have the best chance to purchase the Road whenever a decree for its sale will have been obtained. We hereby give notice, that Bonds can be deposited under this agreement up to the 1st March next. All Bondholders who have not acceded to it by that time will, at the discretion of the Committee, and without further notice, be liable to be debarred from participating in it.

WILLIAM H. HAYS,
WILLIAM S. PIERSON,
T. HASKINS DUPUY,
Committee.

MOBILE, March 1, 1877.

The Committee of Reorganization of the Mobile and Ohio Railroad Company, under the Fourteenth Article of the Agreement of the 1st of October, 1876, will continue to receive Securities as heretofore, until the expiration of the extended time fixed by the Committee.

T. HASKINS DUPUY,
Of and for the Committee.

A. To the best of my knowledge and belief it is a correct copy of the notice issued by me for the committee.

Counsel for Mobile and Ohio Railroad Company, and for Receivers, object to the introduction of the notice as evidence being totally irrevelant.

Objection sustained, and ruling excepted to.

E. H. Grandin moves the Master to rule on the objections made by him to paper offered by George N. Stewart, Esq., as counsel for Committee of Reorganization Mobile and Ohio Railroad Company, dated March 24, 1877, and offered to be filed on the same day. The objections made by said Grandin appear on the journal of that day.

The Master rules that the paper referred to is irrelevant to the issues before him. (Said paper appears on page 6, continuation of Part 4.)

Oliver S. Beers, a witness called by E. H. Grandin for Trustees Second Mortgage, and sworn, says, in answer to questions propounded by Mr. Andrews, acting for said Grandin:

Q. Please explain the following entry on the account of A. Iselin & Co. with the Mobile and Ohio Railroad Company, (said account is marked E1 to C. A. Wetton's testimony): "Interest Account—Interest on general account 28th December, 1871, and commissions 2 per cent., $1,660.36"?

A. A. Iselin & Co., in November and December, 1871, made certain advances at New York to the Company, pending the realization of the proceeds of the Tennessee Substitution Bonds, for which they charged 2 per cent.

commission and 7 per cent. interest, and stated the items charged in account current rendered by them to the Company, dated December 30, 1871, from which account the entries represented on this schedule were made.

Q. Please explain the following entry: "December 30, 1871—For amount of A. Murdock, President, check in favor of R. T. Wilson & Co. for expenses of Tennessee Bonds cancellation, &c., paid by them to Comptroller of State of Tennessee, $1,991.21"?

A. That was the fee charged by the Comptroller of the State of Tennessee, and, I think, authorized by law, which Mr. Wilson stated he had paid, and omitted to charge to the Company before rendering his account and transferring to Iselin the balance due by him to the Company. Murdock, to close the transaction, checked on Iselin against the balance of the account on hand.

Q. What Tennessee Bonds cancellation are referred to in the item in the previous question?

A. Bonds of the State of Tennessee paid in to the State of Tennessee.

[The witness questioned in regard to the coupons of 1874 of the First Mortgage.]

Q. Were not the various securities belonging to the Mobile and Ohio Railroad Company, which had been placed under the control of Duncan, Sherman & Co., or W. B. Duncan, still under their control January 1, 1875—I mean under their control so far as the Company was concerned?

Mr. Stewart objects, on behalf of Alexander Duncan, to any further examination of Mr. Beers, on the ground that he has been examined before. This objection made so far as it may relate to the claim of Alexander Duncan.

Objection also to the matter of the question as not relevant to the claim of Alexander Duncan.

[Answer taken subject to exception.]

A. The whole assets of the Company were assigned to

W. B. Duncan in the spring of 1874, and I believed and treated them as under his sole control up to the time of my leaving, January 1, 1875.

Q. Did or did not the Mobile and Ohio Railroad Company issue a circular in the fall of 1874, or the beginning of 1875, offering to convey to the floating creditors of the Company county bonds and other securities in exchange for the paper of the Company held by them ?

Mr. Stewart—Objected to as leading, and as not the best evidence of the circular.

(Answer taken subject to exception.)

A. In the spring of 1875 a circular letter was addressed to holders of notes belonging to floating debt, inviting bids for the Oktibbeha county and town of Starksville bonds, which was responded to and resulted in sale of bonds for floating debt claims. I think at a valuation of the floating debt in some instances at 120 as against the bonds.

Answer objected to as being irrelevant.

Cross-examination by Mr. Stewart:

Q. You have stated that all the assets of the Company were transferred to Mr. Duncan in 1874. Please state how such assignment was made, and whether or not you allude to assignment made by resolution of Board of Directors and found on the minutes ?

A. Made by resolution of the Board which I drew up at the request of the Directors.

The witness, under examination by Mr. Hamilton on behalf of the trustee's complainants, answers as follows:

Q. Who were the acting Trustees of the First Mortgage, from 1863 to 1875 ?

A. Alexander Jackson, Charles Walsh and George H. Young, were the parties recognized by the Company as Trustees.

Q. Did they or not perform the duties of Trustees during that time about the sale of lands, &c. ?

A. They acted, so far as I knew in all respects, as Trustees.

Q. During that time was any claim of right made by Morris Ketchum upon the Company or its officers to act as Trustee, or did he do any act as Trustee or have any correspondence with the Company as Trustee?

A. I know of no act as Trustee beyond the information given me by the Presidents, I think Brown and Murdock both; that he had approached them in New York. That's all I know about the case. I don't know of any correspondence.

Cross-examined by E. H. Grandin:

Q. These parties you have named as acting Trustees from 1863 to 1875, were the same parties who were appointed by the Confederate court, were they not, on the removal of Mr. Ketchum as an alien enemy?

A. They were.

Q. Were the duties performed by these acting Trustees very extensive in their nature?

A. They signed one power of attorney.

Q. Mr. Beers, did not Mr. Murdock, President, tell you that he had purposely avoided holding further communications with Mr. Ketchum in New York city after the war, because Mr. Ketchum was insisting on his trusteeship, or words to that effect?

Question objected to by Mr. Hamilton and motion to exclude, because it calls for the statement of a third party and is, therefore, hearsay testimony, and because the counsel have not examined or offered to examine Mr. Murdock who is in town, upon the subject, whose testimony would be the best evidence.

Objection sustained and answer excluded. Ruling excepted to.

E. H. Grandin requests the answer be taken subject to all legal objections.

Mr. Hamilton objects to said request.

Answer excluded and ruling excepted to.

By Mr. Hamilton:

Q. What Confederate court do you refer to when you speak of a Confederate court?

Objected to on the same ground that Mr. Hamilton objected to the previous question.

A. Chancery Court, for the Southern District of Alabama.

E. H. Grandin reserves the right to recall Mr. Beers on this sitting. (Witness excused until 3 P. M.)

It being one o'clock and thirty minutes P. M., the Master announces that at four o'clock he will adjourn until half past six P. M., and then hold an evening session. During such evening session opportunity will be given counsel for Trustee's complainants and of Alexander Duncan, to offer testimony upon the questions at issue, which right is claimed by them.

The counsel for Second Mortgage Trustees objects to the ruling, or, announcement, so far as the same does or may be construed to interfere with his rights under the order of the court, dated 21st April, 1877, which he claims gives him the whole of this day to adduce evidence before the Master, to sustain the answer of the Second Mortgage Trustees.

E. H. Grandin offers in evidence the affidavit of Moses Waring, filed in this court July 13, 1876, "as evidence to accompany Master's second report on the Trustee's accounts, from January 1, 1876, to March 31, 1876, dated July 13, 1876," in the cause of Wm. Butler Duncan and A. Foster Elliot, Trustees, vs. Mobile and Ohio Railroad Company et als.

Objected to by Mr. Stewart on the ground that it relates to matters that purport to be long after Mr. Alexander Duncan's rights accrued and as being irrelevant.

(Affidavit received, subject to the objection.)

Affidavit of M. Waring.

WM. BUTLER DUNCAN, A. FOSTER ELLIOT, *vs.* THE MOBILE AND OHIO RAILROAD CO.	Trustees,	*U. S. Circuit Court for the Southern District of Alabama.*

Moses Waring, of the city and county of Mobile, State of Alabama, being duly sworn, deposes and says, that he is now a Director of the Mobile and Ohio Railroad Company, and has acted in that capacity since 27th January, 1874.

That on or about the 2d December, 1874, the Mobile and Ohio Railroad Company renewed with the Bank of Mobile paper to the extent of $22,600, and deposited with said Bank as collateral security Bonds of the county of Oktibbeha and the town of Starksville to the amount of $36,000, and in the spring of 1875 the Bank had the option to take said securities in payment of the debt, and subsequently decided to take the above Bonds in payment, which was done.

That also, in December, 1874, a loan was obtained by renewal from the National Bank of Cairo, on note of the Mobile and Ohio Railroad Company, endorsed by A. Murdock, for $10,000, with Oktibbeha County Bonds lodged as collateral security to the extent of $16,500; they also had the option, in the spring of 1875, to take the security in full payment, which they subsequently did.

That on or about the 23d April, 1875, the Mobile and Ohio Railroad Company owned Lowndes County Bonds and Columbus (Mississippi) Bonds of the amount of $11,315, which they gave in payment of nine certain promissory notes, issued by the Company, and held by Messrs. Toomer, Sykes & Billups, of the city and county of Mobile, State of Alabama; and that said settlement was made 12th May, 1875, as appears in the statement of accounts of the Trustees and Receivers for the month of May, 1875.

The Lowndes and Columbus Bonds were considered of but little value. The Oktibbeha County Bonds and Starksville Bonds realized in the transaction about 60 per cent. of their face value, which was more than they would have brought in the market. I have known some Oktibbeha Bonds sold as low as forty cents on the dollar.

M. WARING,
Director and one of Finance Committee.

Sworn to before me this 13th day of July, A. D. 1876.

JAMES GILLETTE,
U. S. Commissioner, Special Master.

T. H. Du Puy, a witness, recalled by E. H. Grandin for Second Mortgage Trustees and examined.

Q. Have you brought into the Master's office, in obedience to the subpœna *duces tecum*, the letters received by the Mobile and Ohio Railroad Company in the years 1870, 1871 and 1874, from certain parties, and if you have, please furnish to the Master the contents of those letters?

A. I have had my clerk overhaul all the letters that I know of in the President's vault, and after two days' and nights' constant work (E. H. Grandin—"I object to the witness stating anything about the clerk or number of days' and nights' constant work, or any other buncombe of the kind"), he presented to me these bundles of letters as the only ones discoverable: Written by Wm. B. Duncan, three; by Duncan, Sherman & Co., four; Adrian Iselin, none; Adrian Iselin & Co., one; R. T. Wilson, three; R. T. Wilson & Co., three; Wilson & Iselin, none; John J. Walker, sixteen; James Crawford, three; Abram Murdock, twenty; during the years 1870 and 1871. In the year 1874, written by Wm. B. Duncan, twenty-nine; Duncan, Sherman & Co., four; J. J. Walker, thirty-eight. I have read these letters over as carefully as I could in the time I had at my disposal, and I have not found in them anything relating to the coupons of May and November, 1874. I find nothing about the Tennessee matter. They are principally about Consolidated Bond matters, borrowing money, and borrowing bonds to raise money on.

The witness proceeds to read the letters in presence of counsel. Letters read, and such as counsel desire, are furnished by copy as follows:

Letters Received by Mobile and Ohio Railroad Company, 1874.

NEW YORK, February 2, 1874.

My Dear Colonel—I am obliged to be out of town to-day and to-morrow, but will be here Wednesday. Murdock has altogether ceased his remittances, and has only remitted about $25,000 of the $75,000 he promised between the 1st and the 25th of January. You must insist upon further remittances. You wish me to repay

Hays	$10,000
"	10,000
"	10,000
	$30,000

and to continue to pay the January coupons, which are still coming in. I am willing to do all I can be asked, if I can see any incoming, but I cannot continue to allow Mobile to be down on us, as they are doing—of their receipts they should be able to send us some. Am sorry to pen this hasty note.

(Signed) W. BUTLER DUNCAN.

Dear Sir—I send you this note to show the present temper of our Emperor. Do try to make some satisfactory explanation to him on the subject. Our existence lies in his hands.

(Signed) J. J. W.

February 2d.

NEW YORK, February —, 1874.

A. Murdock:

Have advertised to pay March coupons Mobile and New York; pay such presented Mobile. Draw and forward coupons as usual. You must send us some portion of your receipts to reimburse us our advances January coupons. Please reply.

(Signed) W. B. DUNCAN.

NEW YORK, —, —.

A. Murdock, Esq., President:

In forwarding January and March coupons, cancel same.

(Signed) W. B. DUNCAN.

NEW YORK, February 12, 1874.

A. Murdock, Esq., President:

Dear Sir—To keep the January 1874 Coupon Account correctly, as the coupons are payable here and in London, it would be well, if you see no objection, that you send to us here such of the coupons as you have paid and may pay in Mobile, valuing on us for cost of same and sending each valuation to your credit in General Account. You will mark your valuations as against "*January* 1874 *Coupons Account.*"

Unless coupons have some final place of payment, there is apt to be confusion hereafter. The Union Bank of London sends us such coupons as they pay or purchase.

(Signed) W. BUTLER DUNCAN.

NEW YORK, February 28, 1874.

Dear Sir—The enclosed letter to me from D., S. & Co. explains the terms of the arrangement made for meeting the March interest, &c. Please hand it to Beers, that the proper entries may be made on his books. You will perceive that the money is advanced by the parties to whom I have given the demand notes of the Company, secured by deposit of Convertible Bonds as collaterals; the demand notes bear 7 per cent. interest, and it is understood that the parties will hold them until the Convertible Bonds are sold, which, I think, will be effected at an early day. I believe a ring of our friends will be formed to take the whole number owned by the Company. Probably next week I shall be able to give you more definite information as to the prospects of an early sale. Meantime, I am quite satisfied with our success in passing the Ides of March without the loss of our credit. We have a breathing time now, in which to work without the fear of sudden death. Duncan's present intention is to go South on Monday week, and he wishes us to go over our road in daylight. I, therefore, telegraph you to-day to get No. 4 in readiness to send to Columbus, Ky., to meet him there. Col. Rives must go up with No. 4, so that he can explain the beauties of the road and give all needful information. You will, of course, stock the car with a suitable supply of articles to eat and drink. I shall go with Duncan, and can return here in a short time if it should be necessary. Some of our other friends may go with us. I will advise you by telegram as soon as a definite day is fixed for starting.

If No. 4 is not in order, perhaps Col. Rives can get the use of an extra Pullman Car for the occasion. I am very anxious for Duncan and other friends to go over our road, because I believe actual observation would remove all doubts, and fix their faith in the value of the property.

I shall make him go if he can possibly get away from his office.

I received list of March payments this morning. I presume, of course, you will arrange in Mobile the renewal of the paper held by First National Bank. Do not bother D., S. & Co. with it here. I thank you for your McCaube Re. letter, and with, &c. &c., to our friends, &c.

(Signed) J. J. W.

New York, March 5, 1874.

A. Murdock, Esq.:

My Dear Sir—Has the Board acted upon the two trusts held by Col. Crawford and Mr. Rushing. The former, I understand, to have been a trust created as a simple matter of prudence, and that the holders of the securities of the Company will suffer no injustice if this trust be dissolved. The bonds and stock covered again with the Treasury of the Company.

But Mr. Rushing's trust is part and parcel of the agreement with bondholders, from the reports it would appear that certain bonds have been bought from their trust and cancelled, and that certain moneys still remain with the Trustee, of which he has rendered no account. How does this trust stand? This and other questions of similar nature I ask, to be able in my statements to others, whom we desire to interest, to answer definitely. On the points inquired of, I infer from what I hear from Mobile that you are halting in your policy of requiring your creditors to extend your notes, as if you were certain that the negotiations I am endeavoring to make for the Company were already successful. This is not so, nor can I make much progress until I receive the facts which will enable me to obtain a quotation for our stock upon the Stock Exchange; in the meantime, *all the* resources of the Company should be husbanded for a purpose of paying the interest due in May. The Company is still indebted to myself and others for some $200,000, advanced to pay November, 1873, January and March, 1874, interest, and this amount should be reimbursed if the Company expect to obtain assistance in paying the May interest. Can you not make further remittances out of your receipts?

(Signed) WM. BUTLER DUNCAN.

Filed with testimony of T. H. Du Puy, April 25, 1877.

JAMES GILLETTE, Special Master.

Q. By E. H. Grandin—Please produce letter of Wm. Butler Duncan, alleged to be endorsed January 5, 1874, said to be marked "Private," which has been seen by Mr. Hamilton, by the Master and the witness, but not by myself.

Mr. Stewart instructs the witness that if the letter has any reference to the matters under investigation, he is bound to produce it. If it has not, he need not produce it. The instruction given, as attorney of the railroad company, to the witness as Vice President.

A. I have shown this letter to the Master, who agrees with me that it does not relate to the issues before him. I decline to produce it.

Judge Grandin asks that the witness be directed to produce the letter which Mr. Hamilton has just read and laid aside, and which is now in the hands of the witness. Master declines to give such direction, and counsel for Second Mortgage Trustees except to the refusal.

E. H. Grandin offers as evidence, on behalf of Trustee's Second Mortgage, the following: "Application has also been made to Congress for a grant of public lands in aid of this road, which necessarily must be a great national object in a military as well as political point of view, and assurances have been given that their petition will be promptly granted." Extract from letter of President and Directors Mobile and Ohio Railroad Company to the public in 1852, offered in relation to the title of the Trustees.

Also, the following extract from proceedings of the Eighteenth Annual Meeting of Stockholders of the Mobile and Ohio Railroad Company, held at Mobile, April 17, 1866:

Extract from Proceedings at Eighteenth Annual Meeting of Stockholders of Mobile and Ohio Railroad Company, held at Mobile, April 17, 1866.

[Page 4.]

But the war came and the Company has suffered largely by it. The Confederate government controlled the transportation of the road, and we were occupied chiefly in transporting men and supplies for the army.

[Page 5.]

In this condition of things the road was delivered back to us by the United States military authorities, but the power to confiscate or dispose of it as the government might deem proper, was expressly reserved.

On 8th of August there issued from the War Department at Washington an order directing to Maj.-Gen. Geo. H. Thomas, then and now commanding this Department, fixing the terms on which railroad companies would be allowed to purchase rolling stock and supplies for their roads. One of the conditions is as follows: "Each and every Company will be required to reorganize and elect a Board of Directors, whose loyalty shall be established to your satisfaction."

Your Board of Directors were not deemed "loyal," within the meaning of this order, and among the stockholders from whom selections would have to be made, others were not found to be in any better condition.

The only way of relief, therefore, was either to invite men from abroad who had not been in the South during the war, to come and take charge of the road, or to appeal to the President of the United States for pardon. The latter course was adopted, and the pardons were granted, and the cloud over the credit of the road above referred to was removed. W. R. Hallett of Mobile, and John J. Palmer and Morris Ketchum of New York, were the original Trustees in the mortgage to secure the payment of our sterling bonds. Hallett and Palmer died, leaving Morris Ketchum the sole surviving Trustee.

He took advantage of his position; refused to allow other Trustees appointed, refused to authorize the sale of lands, and claimed the

805 right to establish a land bureau in New York, and conducted all the Company's land sales in New York instead of Mobile. This would have been immensely expensive, and led to endless frauds. A bill in Chancery was filed to supersede him as Trustee, and a decree was made, removing him and appointing Chas. Walsh of Mobile, George H. Young of Mississippi, and Alexander Jackson of Tennessee, Trustees, under the mortgage. This bill was filed before the war, but the decree was rendered during the war. It had been impossible to pay the coupons on the sterling bonds during the war, and those that had matured, necessarily remained unpaid, and it was contended that the decree removing Mr. Ketchum was void, being rendered during the war, and that he was still sole Trustee and had a right to take possession of the road.

The bondholders, however, had confidence in the integrity of the management of the road, and did not wish to commit their interests into the hands of Mr. Ketchum. This movement, therefore, failed; and since then, the convention of the State of Alabama has ratified the judgment and decrees rendered during the war, as far as private rights are concerned, which, it is hoped, will give permanent rest to this question and save us from trouble hereafter.

Mr. Stewart objects to the papers as not being evidence of anything whatever. Papers taken subject to objection.

Examination of T. H. Du Puy resumed.

Q. You are aware that a large amount of the securities of the Mobile and Ohio Railroad Company were placed under the control of W. B. Duncan, from the time you became Vice President in latter part of April, 1875, or before that time, what became of those securities and where are they now, or any part of them, or in whose control or custody?

Objected to by Mr. Stewart as being too general, uncertain and irrelevant. Neither Mr. Duncan or this Company are on trial in this issue, or their accounts.

(Answer taken, subject to exceptions.)

A. I know nothing of my own knowledge of securities pledged to Mr. Duncan. If such was done, it was done before I had anything to do with the Company.

Q. Did not the so-called Board of Directors of the Mobile and Ohio Railroad Company, a few weeks ago, pass a resolution in reference to the disposition of securities in which the Company had an interest ?

Objected to by Mr. Stewart as irrelevant. Matters subsequent to the accrual of the rights of Alexander Duncan.

(Answer taken, subject to exceptions.)

A. I will produce a copy of the resolutions referred to, which will be my answer.

It being 4 o'clock, recess taken until 6½ P. M.

7 o'clock P. M.

Witness T. H. Du Puy produces copy of resolutions called for by counsel of Second Mortgage Trustees, dated March 2, 1877, referring to disposition of the securities, in which the Company had an interest (resolutions marked F1), and also resolutions dated ——— 1877, regarding Receivers Duncan and Elliot, which last are offered by Mr. Hamilton and marked F2.

Mr. Hamilton moves to exclude those marked F1.

Mr. Grandin moves to exclude those marked F2 (resolutions filed, subject to exceptions.)

By Mr. Grandin:

Q. This meeting in which these resolutions in regard to Duncan and Elliot were passed, was called on purpose to pass the resolutions, was it not ?

A. The resolutions will show.

Q. Who drafted them ?

By Mr. Stewart—Question objected to.

(The Master declines to take testimony in reference to either set of resolutions, as representing actions of the Board of Directors of the Mobile and Ohio Railroad Company in 1877. They are entirely outside of the issues before him on this reference.)

Judge Grandin excepts to the ruling prohibiting the examination of Mr. Du Puy in reference to the resolutions which have been filed.

E. L. Andrews, for E. H. Grandin, offers the bill and

807 record in the case of Morris Ketchum vs. The Mobile and Ohio Railroad Company, which was heretofore offered and excluded, in view of the admission of the resolutions of the Board claiming to recognize the title of Duncan and Elliot.

The Master, having already sustained the objections thereto, declines to file the said record.

8 o'clock P. M.

George N. Stewart, witness, summoned at the instance of Trustees and Receivers complainants, and examined by Mr. Hamilton, says:

Q. In the letters which were produced at the instance of the counsel for the Rogers' Locomotive Works, acting for the Second Mortgage Trustees, relating to the resignation of the former Trustees in March and April, 1875, your name is mentioned as being concerned in the correspondence, be good enough to state the facts attending your connection with it?

A. Mr. Walsh who was one of the Trustees, in a conversation with me, informed me that he was about to remove from the city; that the time had come when probably very active proceedings would be required of the Trustees; that he could not attend to the duties and wished to resign; that he thought that the other Trustees being old and subject to some inconvenience in signing bonds and affidavits, he thought it very likely that they would do likewise. I was the General Solicitor of the Company. I communicated the matter to Mr. Walker, Vice President. I was directed by him to go up the country and see those gentlemen, and ascertain what would be their wishes in that respect. I first called on Mr. Alexander Jackson at Jackson, Tenn., and showed him the letter which Mr. Walsh had addressed to me, and mentioned to him that I believed it was true that active operations would soon be required of the Trustees, and desired to know what would be his determination in that respect. He told me that he would see his son who was a practicing attorney at Jackson, and advise with him and give me an answer next morning. Next morning he informed me that he had concluded to resign, and signed his letter of resignation which he handed to me. I then went to Waverly, on the Tombigbee river, above Columbus, and saw Mr. George H. Young, and the same communication passed between him and me. He also answered that he was too old for active business at that time, and that he preferred to resign. I then returned to Mobile, and had the three letters offering resignations. I informed Mr. Walker and Mr. Walsh that I had not handed in the resignations, remarking that if the resignations of all three were reported and accepted, there would be no means of continuing the trust except by applying to a court, and I requested Mr. Walsh to withhold his resignation until two other Trustees could be appointed. He consented to this. I then reported to Mr. Walker the resignation of Jackson and Young, but not that of Walsh. New appointments were made of Trustees according to the terms of the deed, by the concurrence of the Board and of Mr. Walsh, Trustee; and after this was completed, Mr. Walsh then tendered his resignation in a letter to Mr. Walker, which was dated after the appointment of the new trustees, which was accepted, and Mr. Walsh then ceased to act as a Trustee after that time. I returned the letters and all the papers to Mr. Walker. Thus it was that these matters occurred.

Q. How long have you been connected with the Mobile and Ohio Railroad Company and in what character?

A. From the commencement of the project to the present day: first, in making speeches in its favor; second, in passing the charter as Senator from Mobile; afterwards, as attorney from the time of its organization; afterwards, as general solicitor, and now as consulting counsel. I have been constantly connected with it from the beginning.

Q. Will you state who were the acting Trustees after 1863 and 1865?

Mr. Andrews, acting for E. H. Grandin, objects on the ground that the Master has already excluded evidence from our witnesses on the subject to which that question is directed.

(Answer taken, subject to exception.)

A. Charles Walsh, Alexander Jackson and George H. Young.

Q. Were they recognized and dealt with by the corporation and as Trustees?

Objected to on the same ground, and for the further ground that the question is leading.

(Answer taken, subject to the objection.)

A. Yes. They were, and their action as such was not questioned or contested by any one. And when I, as counsel, wanted bonds and affidavits in relation to suits, I had to send to get affidavits or the bonds signed by them at the request of the Company, which they did.

Q. Was it or not ever necessary during that time, to protect portions of this trust property against hostile actions by creditors and trespassers, and if so, in whose name and by whose authority were proceedings had to secure that protection?

Objected to by Mr. Andrews on the same ground as heretofore, and on the ground that this line of investigation has been withheld until within an hour of the announced time of adjournment, when it is apparent that the Second Mortgage Trustees have no time to offer rebutting testimony.

Mr. Hamilton states that he has had no opportunity to offer any evidence until the clock struck 8 o'clock P. M.

Mr. Andrews states that Mr. Hamilton had time to offer the evidence on Monday, after 4 P. M., or in the evening of that day, and all the day and evening of Tuesday, but gave no notice even of his intention to offer such testimony at any time.

Answer taken, subject to exception. Ruling excepted to.

A. On several occasions it was necessary in judicial proceedings, to which the Trustees were parties to apply to them as before stated, to carry on proceedings with their aid.

Q. By whose authority were sales of land made after cessation of war?

Objection by Mr. Andrews as before, same ruling and exception taken.

A. The title to the lands, of course, was in them by the terms of the deed, and in all cases of sales of land they, or a majority of them, had to sign the deed by themselves or by their authorized agents.

Q. During this time did Mr. Morris Ketchum ever act as Trustee?

Objected to.

Mr. Andrews moves to strike out the question and answer as entirely irrelevant to any question before the Master.

Motion granted.

Q. Who have been the acting Trustees since the resignation of Young and Jackson?

Objected on same ground.

(Answer taken, subject to exception.)

A. Wm. B. Duncan and A. F. Elliot.

Cross-examined by Mr. Andrews:

Q. Did you not file a plea in this court setting up the title of Walsh, Jackson and Young, and Duncan and Elliot, to the Trusteeship of the First Mortgage, and was not that plea overruled by this court?

Objected to by Mr. Hamilton,

(Answer taken, subject to exception.)

A. The record in this cause gives the answer to the question. There was an order overruling the plea, but that question is not finally disposed of as the record shows.

Q. During the time that you say Walsh, Jackson and Young acted as Trustees and gave bonds and made affidavits, or did any other act as trustees, did you, or did you ever hear of any other officer of the Company calling on any one else to perform those duties as Trustee?

A. No.

Q. Did not Charles Walsh say that after he failed, he did not think it was proper for an insolvent to hold such a position of trust?

Mr. Hamilton—Objected to, because entirely irrelevant. (Answer taken, subject to exception.)

A. I do not recollect that he used such language.

Q. Did he not say that A. F. Elliot was not fit to hold any position, and that Duncan had been advised by his friends to give up all claim to the trust, and should do so if he had a proper regard for public propriety?

A. No; not that I know of.

Mr. Andrews—On behalf of counsel for Second Mortgage Trustees, I move for a subpœna *duces tecum* to witnesses whom I will name, to rebut the testimony offered since 8 o'clock this evening, to sustain the claim of title of the complainants in this suit.

Mr. Stewart—I move that all the testimony taken by the Master, in the Tennessee matter, be excluded on the ground that the proper parties are not before the court.

Special Master—This session is adjourned *sine die*.

JAMES GILLETTE, Special Master.

UNITED STATES CIRCUIT COURT,

FIFTH JUDICIAL CIRCUIT

AND SOUTHERN DISTRICT OF ALABAMA.

WM. BUTLER DUNCAN,
A. FOSTER ELLIOT, } **TRUSTEES.**

VS.

The Mobile & Ohio Railroad Co.

ET ALS.

Proceedings and Testimony before the Special Master, and Minutes of the Reference held under the Decree of March 6th, 1876, and Decretal Order of March 28th, 1877.

PART 6.

Examination of Witnesses before E. L. Owen, U. S. Commissioner, in the City of New York.

MOBILE, ALA.
SHIELDS & CO., PRINTERS, EXCHANGE ALLEY,
1877.

SOUTHERN DISTRICT OF NEW YORK--SS.

Alexander Martin being duly sworn, deposes and says that he served the within notice on E. L. Andrews, Esq., by delivering a copy thereof to, and leaving the same with a clerk in charge of his office, at No. 52 Broadway, in the city of New York.

ALEXANDER MARTIN.

Sworn to before me, this 10th day of April, 1877.
LUCIUS W. HOW, Notary Public.

United States Supreme Court—Southern District of Alabama.

WM. B. DUNCAN ET AL.,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL.

Testimony on behalf of Lewis J. Belloni, objector, taken before Edward L. Owen, Esq., United States Commissioner, at No. 71 Wall street, in the city of New York, April 11th, 8877.

The parties appear.

It is stipulated and agreed by and between the respective Solicitors that the testimony of the witnesses be taken by a stenographer, and that his minutes, when written out and subscribed to by the witnesses, be certified by the Commissioner with the same effect as though taken by him.

George W. Dougherty, a witness produced, sworn and examined on behalf of the Objector, deposes as follows:

By Mr. Blandy:

Q..What is your business?

A..Broker.

Q..Where do you carry on business?

A..16 Wall street.

Q..How long have you been a broker?

A..Ten years.

Q..Did you buy or sell any First Mortgage Sterling bonds of the Mobile and Ohio Railroad Company subsequent to May 1, 1874?

A..Yes, sir, I sold some bonds.

Q..Did you buy any?

A..Yes, sir, bought and sold.

Q..Did you previous to May 1, 1874?

A..Yes, sir, I did.

Q..About what time previous and about what time subsequent?

A..Subsequent, May 6: previous, ——

By Mr. Bangs (interposing):

Q..What did you do May 6? buy or sell?

A..I sold 9,000 bonds; nine bonds, 1,000 each.

By Mr. Blandy:

Q..Previous to May 1st?

A..Previous to that, I have no definite recollection; I have not refreshed my memory.

Q..You have nothing to refresh your memory?

A..Yes, sir, but I have not done so, previous; I have looked up that date and subsequent dates, not previous to it.

Q..Have you anything with you now that would refresh your recollection as to how many you bought and sold previous to May 1st?

A..No, sir, nothing with me.

Q..Did you buy or sell any of the same bonds before or subsequent to November 1st, 1874?

A..Subsequent to November, 1874, I sold some bonds.

Q..Did you buy any?

A..Bought and sold.

Q..Did you, previous to November, 1874, outside of those you have already testified to?

A..I cannot say, because I haven't looked to see.

Q..When did you make the purchase and sale subsequent to November 1st?

A..November 11th.

By Mr. Bangs:

816 **Q..What was it, a purchase or sale?**

A..A sale.

By Mr. Blandy:

Q..Did you purchase the bonds for your own account, or the account of other persons?

A..I don't recollect.

Q..Have you anything by which you could refresh your memory here?

A..Not with me.

Q..What were the prices of these bonds, at or about the following dates, May 1st, 1874?

A..May 1st, 1874, or May 6, 1874, 80½.

Q..June 1st, 1874?

A..I can't say.

Q..July 1st, 1874?

A..I only took the dates May, 1874, and November, 1874, and May, 1875. Those were the dates that I looked up.

Q..Give me the prices of November, 1874?

A..November 11th, 69.

Q..And May, 1875?

A..April 17th and 24th, 56, 55 and 55½.

Q..The last prices you have given me were November, 1875, were they?

A..The last prices were May, 1875, or rather April, 1875; April 17th and 24th, 1875. There was also a sale May 6th, but it is a little irregular. That is the sale with the May coupon off at 43¾.

By Mr. Bangs:

Q..May 6th, 1875?

A..That is May 6th, 1875.

By Mr. Blandy:

Q..Did I understand you that the price about May 1st, 1874, was 80½?

A..May 1st, 1874—80½.

Q..And November, 1874?

A..69.

Q..Between the 1st May, 1874 and the 1st June, 1875,

had you any other transactions in reference to those bonds beyond those testified to?

A..I am sure that I did, and yet I have no precise recollection about it.

Q..Are there any means in your office of refreshing your recollection as to the prices between the 1st May, 1874, and June 1, 1875?

A..There is; there is a record of every transaction we made in the bonds.

Q..I understand you to say that beyond what you have already testified to, you have no information to-day as to the prices?

A..No sir.

Q..Were there coupons falling due May 1, 1874, attached to the bonds you purchased after that date, or any of them?

A..The default was May, 1875.

Objected to by Mr. Bangs.

The witness—No sir. There were no overdue coupons attached.

Q..To the purchases you made after May 1, 1874; is that what you mean?

A..Yes sir.

Q..Were there coupons falling due November 1, 1874, attached to the bonds you purchased after that date or any of them?

A..There were not.

Q..Were there coupons falling due the 1st May, 1875, attached to the bonds you purchased after that date, or any of them?

A..In a single transaction that I have an account of they were not attached.

Q—Did it make any difference in the price, the circumstance of coupons not being attached after the 1st day of May, 1875?

A..Yes sir; it did.

Q..What?

A..I can't tell you exactly.

Q..Did you know that the Mobile and Ohio Railroad Company had defaulted before the 1st May, 1875, upon the first mortgage bonds?

Objected to by Mr. Bangs as of no consequence.

Answer taken subject to objection.

A..I did not.

Q..Was it generally known on the market?

Objected to by Mr. Bangs as beyond his cognizance, so far as appears. The objection is insisted upon.

Answer taken subject to objection.

A..That it had defaulted prior to May, 1875?

Q..Yes, May, 1875.

A..I think not.

Q..I understood you to say you were dealing in these bonds all the time between those dates?

A..Yes sir; I understand you; a default prior to May, 1875?

Q..Yes; can you by reference to your books bring other sales and purchases before and after May, 1875?

A..1875?

Q..1874 and 1875.

A..Yes, sir, I can, I think.

Mr. Blandy: I will have to trouble you to do that to-morrow.

Cross-examination, by Mr. Bangs.

Q..You have been referring to a memorandum book in giving your testimony?

A..Yes, sir.

Q..Are the entries in that book in your own handwriting?

A..No, sir, they are not.

Q..Whose are they?

A..Our book-keeper, Walter Bass.

Q..Why do you use that memorandum book in giving your testimony?

A..Because I take these from our purchase and sales book showing the transactions.

Q..What do you take from your purchase and sales book?

A..This memorandum.

Q..What memorandum?

A..The memorandum from which I have given my testimony.

Q..I thought you said it was in the handwriting of your book-keeper?

A..So it is.

Q..What do you mean by saying you took it from your purchase and sales book?

A..Then I should have said the one that was taken for me. Our book-keeper took it.

Q..You did not take it from your purchase and sales book, then?

A..Personally, no sir.

Q..You did not take it at all from your purchase and sales book?

A..No, sir.

Q..Why do you read as a part of your testimony memoranda in the handwriting of other people?

A..Through my ignorance, possibly, not knowing any better.

Q..Will you please lay aside that book and, without referring to it, tell what Mobile and Ohio bonds you bought or sold in May, 1874?

A..I cannot.

Q..Without referring to the memorandum book, what was the price of Mobile and Ohio bonds in April, 1874?

A..I have no recollection.

Q..Without reference to the memorandum book, what was the price of Mobile and Ohio bonds in April, 1875?

A..I have no recollection.

Q..Who do you know that was ignorant at any time in 1874 and 1875 that the Mobile and Ohio Railroad Company had defaulted in May, 1874?

A..I beg your pardon; I don't understand that question.

Q..What particular person can you name that was ignorant in 1874 of the fact that the Mobile and Ohio Railroad Company had defaulted on the 1st May of that year?

A..I don't know that I can answer that question.

Q..You cannot name a single person that was ignorant of that fact can you?

A..That was ignorant of the fact?

Q..Yes, that was ignorant of it.

A..Well, no sir, I can't say as much as that; I think there are gentlemen in the room that were ignorant of it; that is my opinion.

Q..Did I ask you that?

A..I think you did; yes, sir.

Q..I asked you if you could name a single person that was ignorant; I don't ask what gentlemen in the room know, unless you want to name them. If you can name any person in the room that was ignorant of that fact, to your knowledge, name him.

A..Well, now you bring in something you did not before to my knowledge; I can't name any one, to my knowledge, that was ignorant of the fact.

Q..What made you say, then, that the market generally was ignorant, if you cannot name a single person?

A..Well, my reason for that is that when a bond is in default the market knows it and trades upon that basis; I should have known it myself.

Q..Did you understand that you were asked to swear to your own inferences or that you were asked to swear to facts?

A..I believe I must swear to the facts of the case.

Q..Confine yourself to the facts of the case; what you can say as of your own knowledge, and not reasoning or speculation, that the market was was ignorant of the fact referred to?

A..I tell you that I thought so.

Q..That is all you meant, was it?

A..That is all I said too.

Q..When were you asked to attend here as a witness?

A..I was asked day before yesterday.

Q..By whom?

A..By Mr. Moran's son, Isidor Moran, I think his name is, or Amidee, the younger Mr. Moran.

Q..Had you acted for him as a broker?

A..No sir; never really as a broker; I done a great deal of business with Mr. Moran, but more as a dealer than a broker. I never was Mr. Moran's broker.

Q..You mean any transactions in which you were the interested party?

A..Yes sir.

Q..You bought and sold?

A..I bought and sold.

Q..Then you are not wholly a broker?

A..No sir.

Q..You are partly a speculator?

A..Partly a speculator.

Q..Did it ever happen to you to see a coupon separated from a bond made a subject of purchase or sale?

A..Very frequently.

Q..Before maturity?

A..I have seen such a thing as that.

Q..And you have seen coupons sold after maturity?

A..Yes sir.

Q..And in both cases detached from the bond?

A..Yes sir.

Q..Have you seen bonds sold with the coupons not yet matured and next maturing detached?

A..Have I seen bonds sold without the next maturing?

Q..Yes?

A..Yes.

Q..That is the custom of this market very frequently, is it not? to sell coupons by themselves after maturity, and to cut off the coupon before it matures, and to sell the bond without it.

A..I have done all of those things myself.

Q..Is not that a very common thing?

A..I cannot say that I think so.

By Mr. Blandy:

Q..Think what?

A..That it is common; transactions of that sort are common.

By Mr. Bangs:

Q..Have they not been common in your experience?

A..I done it frequently myself; not in this particular bond, but in bonds generally.

Q..Has this not happened frequently in your experience?

A..Not to my recollection.

Q..What has not happened to your recollection.

A..Trading in Mobile and Ohio bonds short of coupons.

Q..You anticipate me. Has not this frequently happened, that a coupon maturing in a very short time, or which has matured a very short time before, is detached from the bond by the holder, and the bond sold before the holder realizes upon the coupon or collects it?

A..I don't really grasp your question.

Q..For instance: suppose you held some Erie bonds, the coupons of which matured on the 1st of May, would it not be quite a common occurrence for you to cut off a coupon on the 29th or 30th of April and sell the bond without it? Would not it be an ordinary occurrence if you happened to hold the bond after the 1st May, after the coupon had matured, intending to collect the interest, to cut off the coupon then and keep it, with the intention of collecting it and then selling the bond; such things as that happen, do they not?

A..Yes, sir, such things as that happen.

Q..Then the mere finding of a bond afloat with the coupon detached from it, does not signify anything, does it, except that somebody has got the coupon?

A..No, it does not.

Q..What did you mean by saying that the detachment of the coupon of May, 1875, which you bought after that date, made a difference?

A..Because the bond to be a delivery should have carried that overdue coupon.

Q..You meant they were not a good delivery?

A..A good delivery in our Wall-street use, as we Wall-street people use that expression. Now, to have sold the bonds and said nothing, they would have had to carry the May, 1875, coupon, and to sell them as these were sold, it would have to be a special agreement--an arrangement stating the condition that the bonds were in. If you had simply sold the bonds, saying nothing, they would have to carry the unpaid coupon with them.

Q..Are you talking about the bonds that you bought after May, 1875?

A..Yes, sir.

Q..You said the coupons were not attached? Do not refer to that memorandum book, if you please.

A..Yes, sir.

Q..You said that made a difference, and that you could not tell what; did you not know what you meant when you said it made a difference?

A..I know precisely what I meant; yes.

Q..Yet you said you could not tell what difference it made?

A..I could not tell what in the sense of the precise percentage of difference it made.

Q..How do you know that it made any?

A..Well, just sir, as I know anything; I don't really know how to answer your question.

Q..You would not be likely to know that it made a difference without knowing what the difference was, would you?

A..I could even be there——

Q..Do you remember that it made a difference, or do you only guess it would make a difference, or might make a difference?

A..I know that it did make a difference.

Q..How do you know it?

A..From the fact that there was not all with the bond that belonged with it?

Q..Are you speaking now from memory?

A..I am speaking from the memorandum that I have here of the transaction?

Q..Don't that memorandum specify what the difference was?

A..No, sir; it gives the price, stating that the sale was made, the bonds not having the overdue coupon.

Q..The memorandum does not show that it made a difference, does it?

A..No, sir, the memorandum shows nothing about it.

Q..Why do you say that it makes a difference: if you depend on the memorandum, why do you put in something that is not in the memorandum?

A..The reason I did that was because 43¾, the price of that transaction, would not show the price of Mobile and Ohio bonds, a delivery, carrying the overdue coupons.

Q..How do you know that was the price of that transaction?

A..From my memorandum.

Q..But it is not your memorandum.

A..Well from the memorandum that I have.

Q..Why do you rely upon that, when it is not yours?

A..Because it is taken from our books by my direction.

Q..Was the original entry from which it was taken made by you?

A..No sir; probably not.

Q..Who made it?

A..This book-keeper, Walter Bass.

Q..Then you have not testified in that respect to anything that you personally know or remember, have you?

A..That is the case precisely. I have testified from the memorandum taken in the way I have told you, taken from our books.

Q..That is, you testified to the memorandum, and not to anything that you remember?

A..I have no recollection of transactions as far back as that.

Q..That is, if you had been called here and asked these questions, and hadn't had your memorandum book, you could not have answered one of them, could you?

A..I could not give the day and date, amount and price.

Q..Have you any record of the numbers of these bonds?

A..Every single one.

Q..Where is that?

A..Up at the office.

Q..What is it in?

A..In our purchase and sales book—no, let me see—the numbers would be in the daily blotter.

By Mr. Blandy:

Q..Have you any remembrance of when this default took place; from your understanding of the time when it took place; I mean personal recollection outside of reference to your books?

A..I can't say I have, because dates are all mixed up; I live one day at a time; I can't remember these things back.

Q..Is your memory sufficient to enable you to answer the question whether you heard of any default as far back as May, 1874?

A..I could only get at that by reasoning it out; I can't say that I have any recollection one way or the other.

Q..Reason it out in your own way, without doing it audibly, and tell me whether as far back as 1874 you heard of any default?

Mr. Bangs: Objected to, and it is insisted upon that the witness shall reason it out audibly, if he can reason it out at all.

Q..Then reason it out audibly.

A..I know that the default was made in 1875.

Q..And you know that from the circumstances?

A..Partly from refreshing my memory by my brother brokers here as to whether that was the date or not of the default.

Q..And what is the other circumstance or circumstances ?

A..I think that is about all.

Q..The gentleman has, in cross-examination, asked you to mention a single person ignorant of the fact that the company had defaulted May 1, 1874. Can you mention the name of a single person cognizant of the fact that the company had defaulted in 1874 ?

A..I cannot.

Q..Can you mention the name of a single person cognizant of the fact that the company had defaulted the 1st November, 1874 ?

A..I cannot do that.

Q..The gentleman has asked you in reference to your memorandum book ; did you see the original entries in the books of your concern from which the memorandum was taken ?

A..No sir ; I did not.

Q..Did you compare the memorandum in the book which you have with you, along with the entries in your books ?

A..I didn't do that.

Q..And you have relied entirely upon the extract made by Mr. Bass ?

A..By Mr. Bass.

Q..By whom were those books kept ?

A..By Mr. Bass.

Q..What is Mr. Bass' position ?

A..He receives and pays for all the bonds that we buy, and makes them up for delivery.

Q..And makes the entries in the books ?

A..Makes the entries. He is our cashier and book-keeper.

Q..How long has he filled that position ?

A..Since 1871 or 1872.

By Mr. Bangs:

Q..You say that you know the company defaulted in May, 1875 ; do you wish to be so understood ?

A..Yes sir.

Q..What is a default ?

A..Where you present coupons—maturing coupons—for collection, and get no funds in payment.

Q..You mean where you present them to the debtor ?

A..Yes, sir.

Q..Did you present any coupons in May, 1875, to the debtor and meet with a refusal ?

A..Possibly not; probably not.

Q..Did you ?

A..Well, no sir, I did not.

Q..Because I want to ask you, if you did, where you presented them; you say you did not; how do you know then that it defaulted in May, 1875 ?

A..Well, I hardly know how to answer you.

Q..You don't know that it defaulted in 1875, do you ?

A..But I do.

Q..How do you know it then ?

A..Well, perhaps by the assertions of the men in the trade, who dealt in the bonds; I guess I know it that way as well as any other.

Q..I thought you said a default consisted in presenting a coupon and meeting with a refusal; did you not say so ?

A..I did; yes, sir.

Q..How do you know that any such thing happened; you did not see any such thing, did you ?

A..I have to reason a little to come to that conclusion.

Q..Won't you be so good as to answer my question ?

A..You ask me how I know a thing, and you require me to make definitions that puzzle me a good deal.

Q..I beg your pardon; I didn't ask you to make any definitions that puzzled you a good deal; I asked you if you presented any coupons ?

A..I can answer you about that; that I did not.

Q..Did you see anybody present any coupons ?

A..No, I didn't see anybody.

Q..By the use of which one of your senses did you ascertain that coupons were presented and payment refused in May, 1875?

A..Probably the sense of bearing.

Q..Then you heard one presented and refused, did you?

A..It was brought to my conscience through the sense of hearing—the statements of other people.

Q..Did you see any coupon presented?

A..That would be an absurdity; no, I did not.

Q..What did you mean, then, by the sense of hearing?

A..This is very amusing to me—to you; but—

Q..No, it is not amusing; you swear plumply that the Company defaulted in May, 1875; did you not?

A..Yes, sir, I did.

Q..Now, I want to know how you found that out; do you mean anything more than you heard somebody say so?

A..That is about it.

Q..Have you discriminated in your testimony between what you heard other people say and that knowledge which you acquired by the use of your senses, or have you mixed them up very much altogether?

A..It is very much mixed where you go back so far.

Q..You know, do you not, as a matter within your own knowledge, that the Mobile and Ohio Railroad Company, out of its own funds, and over its own counter, actually and fully paid and cancelled every one of its coupons that matured in May and November, 1874; you know that, don't you; you saw it done, did you not?

A..Why, no sir, I saw nothing of the kind.

Q..You didn't see it done in a single instance, did you, in May, 1874, or November, 1874?

A..No, I didn't see it in either case.

Q..How do you know that its coupons were not presented and payment refused, in May, 1874, and that the same thing did not happen in November, 1874, and July, 1874, and January, 1875?

A..Because in trading in the bonds, those overdue coudons were not attached to the bonds.

Q. . Is that the reason you say those coupons had been presented and paid?

A. . That is my reason for thinking so.

Q. . You did not say you thought so; you said that the Company defaulted in 1875, which implies that it had not defaulted in 1874, and you said that of your own knowledge; now, do you know anything about it?

A. . I know only what I have told you.

Q. . You are aware, I suppose, that the Company omitted the payment of some of its coupons which matured in 1872 and 1873, and some which matured in 1869, are you not?

A. . I am aware of it from the fact that I know there is an interest bond, which was given for overdue interest on the first mortgage bonds; that is about the only way I know that.

Q. . You know that, too, do you?

A. . That is about the only way I know that.

Q. . Are you certain you know it?

A. . I don't think I know much of anything; you are making me a little uncertain on that point.

Q. . That correctly describes the present condition of your mind, does it?

A. . That is very much it.

By Mr. Blandy:

Q. . How did you acquire the knowledge of the default?

Mr. Bangs. . In 1874.

Mr. Blandy. . In May, 1875.

Witness. . From the fact that in trading in the bonds they carried coupons that were due May, 1875.

Q. . Of course, if those coupons had been paid they would not have been attached to the bonds, would they?

A. . That is what I think about it; it would have been a matter of course to me.

Q. . Outside of that, is there any other circumstance which brought it to your knowledge; was it a matter of notoriety on the street?

830 Mr. Bangs: That is objected to.

(Taken subject to objection.)

A..I think it must have been.

(The answer is objected to by Mr. Bangs.)

By Mr. Bangs:

Q..To your knowledge, the coupons which you saw floating about attached to bonds after May, 1875, which were payable, by their terms, the 1st May, 1875, had been presented at the office of the company and payment demanded, had they not?

A..I cannot say that.

Q..Then how do you know that there was any default about it?

A..By a reasoning process as usual.

Q..Then you are no more certain of that than you are of the other things that you say you are uncertain about? You are not certain of that, at least, that there had been any default in respect to those coupons, are you?

A..I am satisfied of it in my own mind.

Q..I am speaking of knowledge?

A..Well, knowledge. I haven't got enough to suit you.

Q..Perhaps you have. Just answer this: Do you or do you not know that those coupons had been presented and payment demanded and refused?

A..I don't know; there is no way I could know.

Q..Why not; could you not have taken them and presented them?

A..That would be a possibility; yes, I could have done that.

Q..Where would you have taken them and presented them?

A..I think that interest was payable at Duncan & Sherman's; but I am not even sure of that.

Q..On the face of the coupon it was payable at Duncan, Sherman & Co.'s, was it not?

A..I don't remember.

Q..What do you mean by saying that it was payable at Duncan, Sherman & Co's ?

A..My recollection is, that was where the Mobile and Ohio interest was paid.

Q..Did you ever get any interest payable there ?

A..Perhaps personally not. I think the office has collected interest there.

Q..Do you mean your office ?

A..Our office, yes.

Q..Do you not know that the coupons said on their face that they were payable at Duncan, Sherman & Co.'s ?

A..I have no recollection about it.

Q..How can you say whether it was so or not ?

A..I cannot.

Q..When you referred to your brother brokers, did you mean Mr. Petty and Mr. Thorburn ?

A..I did. They are both here and they are better witnesses than I am too.

GEO. W. DOUGHERTY.

Subscribed and sworn before me, this 14th day of April, 1877.

EDWARD L. OWEN, U. S. Com. for So. Dist. N. Y.

Charles E. Thorburn, a witness produced, sworn and examined on behalf of the Objector, deposes as follows:

By Mr. Blandy:

Q..What is your business ?

A..I am a broker.

Q..Carrying on business where ?

A..No. 11 Broad street.

Q..In partnership with any one ?

A..No, sir.

Q..How long have you been a broker ?

A..I have been a broker about 12 years; between 11 and 12 years.

A..Did you buy or sell any First Mortgage Sterling bonds of the Mobile and Ohio Railroad Company subsequent to May 1, 1874 ?

A..Yes, sir.

By Mr. Bangs:

Q..Which, bought or sold?

A..I said I did both; I have no memorandum of the exact transactions, but I have traded in them considerably as a broker.

By Mr. Blandy:

Q..Did you buy or sell any previous to May 1, 1874?

A..Yes, sir.

Q..How soon previous to May 1, 1874?

A..I have no data to give you, because, in looking at my books, I merely consulted my books to see about the price of the stocks.

Q..Have you any information of the price previous to May 1, 1874?

A..I didn't take any memorandum of that, but I took a memorandum of a transaction in May, 1874, and I don't know the exact date of that transaction; I merely took the transaction from my little note book.

Q..Was it between the 1st of May and 1st of June, 1874?

A..Yes, sir.

Q..It was in the month of May?

A..It was during the month of May; yes.

Q..You cannot give the precise date?

A..No, sir; the date, I didn't take any memorandum of it; it is so long back that I don't remember, of course.

Q..Did you buy or sell any of the same bonds before or subsequent to the 1st November, 1874, outside of the transaction you have just spoken of?

A..Yes, sir.

Q..How recent before the 1st November, 1874?

A..It was about November; I don't remember exactly the date.

Q..And the purchases and the sales subsequent to November 1, 1874, about what date were they?

A..It was during the month of November; I don't remember the dates.

Q..Then the transaction previous to the 1st of November would be within the month of September, if not October the first?

A..October, I should think; yes, October or November. I was trading in them all the time as a broker; I am not a dealer at all.

Q..You have not the precise date of the November transactions?

A..No, sir, I have not the precise date.

Q..Nor that immediately preceding the 1st November?

A..No, sir.

Q..Nor that immediately following?

A..No, sir, I only give you the price of the bonds about that time; I didn't take the exact date.

Q..Did you buy those bonds on your own account?

A..No, sir.

Q..For whom?

A..That I don't know; without consulting my books I don't know; I bought them as a broker entirely.

Q..Could you tell on whose account the purchases were made, by reference to your books?

A..Certainly.

Q..You have not informed yourself on that point?

A..No sir.

Q..You could also tell the precise dates by reference to your books?

A..Certainly.

Q..What were the prices of those bonds at the date of the first purchase and sale that you have spoken of?

A..The price of the the bonds the time of the actual transaction—I made one memorandum from my books in May.

By Mr. Bangs:

Q..What is that Memorandum?

A..A memorandum taken from my sales book.

Q..Taken by whom?

A..Taken by me in my own handwriting.

Q..Who were the memoranda in the sales book made by?

A..By me. All transactions are taken from my little note book that I kept in my pocket.

Q..Have you any recollection of the transaction?

A..No; my memoranda does not go back.

Mr. Bangs—Then I object to your answering the question.

(Taken subject to objection.)

By Mr. Blandy:

Q..I understand you to say that you have no recollection of the precise price at the particular dates and times spoken of, but you can inform yourself from some memoranda which you have now with you?

A..Certainly.

Q..The particular memorandum that you refer to is in your own handwriting?

A..My own handwriting, from my own book.

Q..Taken from it?

A..Taken from my note book; taken at the moment of the transaction?

Q..By whom was the memorandum kept?

A..By me.

Q..Have you that note book with you?

A...Yes sir; the identical book.

Q..With you now?

A..No sir; in my office. I could have brought it with me, if I thought it necessary.

By Mr. Bangs:

Q..You mean to say the memorandum refreshes your recollection?

A..Yes sir; tells me exactly the market price of the bonds.

Q..Does it refresh your recollection?

A..Certainly.

Q..So that without the memorandum you will remember? After having looked at the memorandum, you will remember?

A..If I should carry it in my mind for a minute, I suppose so.

Q..Could you remember now, after having looked at the memorandum?

A..Certainly I can.

Q..Then I ask you to testify without looking at the memorandum, from your memory.

The witness..Allow me to make one remark.

Mr. Bangs—I distinctly object to the witness looking at his memorandum book when he testifies.

The witness--I am not looking at the memorandum book. I have got a little piece of paper.

Mr. Bangs--Well, look at your memorandum then.

By Mr. Blandy:

Q..I understand you to say that the memorandum which you have with you refreshes your recollection, so that you can testify to the prices at the particular dates.

A..Yes, sir.

Q..Supposing you close your memorandum, or not look at your memorandum, is your memory sufficiently retentive to carry in your mind the fluctuating prices, if they do fluctuate, at the different dates?

A..No, sir; I don't understand you.

Q..Is it not necessary for you to have a memorandum before you?

A..Exactly so; I would not do well to swear to the prices of the bonds at the different dates without the memorandum before me, because I might err without intending to do it.

Q..State the prices at the different dates, giving the earliest date first and the latest date last.

Mr. Bangs: I say state, if you can, without reference to your memorandum.

The Witness: I can't state it without reference to the memorandum; I can state the price in 1875, because that has been refreshed; that was 80; beyond that I would not like to state the price without referring to the memorandum.

Q..Refer to your memorandum, refreshing your recollec-

836 tion by it, and tell me the price, giving, as I said before, the price at the first date first and the price at the last date last?

A..In May, 1875, the price was 80.

Q..In 1875 or 1874?

A..In 1874 the price was 80; in November, 1874, the price was 70; and another quotation I took was 68¾; in April, 1875, the price was 62; in May, 1875, the price was 62; in November, 1875, the price was 50 and 52.

Q..Is that the last date of the transaction which you testified to?

A..Yes, sir.

Q..Then were you mistaken in your earlier answer in saying that the price was 80 in May, 1875?

A..I did not say that.

Q..You did first before you commenced to detail these.

A..Oh! I meant '74, of course; that was a *lapsus linguae;* of course everybody knows that.

Q..Were there coupons falling due May 1, 1874, attached to the bonds you purchased after that date, or any of them?

A..Yes, sir.

Q..Were there coupons falling due November 1, 1874, attached to the bonds you purchased after that date, or any of them?

A..I misunderstood your first question.

Q..Were there coupons falling due May 1, 1874, attached to the bonds you purchased after that date, or any of them?

A..Oh, no.

Q..They were not?

A..These coupons were detached from the bonds.

Q..Detached?

A..Yes.

Q..Were there coupons falling due November 1, 1874, attached to the bonds you purchased after that date?

A..No, sir.

Q..Were there coupons falling due May 1, 1875, attached to the bonds you purchased after that date, or detached?

A..The bonds carried the coupons of 1875 to be deliverable.

Q..Were the coupons falling due November 1, 1875, attached to the bonds you purchased after that date, or any of them?

A..They were attached.

Q..Then the purchases that you made in November, or subsequent, had attached to them two coupons?

A..Subsequent to November they had; yes, sir; they carried May and November.

Q..And those two coupons were the May and November, 1875, coupons?

A..Yes, sir. /

Cross-examination, by Mr. Bangs:

Q..Without reference to your memorandum book, state the particulars of the transaction you had in May, 1874, in Mobile and Ohio bonds?

A..I don't remember; I don't remember what it was.

Q..Who was your principal?

A..I don't remember.

Q..Was it a purchase or a sale?

A..I don't remember, sir.

Q..What was the price?

A..80.

Q..How do you know?

A..I took it from the book just before I came down here.

Q..Independently of the book, have you any recollection?

A..That is impossible; without the book I could not have any recollection.

Q..With the book have you a recollection?

A..Perfect.

Q..You recollect it perfectly?

A..Perfectly; give me the book and I will tell you all about it.

Q..Without the book, have you any recollection, is what I say.

A..Certainly not.

Q..Had you any other transactions on that day?

A..Had I any other in any other stock or bond?

Q..Yes?

A..Certainly.

Q..What were they?

A..I don't recollect.

Q..Had you any transaction in Erie securities?

A..No, sir.

Q..Are you sure of it?

A..Certain of it.

Q..You are sure you had none?

A..None whatever; I do not trade in it.

Q..What do you trade in?

A..Southern securities principally, and that class.

Q..Can you name a single transaction you had on that day?

A..No, sir.

Q..Neither as purchaser nor seller on that day?

A..I know I bought some gold.

Q..On that day?

A..On that day.

Q..Do you remember that?

A..Yes, sir.

Q..Who did you purchase it of?

A..I don't recollect, sir; I can't tell.

Q..Who did you sell it to?

A..I can't tell you.

Q..What was the price?

A..I could not tell you.

Q..If you had not looked at your book you could not tell any more about this than you can about the gold?

A..Quite true; I would not recollect anything about it, if I had not.

Q..How do you know the coupon was not attached?

A..Because at that time all the bonds bought and sold carried--were what we call ex-coupon; and I know the fact that these bonds were bought that way or sold that way by all dealers and all brokers.

Q..I am not talking about dealers, I am talking about you?

A..By me.

Q..Which was it, did you buy or sell?

A..I don't know.

Q..Then you have no particular recollection of these bonds?

A..Only from my note book; only my memory being refreshed.

Q..Your note book is one thing and your memory is another.

A..They are both the same; one is relatively—one, of course, has relation to the other. It is impossible to carry those things; I have transactions, sometimes, during the day, if you will allow me to explain.

Q..It is not necessary to explain?

A..All right, you will get it.

Q..It is not necessary to explain anything but what I want explained; do you remember the transactions in these bonds any better than you remember any other transaction?

A..No, I do not, without reference to the book; but I have refreshed my memory.

Q..When you were looking at the book did you mean to say that you remember it, or did you simply believe in the book?

A..I simply believe in the record of that book.

Q..That is all?

A..That is all.

Q..Does that say anything about "with" or "without" coupons?

A..Yes, sir, because it says "regular."

Q..Says what?

A..It says "regular" and that means ex-coupon.

Q..Does "regular" mean ex-coupon?

A..Yes sir; at that time regular meant ex-coupon.

Q..Where did you buy or sell them?

A..I could not tell you without reference—oh, in the office.

Q..You were not in the Stock Exchange?

A..No sir; they were not dealt in at the Stock Exchange, at that time.

Q..Whose office did you deal in them in?

A..That I cannot tell you without reference to my book. If I thought I was going to be cross-examined, you should have had the whole facts; who I bought them of and the numbers.

Q..You can give all this from the memorandum?

A..Yes sir.

Q..Please supply them the next time?

A..Yes sir. The numbers I might not be able to give you, because I very seldom deliver those bonds myself. The bonds do not pass through my office. For instance if I buy the bonds from you and sell them to W. Duncan, you deliver them, and I simply collect my brokerage.

Q..Then you do not know from actual inspection and sight of the bonds, whether they had coupons or not?

A..No sir; I only know from the fact that you would not be stupid enough to deliver a bond, unless you were obliged to, with the extra coupon on. No man in his senses would do that.

Q..Do you know anything about that?

A..Yes sir; I do know.

Q..As of your own knowledge, you do not know whether these particular bonds had the coupons on or not?

A..I am positive of it.

Q..You did not see it?

A..I don't know whether I did or not until I looked at my books. I may have seen those individual bonds.

Q..Would the books show whether you did or not?

A..They would tell me. If I did, I would have the numbers on my books.

Q..I suppose if I asked you about these transactions of subsequent dates, you would give the same answer?

A..The same answer.

Q..You would have no distinct recollection of any one of them?

A..No sir.

Q..You cannot tell the number of any bonds?

A..I cannot tell you anything about it.

Q..Not without reference to your books?

A..Not without reference to my books. I have traded for so many gentlemen that I don't know.

Q..Did you ever sell a coupon by itself?

A..Never.

Q..Did you ever buy one?

A..Never.

Q..You have had as extended an experience as Mr. Dougherty.

A..I bought probably three bonds when he sold one.

Q..You have not had the variety of experience?

A..No sir; I am not a dealer, I am a broker. I am not a speculator, I am simply a broker.

Q..Who asked you to attend here as a witness?

A..Young Mr. Moran and Mr. Charles Moran also; Mr. Charles Moran.

Q..Mr. Charles Moran and Mr. Amidee Moran?

A..Yes sir.

Q..Then you have bought and sold these bonds for them?

A..I have.

Q..How lately?

A..I can't tell you the dates, but I bought and sold very often for them.

Q..Come as near as you can.

A..I bought in 1874 and 1875, and I think 1876, and probably 1877; I think in all these years I bought for them.

Q..Have you bought for them lately; since the beginning of the year?

A..No; I haven't done anything in 1877 for them.

Q..Have you sold for them?

A..Oh yes, sir; I have, too, I believe; well, I am not sure; my impression is I had in 1877.

Q..Bought for them?

A..Yes sir; I think I bought from them.

Q..Mobile and Ohio bonds?

A..Yes sir.

Q..Bought from them?

A..Yes sir.

Q..What did you give?

A..I bought some interest bonds, if I recollect right, at 30.

Q..How long ago?

A..It is probably six weeks or two months ago.

Q..Can you give the nubmer?

A..No sir.

Q..Can you give the amount purchased?

A..Yes sir.

Q..How much was it?

A..1000 bond.

Q..A 1000 bond?

A..Yes sir. Sold it to Mr. Islin.

Q..What other transactions do you remember?

A..I don't recollect at the minute. I can tell by looking at the books. I might buy and sell for these gentlemen.

Q..To them?

A..Whenever I have orders from them.

Q..The question is have you bought and sold for them in 1876?

A..Yes sir.

Q..State the circumstances?

A..I don't recollect the dates.

Q..Have you bought for them?

A..Yes sir.

Q..You have bought Mobile and Ohio First Mortgage bonds for them?

A..I think I have.

Q..What did you give for them?

A..I don't recollect.

Q..Come as near as you can?

A..My impression is that I bought some at 40, but I wouldn't like to be positive.

Q..When was that?

A..Some time during the year.

Q..What part of the year?

A..The latter part of the year, I should think.

Q..Are you sure of that?

A..No; I am not positive.

Q..Do you remember hearing of the commencement of a suit by Morris Ketchum?

A..Yes sir; I read the account of it in a newspaper.

Q..When?

A..That I cannot tell you; it seems to me it was about six months ago.

Q..You cannot be much more precise in your testimony than you have been, can you?

A..No, I cannot, without reference to my books. I can give you all the data if you choose to take my books.

Q..Can you tell how far the bonds have fluctuated within the last year?

A..Yes, sir.

Q..How much?

A..I should think the bonds—they have sold at 46 and at 30; for I have made transactions at both prices.

Q..In the early part of last year they sold at the highest, didn't they?

A..No, I think they sold at about 42; my recollection is, the first of the year they sold at 42, and then they advanced to about 46, and then, with the fluctuations, they declined to 30, and then they rallied to 37.

Q..Did not they run from 42 to about 46 up to the time Ketchum brought his suit, and then they ran steadily down until Mr. Ketchum and Mr. Moran—

844 A..(Interrupting.) No, sir, I do not think Mr. Ketchum and Mr. Moran had anything to do with it.

Q..I must ask you to produce your books, giving the transactions of Mr. Moran in these bonds, giving the prices and numbers of bonds?

A..That I cannot do.

Q..How much can you do?

A..I don't think I have any right to communicate Mr. Moran's business to anybody.

Q..Do you refuse to do it?

A..No, sir; I want to do what is right and honorable.

Q..When we come to the adjourned day I am going to ask you to give an exact memorandum of your transactions in the Mobile and Ohio bonds for Mr. Moran and his firm during the year 1876, the numbers of the bonds and the prices?

A..I can't give you the numbers.

Q..The amount then?

A..Mr. Moran receives and delivers his own bonds; I don't receive them for him.

Q..I should like to have you do the same thing with reference to Mr. Amy?

A..In the year 1876?

Q..Yes.

A..I can't do it without Mr. Amy's permission.

Q..That is for you to attend to; if you do not do it, I shall move to strike out his deposition?

Mr. Blandy: I advise you that we will take the consequence of that; that you are not bound to comply with that request unless you feel that it is proper to do so.

Witness: I shall not do anything that is small or dishonorable; a broker is bound in honor not to tell anything about his transactions unless he has the permission of the parties.

By Mr. Bangs:

Q..Did you get the permission of the parties that you testified about on the direct examination?

A..I have a perfect right to give you the prices and quotations, but none to give you the names.

Q..I do not know the difference?

A..I do; I am a judge of those matters myself.

Q..Have you had any transactions in Mobile and Ohio Railroad bonds for H. Amy & Co. since March 1876?

A..Have I had any from them?

Q..Yes?

A..Yes.

Q..Were they buyers or sellers?

A..I bought for them, I think. Let me understand perfectly. I want to be perfectly right about this thing, and I put myself in the hands of you two gentlemen. I do not want you to put me in the position that I am to do anything that is wrong—legally; that is all. I simply want you to ask me a question that you don't think is wrong.

Q..Do you think it is wrong to answer these questions?

A..I do.

Q..Then I will not press them, but the next time I will. In the mean time, you will inform yourself whether it is right or wrong?

A..Will you be kind enough to get the right from Mr. Amy?

Q..No, sir; I will not do that.

Mr. Blandy..Unless you assert your right to refuse.

The Witness..Yes, sir, I refuse.

Q..Now, I ask you to give the particulars of the purchases or sales, or other transactions, whatever they were, for Henry Amy & Co., and understand you to say that you refuse to answer?

Mr. Blandy..He says he will consult them and see whether they have any objection to his doing it, or something of that kind.

Witness..That is all.

Q..You decline to answer?

A..I stated that I had no right to speak anything about Mr. Amy's business, unless I had his permission.

Q..Do you decline to answer now?

A..Not at all. I tell you that I bought for them, but I cannot answer, I cannot tell you the numbers or the quantities.

Q..I shall ask you at the adjourned day to give the particulars of your transactions for them and for Moran Brothers?

A..Yes, sir; that is in the form of a notice, as I understand it. You can understand the position that I am in. I don't want to do anything to injure their interest, as I would Mr. Duncan, or Mr. Moran, or any of my customers.

By Mr. Blandy:

Q..Do you know when the Company defaulted for these First Mortgage bonds?

A..Yes, sir.

Q..When?

Q..In 1875; May, 1875.

By Mr. Bangs:

Q..How do you know that?

A..I was told so.

Q..Is that your understanding of the sense of the question, when you are asked if you know a thing, that you are at liberty to tell what you are told?

A..Yes sir; if I am told by those who are interested in the road, and who failed to get their coupons, I consider that that is right.

Q..That is knowledge as you understand it?

A..I do sir.

Q..Did Orville D. Jewett kill himself or was he shot?

Mr Blandy:

I object to that as immaterial.

(Answer taken subject to objection.)

A..No; I don't know.

Q..You have been told, haven't you.

A..No sir.

Q..Have you not read it in the papers?

A..I have.

Q..Have you not read that he killed himself ?

A..I have not.

Q..Have you read that he was shot ?

A..I have.

Q..Are you not ready to testify to that as of your own knowledge ?

A..No.

Q..What is the difference ?

A..Because I never believe half what I hear in a newspaper; but if Mr. Duncan, or this gentleman, tells me anything, I believe it.

Q..Did Mr. Duncan or I tell you, or Mr. Moran tell you ?

A..I understood from Mr. Duncan and Mr. Moran and Mr. Hayes that the road had defaulted in 1875.

Q..When did Mr. Duncan tell you ?

A..I think it was in May—I want you gentlemen to understand—

Q..I want an answer to that question ?

A..It was in May, 1875.

Q..What did he tell you ?

A..My recollection is, that the Mobile and Ohio would not pay their interest.

Q..Mr. Duncan told you that ?

A..That is my understanding—my recollection.

Q..where ?

A..In his office.

Q..What was the occasion ?

A..Because I went there to find out, through parties who held the bonds, whether they would pay or not.

Q..What made you doubt whether they would pay ?

A..Because this man had not got his interest.

Q..What man ?

A..Mr. O'Connor, I think his name was.

Q..That was after the 1st May, 1875 ?

A..Yes.

Q..You asked Mr. Duncan what ?

A..I asked him whether the road would pay the interest on these bonds. I bought these bonds for this gentleman, and he sent me there to find out about the bonds, about the payment of interest.

Q..After he had bought them?

A..Yes.

Q..After the payment of interest had matured?

A..Yes.

Q..Then you asked Mr. Duncan what?

A..Whether the road would pay the interest or not.

Q..He said what?

A..He said no.

Q..Therefore you know the road defaulted?

A..I am sure of it--positive.

Q..You did not see any coupons presented?

A..No sir; could not do it; it was an impossibility.

Q..Why?

A..Because they were paid in Mobile and in London.

Q..Then Mr. Dougherty was mistaken?

A..Entirely. He was not posted—not about the coupons; you flurried him and he didn't understand what he was asked about.

Q..The Company, to your knowledge, paid the coupons maturing in May, 1874.

A..No sir.

Q..Didn't you say they did?

A..I did not.

Q..What is the difference between your knowledge in that respect, and your knowledge in 1875.

A..Because the parties that sent the coupons there collected them.

Q..They were paid?

A..Yes sir.

Q..You know that?

A..I got that information from parties who held the bonds.

Q..Do you know that, or not?

A..I cannot know it any more than in that way.

Q..Why do you make the difference; you are ready to say that you know it defaulted in May, 1875, and will not say that you know it paid the interest in 1874?

A..We won't split straws on the question of default. The coupons that belonged to certain bonds belonging to a party for whom I bought, the road did not pay. I went to see about these coupons myself, and was told in the office—Mr. Duncan remembers it very well, probably—that the road would not pay the interest; that I regarded as a default. I had never heard, prior to that, of any default. Therefore, I am satisfied that the road had paid.

Q..Do you know that prior to May, 1875, the road had paid all its coupons?

A...I don't *know* it, but I *believe* it.

Q..You had been told so, had you not?

A..No; I don't know that I ever asked the question, because these coupons had been paid.

Q..What coupons had been paid?

A..The prior coupons had been paid.

By Mr. Blandy:

Q..May and November, 1874?

A..Yes, sir.

By Mr. Bangs:

Q..You knew they had been paid?

A..Yes, sir, in some cases.

Q..How do you know it?

A..Because the parties got their money.

Q..Who paid them?

A..I understood ——

Q..I do not ask you that; I ask what you know.

A..I can't know anything, taking your view of it.

Q..Yes, you can.

A..No, I cannot; it is an impossibility.

Q..You do not know where you are?

A..Yes, perfectly.

Q..You have the perfect use of your senses?

A..Perfect.

Q..You know everything that your senses indicate to your mind?

A..Not always; because you flash your stick in my eyes, and I may believe that is a hand of light, and it is not; but I know exactly what you are trying to do, and that is to confuse me, and you can't do it.

Q..And you are certain of that?

A..Yes, sir.

Q..Your knowledge is just as accurate on that as anything else?

A..Yes, just as accurate.

Q..Do you know whether or not, of your own knowledge, the coupons were paid, in May, 1874?

A..I know that the money was paid for those coupons in May, 1874, to holders of bonds.

Q..Did you see it paid?

A,.I saw parties that got the money.

Q..Did you see it paid?

A..I was told they got the money.

Q..Did you see it paid?

A..No.

Q..How do you know?

A..Because parties that had the bonds sent to Mobile and collected it.

Q..That is all you know?

A..Yes sir.

Q..In your mind do you make any distinction between knowledge and hearsay?

A..Well, I don't know that—I might hear a cannon out there.

Q..I do not want you to speculate; I ask whether in your own mind you make any distinction between knowledge derived from your senses, and hearsay?

A..If you want Locke on Understanding, yes, I do.

Q..Is the information that you possess on the subject of payment of coupons in May, 1874, derived from hearsay or from your own knowledge?

A..I am satisfied.

Q..I do not ask if you are satisfied: I am trying to confine you to the facts; I asked whether it is hearsay or of your own knowledge?

A..I know what you are getting at; I understand the whole thing perfectly. The coupons of 1874 were paid, some of them; I don't know whether all were.

Q..I am asking about your knowledge.

A..I didn't collect any.

Q..Is your statement about the matter of 1874 a question of hearsay or of your own knowledge?

A..I was told by parties who collected them.

Q..I ask you about your knowledge?

A..Why not ask me if I collected them, and I will tell you no, at once

Q..I want to know whether it was a matter of hearsay or knowledge?

A..I was told that they were paid.

Q..I don't ask that. I ask if it was a matter of hearsay or a matter of your own knowledge?

A..You will have to explain to me the difference between a matter of hearsay and a matter of my own knowledge?

Q..Do you need that explanation.

A..I do.

By Mr. Blandy:

Q..You are buying and selling bonds of the different railroads every day, I suppose?

A..Yes sir; that is my business.

Q..And between the years 1874, 1875 and 1876 your dealings in that connection were very extensive?

A..Yes sir.

Q..Had you heard before the 1st of May, 1875, that there was any default on the part of this company in reference to these First Mortgage bonds?

Objected to by Mr. Bangs.

Answer taken subject to objection.

A..Never.

852 Q..Was it a matter well known on the street that the company had defaulted in May, 1875?

Objected to by Mr. Bangs.

Taken subject to objection.

A..Yes, sir; May, 1875.

Q..Then the knowledge you testified you had, that the company had defaulted in May, 1875, is also derived from the fact of its being a matter of public knowledge or notoriety on the street?

A..Certainly.

Q..Was it a subject of constant discussion among you brokers?

A..It was, among those who dealt in that security.

Q..Had you to regulate your dealings in the way of purchasing and selling those particular bonds accordingly, in that connection?

A..Yes, sir.

Q..Now, if the company had defaulted in May, 1874, ordinarily the coupons of May and November, 1874, would be attached to the bonds?

Objected to by Mr. Bangs.

Answer taken subject to objection.

A..I mean, to be a delivery, the coupons must necessarily go with the bonds. May I go further?

Q..Yes?

A..It is a custom in Wall street, where a road does not pay up its interest, or a State does not pay up its coupons, that a regular delivery—the bonds carry the matured coupons always. Is that what you wanted?

Q..Yes. Would it carry that matured coupon if the company had not defaulted?

A..No, sir.

By Mr. Bangs:

Q..I believe you have stated these bonds were not dealt in at the Stock Exchange?

A..Not at that time. They are now; they are on the call; Mobile and Ohio were called afterwards.

Q..Are you a member of the Stock Exchange?

A..I am not.

Q..How do you know that?

A..Because I saw them on the list; I think Mr. Hayes had them put on.

Q..That is all you know about that?

A..Yes.

Q..You don't think you can possibly be mistaken about that, do you?

A..Mobile and Ohio?

Q..Yes--being on the list?

A..That is my impression.

Q..You don't think you can be mistaken about that?

A..I don't think I can, unless they have been taken off lately.

Q..The rule you speak of was a rule of the Stock Exchange?

A..And of the street.

Q..And of the street, too?

A..Yes, sir, among all classes of brokers.

Q..So that bonds cannot be sold after a default had taken place in the payment of interest, unless the coupons go with them?

A..Not to be a regular delivery.

Q..What do you mean by "to be a regular delivery?"

A..I mean to say, if nothing is said about the default. If I sell you $10,000 of bonds, and nothing is said about what coupon it carries, you are entitled to all unpaid coupons.

By Mr. Blandy:

Q..As well matured as those to mature?

A..Yes, sir.

By Mr. Bangs:

Q..How do they get to be so? Did you make that law?

A..No, sir.

Q..Who made it?

A..The general custom of the street and the decision of the Stock Exchange.

Q..I asked you if it was a rule of the Stock Exchange?

A..I don't think you did.

By Mr. Blandy:

Q..You say it is?

A..Yes, sir.

By Mr. Bangs:

Q..Did you hear at any time that the Mobile and Ohio Railroad Company had received any assistance from Duncan, Sherman & Co.?

A..Yes, sir.

Q..When?

A..I heard it in 1874; the latter part of 1874.

Q..From whom?

A..I think I heard it through Mr. Hayes, if I recollect.

Q..What kind of assistance?

A.. --and from Mr. Duncan as well.

Q..What kind of assistance?

A..Pecuniary.

Q..Is it possible?

A..Yes, sir.

Q..In what shape?

A..I heard they lent them some money.

Q..For what purpose?

A..To take care of them.

Q..Then you knew that the Mobile and Ohio Railroad Company was borrowing money?

A..Yes, sir, decidedly.

Q..You saw it loaned?

A..No, sir; but I had that paper in my hands at different times.

Q..What kind of paper?

A..30, 60 and 90-day paper; Railroad paper.

Q..Notes to sell?

A..Yes, sir.

Q..Were you asked by Mr. Duncan to borrow money for the company in 1874?

A..Never. Mr. Duncan never came to me to borrow money in 1874. I would have gone to him.

Q..I mean to make negotiations?

A..No, sir, never.

Q..And you never saw a coupon sold or bought by itself?

A..Oh, yes, sir; I have, very often.

Q..I asked you that.

A..Oh, no, you did not. You asked me if I had bought or sold Mobile and Ohio coupons.

Q..I didn't ask you that, with great respect. I did not mean to limit that to those coupons. You have seen coupons bought and sold?

A..Certainly.

Q..Separately?

A..Certainly.

Q..Coupons yet to mature?

A..Coupons yet to mature? yes, sir.

Q..And coupons which have matured?

A..Certainly; having matured and yet to mature. In the case of State bonds very often; South Carolina particularly, because they are receivable for taxes; Virginia also; there is quite a trade in them.

Q..Did you understand that the Mobile and Ohio Railroad Company paid all the coupons which matured during the war?

A..I knew they had not.

Q..Were all of those coupons attached to the bonds?

A..Oh, no.

Q..They were off?

A..They were all off.

Q..And yet it was known they were not paid?

A..Certainly; I knew they had been funded.

Q..They had all been taken off equally from all the bonds, had they not?

A..Yes, sir.

856 Q..Did not that make a difference in the application of this decision of the Stock Exchange?

A..Not at all.

Q..Did not?

A..No—because—

Q..Then why were not the coupons attached?

A..Because they had been funded by a special arrangement.

Q..How do you know that?

A..I know it from the Union Trust Company; they told me so.

Q..Do you mean to say that they had all been funded?

A..Oh, no; I don't mean to say that all had been funded.

Q..All you mean is that the funding scheme had been got up, and some people had taken advantage of it?

A,.Yes, sir.

Q..Why were not those coupons that matured during the war, and on which default was made, and which were not embraced in that funding scheme, why did they not stick to the bonds until the funding scheme was carried out?

A..Because, up to the time, as I understand it, that the coupons were funded, they commenced paying, from that time, interest on the bonds.

Q..Why did not the unpaid coupons continue attached to the boonds?

A..Because they were funded.

Q..But you say they were not all funded?

A..I say I don't know. You asked me whether they were or not. I told you I didn't know. I didn't say that they were not. I did'nt say whether they were or not. I told you I didn't know.

Q..Do you mean to say that that supposed rule you speak of, of the street and of the Stock Exchange, applies where the entire maturity of the coupon is detached?

A..What is that?

Q..Where the whole maturity of the coupon is detached by a purchaser of the coupon, do you mean to say that the rule you have spoken of as a rule applies?

A..I mean to say you have got to give them the coupon or else the money.

Q..Whatever rule there is, is it not for the purpose of preventing one set of purchasers from buying the bonds with the coupons, and another set from buying them without the coupons?

A..All bonds—

Q..Do not tell me about all bonds, please answer my question.

A..I cannot, for I don't understand your question.

Q..Is it not the object of the rule to accomplish this purpose, that there should not be one set of bonds out with a part of the coupons attached, and another set with the coupons, maturing at the same date, detached? In other words, is it not to produce uniformity?

A..Yes, sir; it is to produce uniformity.

Q..If all the coupons of a particular class are cut off, the uniformity is produced by no other means?

A..No, it is not.

Q..Is not uniformity produced by detaching all the coupons?

A..No; because you have got to put the money there?

Q..Is not uniformity produced?

A..No, it is not.

Q..Where is the want of uniformity?

A..Because I might have one bond, and that one single bond would break the rule.

Q..Where all the coupons of a particular due date are cut off the bonds, do not the bonds present the same uniform appearance and have the same uniform value?

A..Of course.

Q..Then is not uniformity produced by that process?

A..In appearance, yes, sir; but not in delivery.

Q..If they are all delivered with the coupons off, is not the delivery the same?

A..No; you have to make the delivery good.

Q..Is not one delivery just as good as another?

A..No, it is not.

Q..What makes the difference?

A..Because you have got to make up the difference.

Q..Where coupons are all cut off the coupons of a given date, is not one delivery just as good as another?

A..No, sir.

Q..What is the difference? Do not tell me what you have got to do? What is the difference between the delivery of bond A and bond B, where the coupons are cut off from both?

A..Neither of them is a delivery.

Q..What is the difference between the delivery of one and the delivery of another?

A..You cannot expect me to answer a question as to whether one bond is in appearance like the other, because I don't suppose you would ask such a question.

Q..Are they both bad or good deliveries?

A..They are both bad deliveries.

Q..What is the difference, if they are both bad?

A..There is no difference.

Q..Now, if the same thing happens to a thousand bonds, what is the difference in the quality of the delivery of any of those bonds?

A..All bad.

Q..That answer is objected to. What is the difference in the quality? Is there any difference?

A..All bad.

Q..Is not one delivery just as good and just as bad as another?

A..Quite so.

Q..When defaults have taken place for a series of years, as in the case of the Mobile and Ohio bonds during the war, and deliveries were made without those coupons, you do not consider any one of these a good delivery?

A..You are mistaken.

Q..Do you consider it a good delivery?

A..After the funding scheme was carried in, I do.

Q..Before the funding scheme was carried in?

A..No, sir; it was not a good delivery until the funding scheme.

Q..Suppose the funding scheme has never been carried out, do you consider it a good delivery?

A..No, sir.

Q..Then if the funding scheme has not been carried out, there have not been any good deliveries of Mobile and Ohio bonds with coupons attached since the war?

A..If the funding scheme had not been carried out.

Q..*Has* not?

A..But it has.

Q..I do not ask you that?

A..What is the use of supposing an impossible case to me, and then asking me the question?

Q..I will tell you when the case comes to be summed up. If the funding scheme has not been carried out, has there been a good delivery of Mobile and Ohio bonds since the default, which began at the beginning of the war?

Objected to by Mr. Blandy as hypothetical.

A..I am trying to you. You say if a certain thing has not happened, which has happened. It has happened; consequently there can be no "if" about it.

Q..Will you answer my question upon the hypothesis that I put?

A..Certainly I will.

Q..If the hypothesis has not been—

A..(Interrupting.) "Had not?" I can't understand it. "Has," I can understand.

Q..Well, if it had not been?

A..If it had not, the bonds would have required all the coupons which are now in escrow.

Q..If the funding scheme had not been carried out, has there been a good delivery of any of those bonds since the war?

860 A..No, sir. Now we get at it. Not according to the rule of the Stock Exchange. You said "has" and not "had."

By Mr. Blandy:

Q..You stated that you had a conversation with Mr. Duncan and Mr. Hayes in reference to whether the interest falling due in May and November, 1875, would be paid on these bonds?

A..*Had* been.

Q..*Would* be paid. Could you state whether that interview took place subsequent to the 1st May, 1875?

A...The conversation which I alluded to then was subsequent to the 1st May, 1875.

Q..Subsequent to May 1, 1875?

A..Yes, sir; then I went there in the interest of this Mr. O'Connor. I went there to ask about his bonds.

Q..Mr. Duncan and Mr. Hayes that you refer to; will you give me the full name of Mr. Duncan?

A..There is the gentleman.

Q..Mr. Wm. Butler Duncan?

A..Yes, sir.

Q..What is Mr. Hayes' name?

A..William H. Hayes.

Q..Two of the plaintiffs in this suit?

A..Yes, sir; but I had no conversation with Mr. Hayes at that time about these bonds.

Q..Did you have any conversation with Mr. Hayes subsequent to the 1st of May, 1875?

A..Subsequent?

Q..Yes?

A..Oh, very often. I have talked with him very often. I suppose I have talked with Mr. Duncan or Mr. Hayes fifty times.

Q..In your conversation with Mr. Duncan was anything said in reference to any default having been made by this company in May, 1874, the year previous?

A..At that time?

Q..Yes?

A..No, sir; let me explain: I merely went there to see whether the road would pay interest upon these bonds that Mr. O'Connor had. That was all the conversation I had.

Q..I understand that the coupons for May, 1875 had not been paid?

A..Yes, sir.

Q..And were attached to the bonds?

A..Yes, sir; and Mr. O'Connor asked me to go and see Mr. Duncan and ask him whether the interest would be paid.

Q..Before you went to see Mr. Duncan was it a matter of notoriety upon the street that a default had been committed by the Railroad Company in the payment of this interest?

Objected to by Mr. Bangs.

Taken subject to objection.

A..Yes, sir.

Answer objected to by Mr. Bangs.

Q..And you went to Mr. Duncan to get information beyond what you had yourself?

Objected to by Mr. Bangs as immaterial.

Taken subject to objection.

A..Yes, sir; I went as this man sent me there.

Answer objected to as incompetent and immaterial by Mr. Bangs.

Q..Did you ever sell any notes of the Mobile and Ohio Railroad Company to Duncan, Sherman & Co.?

A..Not that I recollect.

By Mr. Bangs:

Q..Have you ever heard that the coupons maturing in 1874 were not paid by the company?

A..I have.

Q..When did you first learn that?

A..I heard that when I heard of the failure of Duncan, Sherman & Co.

Q..Never before?

A..No, sir.

Q..You are quite certain of that, are you?

A..Sure of it.

Q..Where was this conversation with W. Duncan and Mr. Hayes?

A..I had no conversation with Mr. Hayes. The conversation with W. Duncan—

Q..(Interposing.) I thought you said you had a conversation with Mr. Duncan and Mr. Hayes, two of the plaintiffs in this suit?

A..I had conversations about the Mobile and Ohio at different times.

Q..But you never had a conversation with them together.

Witness..About Mobile and Ohio bonds?

Mr. Bangs..Yes.

A..Yes, sir.

Q..I ask you what it was?

A..I don't remember.

Q..Were they together when you asked them whether the coupons of 1875 were going to be paid?

A..No, sir.

Q..Mr. Conner or O'Connor bought these bonds after the 1st May, 1875, did he not?

A..No, sir; he bought them before that.

Q..With the coupons attached?

A..Yes, sir; I bought them from Mr. Duncan for him.

Q..Are you sure of that?

A..I am certain of it.

Q..And after the 1st May, 1875, you went and asked him whether the interest would be paid, did you?

A..Whether this Mr. O'Connor would get his interest.

Q..How long after the 1st of May, was it?

A..Pretty soon afterwards. I don't recollect the exact date.

Mr. Bangs—I do not ask you to recollect the exact date.

Witness—Pretty soon afterwards, in the month of May.

Q..What do you mean by pretty soon?

A..It must have been within a week. Mr. Duncan understands me.

Q..Do you defer to Mr. Duncan's recollection. Do you think he remembers it better than you ?

A..No, sir ; I do not.

Mr. Bangs—Do not refer to him then, because he remembers very differently from the way you do.

Witness—All right.

Q..What did you give for those bonds ?

A..I don't recollect. I could tell by looking at my books.

Q..Were they delivered to you ?

A..No, sir ; to Mr. O'Connor.

Q..How do you know that ?

A..He told me so. Mr. Duncan, too.

Q..Is that the reason you say you know it ?

A..Yes, sir; I believe both of them.

Q..That is the reason you say you know it, is it ?

A..Yes, sir ; I believe them both.

Q..Then if Mr. Duncan and Mr. O'Connor should testify that they told you the coupons for 1874 were not paid and had not been paid, but had been purchased, would you believe that, too ?

A..I should not recollect it ; but I should take it for granted that I must have forgotten it, because I believe they are truthful.

Q..Where did the conversation with Mr. Duncan take place ?

Witness—About the bonds ?

Mr. Bangs—Yes.

A..It took place in Mr. Duncan's office, the rear office in Duncan, Sherman & Co.'s building.

Q..Was anybody present besides you and Mr. Duncan ?

A..I don't recollect about that.

Q..What did you ask him ?

A..I told him that Mr. O'Connor asked me to ask him whether the interest would be paid. Whether he could get his interest.

Q..Which?

A..Whether he could get his interest.

Q..What did you mean by "whether he could get his interst?"

A..Well, whether he could collect the coupons.

Q..Did you say that?

A..I think I said whether he could get his interest.

Q..Did you say from whom?

A..I don't know whether I asked him whether he could get it from the road or not. I don't know whether I used any other expression than that.

Q..You do not know whether you asked him whether he could get it from Duncan, Sherman & Co.?

A..No; I don't know whether I did or not.

Q..But you might have asked him that?

A..I might have asked him that; I don't know. I used to go in there always in May and November and ask him—

Q..(Interrupting.)—Do you say you made a contract for these bonds with Mr. Duncan?

A..That is my recollection.

Q..Where was that?

A..In Duncan & Sherman's office.

Q..Did you go there on purpose to buy them?

A..I did—or to sell them, I don't know which.

Q..If you went to sell them, how came you to buy them?

A..I was the broker between the two parties.

Q..Who were the two parties?

A..Duncan, Sherman & Co., and Owen O'Connor.

Q..Who employed you?

A..That I can't recollect without looking at my books. I was employed by one or the other party. One or the other party paid me my brokerage, but which, I don't recollect.

Q..You can't tell whether Duncan, Sherman & Co. employed you to sell or O'Connor employed you to buy?

A..No; not at the minute. That I don't recolllect. I know the fact that I got a brokerage on the transaction; but who paid it--

Q..(Interrupting]--If Duncan, Sherman & Co. employed you to sell, where did you find the customer?

A..I found it in O'Connor. O'Connor came to me to buy.

Q..To buy what?

A..To buy Mobile and Ohio bonds—sterlings.

Q..Did he come after Duncan, Sherman & Co. employed you to sell, or before?

A..That, I can't recollect.

Q..Do you remember the prices of those bonds?

A..No, sir; I do not.

Q..When were they bought?

A..That, I can't tell you exactly either.

Q..About when?

A..I should think it was some time in 1874.

Q..Some time in 1874?

A..I think so.

Q..July?

A..I think—I don't know. I don't recollect. I wouldn't like to say, because I might err, you know.

Q..Was it later than July?

A..That, I can't tell you.

Q..Are you sure it was in 1874?

A..That is my recollection.

Q..Are you sure it was in 1874, I say?

A..That is my recollection.

Q..I ask you, if you are sure?

A..I can't be, without referring to my notes.

Q..Can you say whether it was not before May 1, 1874?

A..That, I can't tell.

Q..For aught you know, they had the 1874 coupons attached.

A..Oh, no; I saw them—O'Conner showed me the bonds.

Q..Showed them, when?

Witness—I beg your pardon; I thought you said that they had the 1875 coupons attached.

Mr. Bangs—No.

A..No, I don't recollect.

Q..When you bought them, you do not know but they had the 1874 coupons attached, do you?

A..I don't recollect.

Q..How many were there?

A..That, I don't remember—whether it was seventeen or twenty-seven thousand. I just recollect the circumstance of making the trade, but I don't recollect the number,

Q..Was it not 270,000?

A..No, sir.

Q..Are you sure of that?

A..Certain of it.

Q..Was it not 170,000?

A..I am sure it was not.

Q..Was it not 70,000?

A..Not so many.

Q..How?

A..Not so many.

Q..And that you are sure of?

A..I am pretty sure of that.

Q..Was it 50,000?

A..That I don't recollect.

Q..You cannot tell.

A..I can't tell without referring to my memorandum.

Q..It was somewhere between seventeen and fifty thousand, was it?

A..I don't recollect the exact number.

Mr. Bangs..I do not ask you to recollect the exact number.

Witness..I can't tell; It was a very nice brokerage, I remember.

Q..Was it not less than seventeen?

A..I think not.

Q..And it was not more than fifty?

A..I don't think it was.

By Mr. Blandy:

Q..You are clear, are you, that when you called and had this interview with Mr. Duncan, your question was in reference to the payment of the coupons that matured the 1st of May, 1875?

A..Yes. sir.

Q..Will you be good enough to tell us what Mr. Duncan stated to you?

Mr. Bangs..I object to that. It has been asked three or four times.

(Answer taken subject to objection.)

Mr. Blandy..I want you to give, without interruption, just what Mr. Duncan stated in reference to it.

A..He simply stated the interest would not be paid. I didn't say anything more. He simply said the interest would not be paid.

By Mr. Bangs:

Q..And your inquiry related to the seventeen or fifteen bonds which you had bought or sold, you do not know which?

A..Yes, sir.

Q..It related to some number of bonds, which you cannot remember, which you had either bought or sold, you cannot tell which?

A..Yes, sir.

Q..And you cannot tell when you had bought or sold them?

A..Not the precise date.

Q..No, nor within a year.

A..Well, no, I can't, without reference to my notes, my note book, my sales book, my purchase book.

Q..Did you converse with Mr. Duncan in April, 1875, about Mobile and Ohio?

A..I don't recollect whether I did or not.

Q..Did you converse with him on any occasion when he said that it was making great efforts to obtain the money to get the coupons, or to take care of or to provide for the coupons?

A..I think Mr. Duncan stated to me several times that he was doing all in his power.

Q..To do what?

A..To carry the Mobile and Ohio Railroad.

Q..How?

A..My understanding was that he was trying to raise money for that road.

Q..Well, did he not give you to understand that he was trying to raise money to take up the coupons?

A..Decidedly

Q..In 1874?

A..No, 1875.

Q..Before the 1st of May?

A..I don't know whether it was before the 1st of May or not.

Q..Was it after the 1st of May, after the company was in default, that he told you that?

A..Yes, sir; my impression is that Mr. Duncan—I may not be clear in my recollection, but the impression always in my mind was that Duncan and Sherman—

Mr. Bangs..Do not go into that.

Witness..If you bind me down to the strict letter of his words, it is impossible now to tell you.

Mr. Bangs..Give the strict sense of his words.

Witness..The strict sense of his words, the impression made upon my—

Mr. Bangs..I do not ask you that. I want to know his words, or the sense of what he said. Did he not say that he was trying to raise money to take up or carry these coupons?

A..Oh, yes, sir.

Q..Was it not in 1874?

A..No.

Q..Was it not before the default of May, 1875?

A..I think not.

Q..Was it after the default of May, 1875?

A..I think it was about the time of the default in 1875.

Q..Was it after the default?

A..I think—yes.

Q..How many such conversations did you have?

A..Mr. Duncan has spoken to me several times about the Mobile and Ohio road, and the impression upon my mind—

Q..(Interposing.) I do not ask you that. How many such conversations did you have?

A..I can't tell you.

Q..More than one?

A..My impression is that he spoke to me more than once.

Q..In that sense?

A..In that sense.

Q..And running through a considerable period of time?

A..No, sir, not very considerable, because it was just about that time.

Q..About what time?

A..About May, 1875.

Q..How do you locate that time?

A..I locate it by the application of this man to me to get his interest; that is the only way I locate it. It was about that time that I spoke to Mr. Duncan.

Q..You locate it about that time?

A..About that time; yes, sir.

Q..How long have you known Mr. Duncan?

A..I don't recollect; I think I have known him for—well, let me see; I joined the club in 1865, I think; I think I have known Mr. Duncan ever since 1865; just after the war I came here.

Q..You have been in the habit of talking to him about Mobile and Ohio affairs, have you?

A..Yes, sir.

Q..A good deal?

A..Yes, sir.

870 By Mr. Blandy:

Q..You are not quite clear as to the date of your interview with Mr. Duncan, are you, whether it was before the 1st May, 1875, or whether it was after?

Witness..About the O'Connor interview?

Mr. Blandy..Yes.

A..I am clear on that; that was after the 1st of May, 1875—the O'Connor interview.

Q..Then the doubt in your mind as to the other interview, relates to the conversation wherein Mr. Duncan stated that he was about to raise money to assist the road, or something of that kind?

A..Yes, sir.

Q..Was it anticipated upon the market that the coupons of May, 1875, would not be provided for?

A..Yes, sir.

Q..Is it possible that that circumstance may have led you to converse with Mr. Duncan in reference to the payment of the coupons of May 1, 1875, anticipating that they would not be paid.

A..Yes, sir.

Q..And before the 1st May.

A..Yes, sir.

Q..That circumstance may have brought about this conversation before the 1st May?

A..Yes, sir.

By Mr. Bangs:

Q..How do you know that it was anticipated on the market that the coupons would not be paid?

A..Because every Southern road they anticipated before the interest fell due, that they would go to default.

Q..And how long had that been so?

A..Ever since I came here. Ever since the war.

Q..Then this was not a special case?

A..No, sir.

Q..Did you ask him about any other road?

A..I asked him about Alabama State bonds.

Q..Did you ask him about anything else?

A..I don't know that I did. We always ask such questions.

Q..Did you not ask him the same questions in 1874?

A..I think it very likely. I may have.

Q..Did you?

A..I don't recollect.

Q..You would not say you did not?

Witness—Now, gentlemen, you want me to go into a conversation I had with Mr. Duncan.

Mr. Bangs..I do not know that I do. I want you to answer my question?

A..I have spoken to Mr. Duncan prior to this about the condition of the road, and the chance of paying the interest. I was sent by Mr. Moran once to see him; and Mr. Moran sent me to Mr Duncan and I had a conversation. It was in reference to the purchase of some bonds for a correspondent of Mr. Moran's, in Europe. I went to see Mr Duncan. I can't tell you whether it was in May, 1874, or November, 1874, but it was during the year 1874; and on the strength of that conversation I suggested—

Mr. Bangs..No matter about the "strength" of that conversation.

Witness..You want to get at it?

Mr. Bangs..I do not want to get at it. I asked you a question and you have not answered it yet.

Witness..If you wanted to find out about the road, I will tell you all about it; all the conversations.

Mr. Bangs..Go ahead. Nobody has interrupted you in stating the conversations.

Witness..All right. This thing is coming back clear to me now. Mr. Moran sent me to see Mr. Duncan and I went to see him. I asked Mr. Duncan in reference to the condition of the road as an investment for the other side. Mr. Duncan told me that he thought the bonds were good; stated that their house was largely interested in the success of the road; and so I reported to Mr. Moran.

Q..When was that?

A..That was in the year 1874.

Q..What part of the year?

A..It was the first part of the year.

Q..What do you mean by the first part?

A..It was in, I think, as well as I recollect, the spring.

Q..What do you mean by the spring?

A..Prior to the payment of the May, 1874, coupons.

Q..How do you locate it at that time.

A..Because it has come back to me, all now.

Q..How do you locate it?

A..I am now trying to get the whole thing back clear to me. I recollect it in this way. I recollect the circumstance of Mr. Moran sending me there, and I recollect—you have brought it back to me by your questions.

Q..Answer my question, if you please; how do you locate that as the time?

A..I locate it from my recollection—from my memory.

Q..What month was it.

A..That, I can't tell you; but it was in the spring of the year. It must have been about the time of the payment of the coupons.

Mr. Bangs..No matter about what it must have been?

A..Well, it was about the time of the payment of the coupons.

Q..What do you mean by that?

A..I mean when the coupons would naturally fall due.

Q..Do you mean payment as synonymous with the time when the bond falls due?

A..The coupon falls due.

Q..Is that what you mean by the payment?

A..Yes, sir.

Q..About the time it fell due?

A..Yes, sir.

Q..Was it before or after?

A..It was before.

Q..Had you told this to Mr. Moran?

Witness..Told what?

Mr. Bangs..What you have just now stated?

A..Certainly. I went back to his office.

Q..Had you told it to him before you were examined to-day?

A..Certainly.

Q..Two or three years ago?

A..Yes, sir.

Q..Have you made it a subject of conversation with him since?

A..Only once.

Q..Then he knew it when you were sworn to-day, did he?

A..If he has not forgotten it. It had slipped my memory until you called it up.

Q..And you have not thought of it until this minute.

A..No.

Q..Mr. Duncan told you they were largely interested in the road, did he?

A..He said they were largely interested in the road.

Q..Did he tell you the nature of the interest?

A..Yes, sir.

Q..Are you sure of that?

A..Positive.

Q..Are you sure that he did not tell you that they had bought the coupons of May, 1874, and were largely interested in that way?

A..I am positive of that, because Mr. Moran would not have bought the bonds if he had known that.

Mr. Bangs..Let us get this straight now.

Witness..You will get more of this than you want; you shall have it, more than you want.

Q..What do you mean by saying we shall have more than we want?

A..I mean this, that you are badgering me, and I am not going to submit to it. I consider that you are badgering me, and I am here to do what is right for both parties. I

have done business for both sides; but I consider that you are trying to badger me.

Q..Have you been under that impression in giving this last interview with Mr. Duncan ?

Witness..No, sir, from your remark telling them to take down what I have said.

Mr. Bangs..They did not take down anything but what you did say, did they ? You did say that you were going to give us more than we wanted, did you not ?

A..I may have said that.

Q..Did you not say that ?

A..It is very likely I did.

Q..Did you say it ?

A..It is very likely.

Q..Did you intend it ?

A..You may put it as you choose.

Q..Did you say that ?

A..I think likely I did.

Q..Is that all the answer you will give ?

A..I will answer all the questions you want.

Q..Did you make that answer ?

A..If you will read it I will tell you.

Q..Did not Mr. Duncan tell you that his large interest consisted in the fact that he had taken up and was carrying the coupons of 1874 ?

A..He never told me that in 1874.

Q..When did he tell you that ?

A..I think he has told me that since his house failed.

Q..Whereabouts ?

A..My impression is that he told me in his office.

Q..Has he not told you that more than once ?

A..Yes, sir.

Q..How many times has he told you ?

A..I can't tell you; several times.

Q..Are you able to distinguish the different occasions on which he told you, from each other ?

A..No, sir.

Q..Are you able to locate the different occasions?

A..No, sir.

Q..Did he in any way specify the large extent of the interest of his house.

A..I think he did.

Q..What did he say?

A..He referred to the report of the condition of the Mobile and Ohio road, and I saw from that report that they were largely interested.

Q..Which report was that?

A..The failure of his house I refer to. I cannot tell what you think.

Q..I am speaking of the time before the failure of his house, when he said he was largely interested—at any time?

A..I don't recollect.

Q..He did not tell you, then, at any time before his failure, what the nature of his interest was?

A..No, sir.

Q..Do you say that you bought bonds for Mr. Moran?

A..For him? yes, sir.

Q..As the result of that conversation?

A..Mr. Moran bought them.

Q..How do you know?

A..Because he told me so.

Q..Is that what you mean by know?

A..Yes, sir.

Q..Had you anything to do with the purchase?

A..My idea is that I did; that I got the brokerage.

Q..Can you fix the date of it?

A..I don't know that I can. I think I can by looking at the books.

Q..Will you please produce the book and bring it here, and give us the date?

A..I guess I can; I think I can bring the book.

Q..I ask you to do so; bring the book itself and not any extract from it. Was anybody present at that conversation?

A..I don't know. Do you mean with Mr. Moran?

Q..With you at Mr. Duncan's?

A..I don't recollect. The partners were generally there.

Q..Are you entirely satisfied that you have given no more than we want, or do you want to give us some more in the same spirit; if you do I am ready to take it without asking any specific question?

A..What is the object of your remark?

Q..You said you would give us more than we wanted; now, if there is anything you have withheld, I will give you the opportunity to state it?

A..I will tell you exactly. My idea was, I tell you frankly, that you were badgering me.

Q..Have you anything further to say in pursuance of that determination, to give us more than we want?

A..I understand your motive; I think I see through it. Your idea is to get the answer estopped about this interview.

Q..Are you asking me a question?

A..I merely want to know if that is what you want me to say about it.

Q..I have nothing to do but to repeat that question: Have you now told us, as a matter of fact, all that you have to say in pursuance of your determination to give us more than we wanted; that is my question?

A..Oh, yes, sir.

Q..You have now finished?

A..Yes, sir.

By Mr. Blandy:

Q..Will you just take up the conversation that you were relating, between yourself and Mr. Duncan, and give us your reasons why you are satisfied Mr. Duncan did not tell you that his firm had taken up the coupons of May 1st, 1874?

A..Mr. Duncan stated to me that the road was doing very well, and he spoke very well of the road, and I repeated the conversation to Mr. Moran; and Mr. Moran invested in the bonds, as I understood it, on the strength of that conversation.

Q..On the strength of that conversation?

A..Yes, sir.

Q..On the strength of your report of it, did he?

A..Yes, sir.

Q..And you reported to Mr. Moran, in substance, what Mr. Duncan had stated to you.

A..Yes, sir; I also stated to Mr. Moran that I preferred he should see Mr. Duncan himself.

(Answer objected to by Mr. Bangs.)

Q..We will excuse that; it is objectionable. That is the substance of the conversation at that interview, is it, with Mr. Duncan?

A..Yes, sir.

By Mr. Bangs:

Q..How much did Mr. Moran invest on the strength of that conversation?

A..I don't know; I don't recollect.

Q..Did you ever know?

A..I think I do; I think I have.

Q..How do you know?

A..I think I either bought the bonds for him, or he told me how many he had bought.

Q..You cannot tell which?

A..Not without reference to my books.

Q..And in either case you say you know, that is, whether you bought them or whether he told you he bought them. You know he bought them?

A..Yes, sir.

Q..In either case?

A..Yes, sir.

Q..That kind of information which you get from the statement of others you give as a part of your own knowledge, do you?

A..You make a statement and then ask me a question. I believe that I do know it.

Q..Where you get information from Mr. Moran, and are asked questions in relation to the subject, you state the information embodied in his statement as information within your your own knowledge, do you?

A..To the best of my knowledge and belief.

Q..Is it in your knowledge or not that he bought any bonds?

A..Yes, it is my knowledge and belief from the statement.

Q..Is it within your own knowledge?

A..I believe he bought it.

Q..Is it within your knowledge?

A..Do you want me to answer Yes, or No? I will answer it.

Q..Is it within your knowledge?

A..To the best of my knowledge and belief, yes.

Q..Is it within your knowledge?

A..I believe so.

Q..You believe it is within your knowledge?

A..Yes, sir.

J. N. Petty, a witness produced, sworn and examined on behalf of the Objector, deposes as follows:

By Mr. Blandy:

Q..What is your business?

A..Broker.

Q..Where do you carry on business?

A..No. 8 Broad street.

Q..How long have you been a broker.

A..About twenty-five years.

Q..Are you in partnership or alone?

A..Alone, yes, sir; at present. I have formerly had partners.

Q..Did you buy or sell any First Mortgage Sterling bonds of the Mobile and Ohio Railroad Company prior to or subsequent to May 1st, 1874.

A..I have, both.

Q..You have bought and sold prior to May, and bought and sold subsequent to May.

A..I have.

Q..Can you tell me from memory how recently before the 1st May, 1874, you bought and sold such bonds ?

A..I could not tell you all the transactions without going to my books. I can there. I can then. I have a record of such transactions as I made.

Q..Can you tell me the nearest approximate purchase to 1st May ?

A..I have not refreshed my memory as to the precise dates. I have simply refreshed my memory as to the ruling prices of the securities.

Q..Can you tell me about how soon after the 1st May, 1874, you bought and sold ?

A..I was looking over my books, but I did not take any dates, except at certain intervals during the year, about the ruling price. I can get that by going to my books; can get the transaction exactly. I found the price in May 1874, was 80; in October, 1874, it was 61 to 62. In June, 1875, they dropped down to 50, and subsequent to that they have receded down to about 30 cents, and then rallied up.

Q..Then you bought and sold subsequent to May 1, 1874 ?

A..I have dealt in the bonds since 1857.

Q..Down to what period ?

A..The present.

Q..Down to the present period ?

A..Yes, sir; 1857 or 1858. I guess the first transaction I made in them was in 1858.

Q..Did you buy them on your own account or for some other person ?

A..Both. Just as the case might be.

Q..Can you give us the names of the parties from whom you purchased, from memory ?

A..I cannot, from memory. I have bought for Mr. Moran and I have bought for Mr. Duncan and a number of

Q..I mean you personally?

A..I could not recollect whether I went myself or sent a boy.

Q..I mean did you get the face of the coupon?

A..On these particular Mobile and Ohio coupons do you mean?

Mr. Bangs—Yes.

Witness—Of the certified bonds?

Mr. Bangs—Any coupon?

Witness—Yes, sir; if you mean any bonds?

Q..What?

A..The certified bonds.

Q..Is that the exception?

A..Of course it is an exception.

Q..Then of those you did not get the face?

A..It depends upon what you calculate sterling at whether you have got the face or not.

Q..How did you get your pay? In United States money, coin or currency?

A..Just as it happened, about which coupon it was.

Q..You got the money of the United States, did you not?

A..In some cases—always money of the United States—some few coupons in greenbacks and some coupons in gold. There is a difference in the coupons.

Q..But it was always in money of the United States?

A..Yes, sir; money of the United States.

Q..Then you never got the interest in Sterling money?

A..No.

Q..Where were the coupons payable?

A..At George Peabody's office in London.

Q..Why did you not send them there?

A..Because the President and Directors told me it would not be paid there. That was hearsay, of course, but I thought it was pretty good.

Mr. Bangs—Now, I want to ask you a question, and I solicit humbly an answer, if you will give it?

Witness..Meekly, I will give it?

Q..Excepting the certificate bonds, did you ever get the face of the coupons from Duncan, Sherman & Co.?

Witness..What do you call the face?

Q..The amount paid for the coupons.

Witness..Do you mean £6.10.0?

Q..Yes, converted into American money?

A..Yes, sir, less 25 cents.

Q..You got its equivalent, less 25 cents.

A..Yes, sir, I got its equivalent, less 25 cents.

Q..What was the 25 cents taken off for?

A..Well, that was the amount I was told that would be paid, and I took it. I don't know what the 25 cents was, but may be, by refreshing my memory, I could recollect.

Q..Were they large amounts?

A..Not very.

Q..Did you take any pains to ascertain why you were asked to take less than the face of the coupon?

A..That is what every one took.

Q..Will you be so good as to pay a little attention to my question. How do you know that that is what every one took?

A..So far as I know.

Q..Did you make any inquiry as to the reason why you were asked to take less than the face of your coupons?

Mr. Blandy..I object to that upon the ground that it already appears by the testimony of the witness that he got the equivalent of that coupon so far as his knowledge is concerned.

The Witness..I might have had my opinion about what it was. I suppose it was to cover Exchange.

Q..Then you understood that you were standing the Exchange, do you?

A..The coupon; the owner of it.

Q..You understood the holder of the coupons was required to stand the expense of the Exchange?

A..Yes, sir, and very properly so, too.

Mr. Bangs..Did I ask you that; if I did, I will take the answer?

Witness..I did.

Q..And that was the reason you went there in May, 1875, was it?

Witness..What was the reason, if you will be so good as to explain?

Mr. Bangs..Because you had previously taken your coupons there.

Witness..I did not say that I said I went there to try to get the money.

Q..Did you go there because you have previously resorted to that place to get your coupons cashed?

A..I went there from the fact that it was known to me that Duncan, Sherman & Co. were the financial agents, and that Mr. Duncan was the President.

Q..What do you mean by financial agents?

A..Attended to the monetary affairs of the company.

Q..How do you know that?

A..From public report, accepted by every one.

Q..Was it accepted by Mr. Blandy?

A..I had not the pleasure of his acquaintance.

Q..Then you do not mean him?

A..No, sir.

Q..And you do not mean every one?

A..I mean every one, so far as I was personally cognizant of it.

Q..It was accepted by every one who you knew accepted it.

A..I did not know of any one who objected to it, or said to the contrary.

Mr. Bangs..That is a different thing from saying that it was accepted by every one.

Witness..We might theorize on that.

Mr. Bangs..I do not want any theorizing. I want to get you in the habit of speaking correctly.

Witness..I am trying to do so.

Q..Was the reason why you went there in May, 1875, to get your coupons cashed, because you were in the habit of getting your coupons cashed there before?

A..To some extent. Some times, previous to that, they had paid them at Mobile.

Q..How long was it since they had cease to pay them at Mobile?

A..I can't answer that accurately, because it has been several years past, and I might mistake as to dates.

Q..State as near as you can.

A..I may be in error, but my recollection is that Duncan, Sherman & Co. paid them one or two years. That is my recollection.

Q..But previous to that, from 1857, down, they had been paid in Mobile, had they?

A..Oh, no. They paid a portion of them in London. They subsequently made an arrangement to pay a part of them in America. Who paid them in New York, I don't know. They were paid by the Bank of Mobile—such as were paid in the South.

Q..Do I understand you to say that you had sent some to Mobile to be paid?

A..I did.

Q..When did you cease to send them to Mobile?

A..Subsequent to May, 1875.

Q..Where did you collect them after May, 1875?

A..No where.

Q..Did you send them to Mobile down to May, 1875?

A..No.

Q..When did you cease sending them to Mobile?

A..I cashed, at the office of Duncan & Sherman, subsequent to May, 1875, certain non-certified coupons that I understood had to go to Mobile, and I presumed—

Q..(Interposing.) Surely you can't complain of my question. It is a plain one. When did you cease sending your coupons to Mobile?

A..May, 1875.

886 Q..Do you mean that up to that time you had sent them to Mobile?

A..No, sir.

Q..Up to what time did you send them to Mobile?

A..Prior to May, 1875, in part; in part I cashed at the office of Duncan, Sherman & Co.

Q..Did you send them to Mobile in 1874?

A..I could not answer you definitely, but my impression is I did not.

Q..Did you have any cashed in 1874?

A..I think I did.

Q..What is your recollection?

A..My recollection is that I had them cashed, less 25 cents a coupon?

Q..In 1874?

A..The regulation required that certain coupons to go to Mobile would be cashed here in New York less 25 cents. I think it was.

Q..Did you personally have them cashed or did you send somebody else?

A..I can't answer whether I did it myself or had it done by a clerk.

Q..In 1873, where were your coupons cashed: Here or at Mobile.

A..My recollection is, that they were payable either here or at Mobile. I don't recollect to have sent any there then, but I am not positive about that.

Mr. Bangs..Do not blame me; that is a plain question.

Witness..I am not blaming you.

Q..How were they cashed in 1873?

A..By paying the money for them.

Q..Where?

A..It was in the United States. I would not venture to say whether they paid them in New York that year or not.

Q..You do not recollect them?

A..I don't recollect whether they paid them in New York or not.

Q..How was it in 1872?

A..They were payable either in New York or Mobile.

Q..Where were they paid in 1872?

A..In the United States.

Q..Is that all you can say?

A..They were payable either at Mobile or New York, and paid at either one or the other. I can't remember. Sometimes they paid the coupons at Mobile and sometimes at New York.

Q..You have not a very definite recollection about it, have you?

A..I can have a more definite recollection.

Q..You have not a very definite recollection about it, have you?

A..In some respects I have. As to precise dates, and some circumstances you ask for, I have not at the moment.

Q..Who requested you to come here as a witness?

A..Mr. Moran's son.

Q..Have you done any buying for him?

A..Yes, sir.

Q..Of these bonds?

A..Yes, sir.

Q..At the Stock Exchange?

A..No, sir; I was not aware that there was ever any business done in them at the Stock Exchange.

Q..You have not done any in them at the Stock Exchange, have you?

A..No, sir.

Q..Are you a member of the Stock Exchange?

A..I am not.

Q..How recently have you done business for Mr. Moran in these securities?

A..I could not answer as to the date.

Mr. Bangs..I do not ask as to the day.

Witness..In these bonds?

Mr. Bangs..Yes.

A..I have not in several months, in Mobile and Ohio bonds.

Q..How many months since?

A..I can't fix it in my memory.

Q..Was it several months ago?

A..Yes, sir.

Q..Was it a purchase or a sale?

A..I don't think I ever purchased any bonds from him. I have sold him bonds. If ever I purchased any of him I don't recollect it.

Q..Was the transaction of several months ago a sale to him?

A..Yes, sir.

Q..At what price?

A..I could not answer the question from memory.

Mr. Bangs..You can come somewhere near it. You answered from memory that the bonds had run down to 30.

Witness..That was taking an extract from my sales book.

Q..Is not that within your recollection?

A..Yes, sir.

Q..The same memory which enables you to say they ran down to 30, would enable you to learn that, would it not.

A..If I have a chance to refresh my memory as to the particular transaction with Mr. Moran, or any one else. I can't do it now.

Q..I should like to have you furnish the numbers of the bonds which passed through your hands?

A..I think I can give you the numbers of the bonds. If not I can tell you who delivered them.

Q..Did you generally receive and deliver the bonds yourself?

A..Sometimes I did, and sometimes I did not. That is as the case may be.

Q..Do your books indicate the cases in which you did?

A..Yes, sir.

Q..And those in which you did not?

A..Always.

Q..Were those your own bonds, of which you took the coupons, in May, 1875?

A..They were my own coupons.

Q..Did you not own the bonds to which they belonged?

A..I did not.

Q..Where were the bonds?

A..They were out of my sight. I have heard where they were.

Q..How long had you held those coupons detached from the bonds?

A..I think about two months.

Q..That is not an uncommon thing, is it?

A..There is nothing illegal in it or improper, or anything that would be suspicious.

Q..Did I ask you that? If you will swear that I asked you that, I will take the answer. I asked you if it was an uncommon thing for coupons to be detached and run around apart from the bonds?

Witness..Run around or carried around?

Mr. Bangs..Carried around.

A..I have seen them carried around in many different cases prior; matured separate from the bonds.

Q..Is it an uncommon thing?

A..It is not nearly so common as to see them on the bond, but it does occur in many cases.

Q..They get separated and have a currency of their own?

A..Yes, sir; it occurs very often in Government bonds.

Q..Does it not occur in other bonds?

A..Less frequently, but it does occur.

Q..Do you hold those coupons yet?

A..No, sir.

Q..What has become of them?

A..Sold them.

Q..When?

A..I think during the year 1875, and I suppose near

890 the month of September. It may be in the month of September, I can't tell the date exactly; but during that year.

Q. .What did you get for them?

A. .I think it was between 45 and 50 cents on the dollar; estimating them at $40 apiece.

Q. .Then if the bonds were sold from which those coupons had been detached—if the bonds had been sold by yourself after May, 1875—you do not suppose that any claim would arise on those detached coupons, do you?

A. .It would be a very verdant buyer if he didn't claim it.

Q. .You do not think you did anything dishonest in selling those coupons do you?

A. .They were my coupons.

Q. .You do not think you did anything dishonest in selling them?

A. .No, sir.

By Mr. Blandy:

Q. .Is it not a rare occurrence to sell coupons in the New York market, before they are due, detached from the bonds?

Witness. .To see them sell coupons before they are due?

Mr. Blandy. .Yes, detached from the bonds?

A. .I have seen it in more cases than one.

Q. .But you do not mean to say that it is a common thing?

A. .It is not at all a universal custom.

Q. .It is a rarity, is it not?

A. .It is, you might say, a rarity.

By Mr. Bangs:

Q. .Do you mean to say that it is not a most common practice for people who hold coupon bonds for investment, to take the coupons off and carry them to a broker and get them cashed without going anywhere near the place of payment. I have done it a hundred times myself?

Witness. .Before maturity?

Mr. Bangs..Before maturity or about maturity. What do you say about that? Do you not know that brokers make a business of buying coupons or cashing them over their counters for people who do not want the trouble of collecting them?

Witness..I spoke as to Governments. That is a custom.

Q..And a very large trade?

A..You offer other coupons and it would throw discredit on the owner of the bonds, and discredit on the bonds themselves.

Q..Where the coupon is payable and collectable in New York?

A..Yes, sir, it would.

J. N. PETTY.

Subscribed and sworn to before me, this 14th day of April, 1877.

EDWARD L. OWEN, U. S. Com. So. Dis. N. Y.

Adjourned to Friday, April 13, 1877, at 3 P. M.

NEW YORK, April 13, 1877, 71 Wall street, 3 P. M.

Pursuant to adjournment the parties appeared, and the examination proceeded, as follows:

Charles E. Thorburn recalled. Continuation of cross-examination by Mr. Bangs:

Q..Have you ascertained what was the date and the amount of your purchase, which you testified you made for Mr. O'Connor.

A..No, sir.

Q..Have you ascertained the date, the time when you said you went to get information for Mr. Moran?

A..Yes, sir.

Q..You have ascertained that?

A..About the date, I place it in this way because—

Q..No matter how you place it. Have you or have you not ascertained the date.?

A..The exact date?

Q..Yes.

A..Yes.

Q..The exact date?

A..Yes.

Q..You are able to give the exact date?

A..Yes, I can give you the exact date.

Q..Do you mean to say that you told Mr. Duncan or any body else, that you were acting for Mr. Moran?

A..Yes, sir.

Q..You did tell him that?

A..Yes, sir.

Q..You are sure of that?

A..I told him that I came from Mr. Moran, yes.

By Mr. Blandy:

Q..What is the exact date?

A..It is May 21, 1874.

By Mr. Bangs:

Q..What were the purchases that were made on the strength of the information obtained from Mr. Duncan?

A..I bought 5000 bonds at 81 from McGinnes Brothers & Fearing. Mr. Moran saw Mr. Duncan himself also before the purchase of the bonds.

Q..In your presence?

A..No, sir.

Q..How do you know he did?

A..Because he left me to go to Mr. Duncan.

Q..Do you know that he did? When you said that Mr. Moran saw him, were you stating a fact within your own knowledge?

A..Yes, sir.

Q..Did you see him?

A..No, sir.

Q..Don't you know the difference between knowing a thing of your own knowledge, and hearing it stated to you by somebody else?

A..If a man states a thing that I know to be truthful, I know it.

Q..If a man tells you a thing which you believe to be true, you know it?

A..Yes, sir.

Q..And therefore you state it as within your own knowledge?

A..Yes, sir.

Q..You did not see Mr. Moran have an interview with Mr. Duncan?

A..No, sir.

Q..And yet you say you know he did?

A..Yes, sir.

Q..It is upon that principle and basis that you have given testimony, is it?

A..Yes sir.

By Mr. Blandy:

Q..Do you mean to say that it is upon that principle and basis that you testified to a conversation which you yourself had with Mr. Duncan..

A..I had that conversation with Mr. Duncan. I then went to Mr. Moran—

By Mr. Bangs:

Q..No matter about that?

A..The purchase was made on that account.

Q..You are only asked about the interview?

A..I am simply acting as a broker. I want you to understand my position. I am a friend to both parties.

By Mr. Blandy:

Q..When you say, in answer to the gentleman's question, it was upon that principle and theory that you testified to certain facts, you do not mean to be understood as saying that it was upon that theory and principle that you testified to an interview which you yourself had with Mr. Duncan and Mr. Hays?

A..Certainly not. I had a personal interview with Mr. Duncan?

By Mr. Bangs:

Q..In giving your testimony you state as being within your own knowledge anything that anybody else has told you, if you believe it to be true, don't you?

A..I believe a thing as I do—

Q..(Interposing.)..No; that don't answer my question.

A..Let us understand.

Q..Yes.

A..I can't understand you, because I don't want you to mislead me. That is the idea. I believe a thing that is told me. If Mr. Duncan was to tell me a thing, I would believe it just as promptly as I would if I saw it.

Q..And you swear to it as being within your own knowledge?

A..I believe it to be.

Q..You must answer my questions once in a while.

A..I cannot answer any more than that.

Q..Then answer that; pay attention to the question. If Mr. Duncan told you a thing, and you believed it, would you swear to it as being within your own knowledge.

A..I would say that I would believe it to be a fact.

Q..Would you state it as within your own knowledge; that is the question.

A..I cannot answer it.

Q..That is enough, if you say so. Who did you buy your 5,000 bonds for, of Dean, McGinnis & Co.?

A..I bought them for account of Moran & Brothers.

Q..At what date?

A..The 21st May.

Q..And you give that as the date of your conversation with Mr. Duncan?

A..Yes, sir.

Q..Simply because you bought those bonds on that day.

A..No, sir.

Q..What then?

A..Because it made an impression upon my mind at the time. I wanted to know how the Mobile and Ohio Railroad stood.

Q..Independently of the fact that you bought these bonds on that day, how do you fix that date as the date of the conversation?

A..Because I remember the conversation as having taken place.

Q..How do you fix it as that date, is the question?

A..I will state how I do.

Q..Independently of the fact of purchasing the bonds, I say?

A..I do not understand you.

Q..You do not understand me?

A..I do not understand your question.

Q..Then I will not press a question you do not understand. Did you buy any bonds for Mr. Moran before that time?

A..I have no record of that year.

Q..Did you?

A..I think not.

Q..Was the first purchase of bonds you made for Mr. Moran in that year made on the 21st May?

A..That is my recollection.

Q..That you swear to?

A..That is my recollection.

Q..Do you mean to say you did not buy any for him in that year?

A..I mean to say, simply, that I have no recollection of buying any; no record of buying any.

Q..Have you looked for the record?

A..Yes, sir.

Q..When did you begin to look?

A..I began to look to-day.

Q..What did you begin to look at?

A..The 1st of January, 1874.

Q..When was your next purchase after the 21st of May?

A..The 15th of July.

Q..For Mr. Moran?

A..For Mr. Moran; 1874.

Q..Was Mr. Moran the holder of bonds on the 21st of May, 1874?

A..I believe so.

Q..What makes you believe so?

A..Because he told me so.

Q..How many did he tell you he had?

A..He didn't tell me.

Q..What else did he tell you about his owning bonds?

A..He told me that his friends in Europe were interested in these bonds.

Q..I ask you what he told you about his holding bonds?

A..He told me he held some.

Q..Did he tell you how long he had held them?

A..No, sir.

Q..Did you know before the year 1874 that he was a holder of bonds?

A..Yes, sir.

Q..Largely?

A..I didn't know how much; he never told me.

Q..Was he a frequent operator in them?

A..Yes, sir.

Q..And your understanding and belief is that he held some on the 1st May, 1874?

A..Yes, sir, I think so.

Q..Have you communicated to Mr. Moran or Mr. Blandy the date that you found?

A..No, sir; I haven't said a word to either of them since I saw you.

Q..I mean have you communicated to them at any time the date of the transaction with Mr. O'Connor?

A..I never mentioned to either of them anything except what I said here.

Q..They are both present, are they not?

A..Yes, sir.

Q..Did you tell them the amount?

A..Nothing except what I said here.

Q..You would be able, if you were asked, to give the date of that transaction, the purchase of the bonds for Mr. O'Connor, and the amount of it, would you not?

A..I suppose I would; it is so long ago I have forgotten about all of those transactions.

Q..Please answer that question. Is that O'Connor transaction in that memorandum (referring to a memorandum in the hands of the witness)?

A..No, sir.

Q..That is a memorandum of all your transactions after the 1st May, is it not?

A..No, sir; only an account of Moran Bros. I guess it would take you a week if you wanted all of my transactions in Mobile and Ohio—everything that I have done.

By Mr. Blandy:

Q..Did I understand you, by your testimony to-day, to have testified that May 24, 1874, was the day on which you had your conversation with Mr. Duncan, which conversation you testified to the other day, or is that the date of the first transaction with Moran Bros., in reference to the bonds of this Company?

A..That is my recollection of the conversation that I had with Mr. Duncan in reference to the purchase of the bonds for Mr. Moran.

Q..And I understand you to say you fixed the date from the circumstance that you made this purchase on the 21st May, 1874?

A..Yes, sir.

By Mr. Bangs:

Q..That you made a purchase on the 21st May, 1874?

A..Yes, sir.

Q..I thought you said Mr. Moran bought from Dean, McGinnis & Co.?

A..That is exactly what I did say. I don't say that he bought them from Mr. Duncan.

Q..You did not say that you bought them either?

A..Yes, I did. I bought the bonds for Mr. Moran after the conversation with Mr. Duncan.

Q..From Dean, McGinnis & Co.?

A..From Dean, McGinnis & Co.

By Mr. Blandy:

Q..And you fix the date from that purchase?

A..From that purchase; yes, sir.

Q..But the purchase was not made from Duncan, Sherman & Co.?

A..No, sir; I haven't said anything of that kind, either. I never want to imply that Mr. Duncan would suggest to me to buy bonds if he did not know the road was in bad order. That was exactly what I wanted to explain about my testimony. I was afraid that you had got that impression yesterday.

Q..The impression that I had was that May 21, 1874, was the day on which you made the purchase for Moran Bros and that that purchase of bonds was made from Duncan, Sherman & Co.?

A..That is not the impression—

Q..(Interposing.)—That is not your testimony?

A..Nothing at all; nothing at all. I never had the slightest idea of giving any such impression.

Q..What have you referred to in reference to the seventeen thousand purchase?

A..That was to place—to show the reason why I went to ask about the interest. It was in reference to these bonds—why I should have been sent there to find out anything about the interest.

Q..Then I do not understadd that you do not fix any date of that purchase?

A..No, sir; I never have told you.

Q..Look at the exhibit offered in evidence by the learned counsel on the other side, Mr. Bangs, and refer to the first item and state whether that is the first transaction that you refer to about some $17,000 of bonds.

A..I can't tell you, as I stated in my evidence before, my recollection was it was about seventeen. Mr. Bangs asked me whether it was seventeen or twenty-seven; I told him I didn't know, but my recollection was it was seventeen thousand bonds.

By Mr. Bangs:

Q..$17,000 of bonds you mean, and not seventeen bonds, do you not?

A..That is the Wall-street parlance.

Mr. Bangs..That would be $17,000,000.

The Witness..$17,000 worth of bonds of par value, $17,000.

By Mr. Blandy:

Q..Do you think that first item in the exhibit offered by the counsel on the other side is the transaction?

A..I can't tell without looking at my books.

Q..You have not referred to your books to ascertain that fact?

A..No, sir; if you give me that date, I can refer to it.

By Mr. Bangs:

Q..How long would it take you to refer to your books?

A..I should probably have to go—it would take me an hour. I would have to go through four years of books.

Mr. Bangs (to Mr. Blandy)..Will you concede that that is the date?

Mr. Blandy..I cannot concede that.

Mr. Bangs..Then I shall have to have Mr. Thorburn testify to that.

By Mr. Bangs:

Q..To your best recollection what was the date of the purchase of the bonds which you said you bought for Mr. O'Connor, to the amount of $17,000?

A..To the best of my recollection it was during the year 1874.

Q..What part of the year 1874?

A..The early part.

Q..Was it not, according to your best recollection, before the 1st May, 1874?

A..That I can't tell you.

Q..According to your best recollection?

A..I have no recollection of the exact date.

Q..Have you looked over your sales book to find your purchases and sales of Mobile and Ohio bonds for Mr. Moran?

A..Yes, sir.

Q..Since the 1st May, 1874?

A..I have.

Q..Then, in looking at that, you found on your books every entry—that is, your eye fell upon every entry—of a transaction that you had for anybody in Mobile and Ohio bonds during that period? Is not that so?

A..Yes, sir; I presume so, but it did not make any impression upon me—this sale—because I was looking for his name simply.

Q..Did you see O'Connor's name?

A..No, sir.

Q..Your eye did not fall on his name?

A..No, sir; I didn't happen to see it; it made no impression upon me; I might have seen it.

Q..Did you see it?

A..Not that I recollect of.

Q..Where does O'Connor live?

Witness..Do you mean where does he live now?

Mr. Bangs..Yes, sir.

A..I am not sure; still I think I know.

Q..Where is it?

A..It is a hotel.

Q..At the corner of 58th street and Broadway?

A..Yes, sir; 58th street and Broadway.

Q..At the Grand Circle Hotel?

A..Yes, sir, I think so.

Q..Is Mr. O'Connor reputed to be a man of wealth?

A..Yes, sir.

Q..And the owner of that property?

A..Yes, sir.

Q..He owns about $100,000 of Mobile and Ohio bonds, does he not?

A..That I don't know.

Q..Allow me to see the memorandum which you took of your transactions?

A..There it is (producing memorandum).

Q..I shall have to trouble you to find the date of that purchase for O'Connor?

A..You can get Mr. Duncan to give it to you, just as well as I can. The O'Connor bonds I fixed merely to find out why I went to to see Mr. Duncan.

Q..On this memorandum produced by you, what does "B" mean?

A..Bought.

Q..And what does "S" mean?

A..Sold.

Mr. Blandy..Is there any use in your taking that down? The memorandum is not offered?

Mr. Bangs..I am going to offer that.

Q..And then, where it says "S 5," etc.?

A..That means five.

Q..That means you sold this for Mr. Moran to some person?

A..Yes, sir.

Q..Where it says "B," it means you bought for Mr. Moran?

A..Yes, sir, of somebody.

Q..And the prices are correctly given, are they?

A..Yes, sir.

Q..Then, in September, you bought for Mr. Moran one interest bond of twenty, did you?

A..Yes, sir.

Q..On the 28th July you bought for him one first mortgage at 33?

A..Yes, sir, at 33.

Q..On the 21st September you bought two at 36½?

A..Yes, sir.

Q..On the 9th of October you bought 10 at 38?

A..10 at 38? yes, sir.

Q..On the 10th October you bought 4 at 37½?

A..37½; yes, sir.

Q..On the 25th November you sold for him at 40?

A..Yes, sir.

Q..Those indicate the fluctuations of price, do they?

A..Yes, sir. *This* was rather under the market, I think.

Q..What, 20?

A..Yes, sir, the Sterling sold at 30. Mr. O'Connor simply came to my office and asked me to go to see Mr. Duncan, to see whether they would pay the interest; that is all I had to do with it. As I had been mixed up in the transaction between him and yourself (speaking to Mr. Duncan) in the purchase of the bonds. I don't know whether it was a year before. It might have been.

Q..Do you mean you had no transactions for Mr. Moran since the 1st January of this year?

A..No, I do not.

Q..Have you had any such transactions?

A..I think I have.

Q..Have you bought and sold for him?

A..I think I sold that very bond at 30, if I recollect aright.

Q..That is the 21st of last September?

A..I think that bond I sold at 30, if I recollect right.

Q..Have you sold some more for him?

A..I don't recollect.

Q..Have you bought for him?

A..I don't recollect.

Q..Will your books show?

A..Yes, sir.

Mr. Bangs..I must trouble you to look at your books, and continue this statement down to this time. I would like to have you tell the date of the purchase of those 17 bonds for Mr. O'Connor.

The Witness..I am sorry to keep you waiting. I will give them if I can. I may have them in my pocket. I don't know.

By Mr. Blandy:

Q..On page 94, of your cross-examination, you testified, in answer to Mr. Bangs, that Mr. Moran sent you to Mr. Duncan, and that you went to see him. The testimony is in these words: "Mr. Moran sent me to Mr. Duncan in reference to the condition of the road, as an investment for the other side. Mr. Duncan told me that he thought the bonds were good; stated that their house was largely interested in the success of the road, and I so reported to Mr. Moran."

A..Yes, sir.

Q..You were then asked the question: When was that? You said "That was in the year 1874;" so I understand that the date you supply to-day as the 21st May, 1874, was the date on which you had this conversation?

A..Yes, sir.

Q..And that is the only date that you supplied to-day, of any conversation, that you testified to-day, as having had with Mr. Duncan?

A..I have talked with Mr. Duncan very often about it, but nothing about that transaction; yes, sir.

Q..That is the only object in offering this date of the 21st May, 1874, to fix this conversation, is it?

A..Yes, sir.

By Mr. Bangs:

Q..And the reason why you fix that as the date is because on that day you bought some bonds of Dean, McGinnis & Co.?

A..For Mr. Moran, yes, sir.

Q..The other day you stated, on the day of the conversation, you did not buy the bonds, but that he bought the bonds and told you he bought them; which of those statements is correct?

A..I don't recollect making that statement.

Mr. Bangs..Suppose you did?

Mr. Blandy: Suppose you did not; so as to have the question complete.

The Witness..I think you will find that I stated to you that I didn't recollect whether I bought the bonds or whether he did; but I can tell by reference to my note book. I think you will find that is my testimony. It is a long time ago, and it all comes back to me; it all comes back to me by your questions.

Q..Is it your recollection that your purchase of the $17,000 of bonds for Mr. O'Connor, was in February, 1874?

A..I cannot answer the question for fear of making a mistake without referring to my book.

Mr. Bangs..Now, that we have got that down, let it stay down, and do not try to alter it. If you will look at your book I will be obliged to you.

The witness..All right, sir.

Q..Was the purchase of five bonds of Dean, McGinnis & Co., the only purchase you made for Mr. Moran?

A..That day; yes, sir.

Q..At any time?

A..Oh, no; why here is a whole list of bonds that I bought.

Q..At any time about May, 1874?

A..I think it was.

Mr. Bangs..I should like to have you produce a list of the purchases you made for Mr. Moran, from the 1st January, 1874, down to the beginning of the statement you have produced, the 21st May, 1874.

Witness..All right.

Mr. Blandy..When do you desire him to do this?

Mr. Bangs..Before his deposition is completed.

Mr. Blandy..The deposition has got to leave here tomorrow.

Mr. Bangs..It has got to leave here when it is completed and it cannot leave before.

Mr. Blandy..As far as I am concerned, my portion of it shall certainly leave.

Mr. Bangs..As far as I am concerned your portion shall not leave until it is completed.

The witness..Gentlemen, if it is necessary, I am willing to stay down here all night.

Mr. Bangs..If you will go and get these particulars we can finish it to-night.

The witness..It may take me an hour or an hour and a half. I have got to go into my books and go back four years.

By Mr. Bangs:

Q..That is not all. I want to ask you a question. You said this in your examination day before yesterday:

"Q..Do you say that you bought bonds for Mr. Moran?

"A..For him? Yes, sir.

"Q..As the result of that conversation?

"A..Mr. Moran bought them.

"Q..How do you know?

"A..Because he told me so.

"Q..Is that all you mean by know?

"A..Yes, sir.

"Q..Had you anything to do with the purchase?

"A..My idea is that I did. I got the brokerage."

Now, I ask you, how you reconcile that with your statement to-day, that you bought them yourself of Dean, McGinnis & Co.?

A..I bought these five.

Q..What you said the day before yesterday that you knew of the transaction because he told you of it?

A..I told you at the time that it was so long ago that I had forgotten.

Mr. Bangs..You did not tell me at the time. I have read to you what you told me at the time.

Witness..I tell you so now.

Q..You said the day before yesterday that you knew of the purchase because he told you of it. To-day you say you know of the purchase because you bought them?

A..I have referred to my books since and I know positively.

Q..Then what you said day before yesterday is incorrect; your knowledge was not derived—

A..(Interrupting)..My knowledge was my recollection.

A..Your knowledge was not, in fact, derived from his telling you so?

A..I understood him to say that he had bought them and I bought these five also.

Q..Then those that he told you that he had bought were a different lot from the five?

A..So I understood.

Q..And so you understand now?

A..So I understand now; that he had bought other bonds as well as those that I had bought. Does that make it clear?

Q..Not much. What bonds did he tell you he had bought?

A..Some Mobile and Ohio.

Q..From whom?

A..He didn't say.

Q..And you were not the broker?

A..No, sir; and this is the lot of bonds on which I got the brokerage.

Q..All he told you was he had bought some bonds?

A..Yes, sir.

Q..Did he tell you how many?

A..He made the impression on my mind—

Mr. Bangs..Never mind the impression.

The witness..I want to get that straight.

Q..I want to get it straight, too. He sent you to Mr. Duncan for information?

A..Yes, sir.

Q..And then he went and bought some bonds, and told you he bought them, and yet did not employ you as a broker?

A..He took those bonds on the strength of that conversation. That is what I mean to say?

Q..No matter what you meant to say. I want you to answer my question. He sent you to Mr. Duncan to get some information, and you brought it to him, and he then did not employ you as a broker, but went and bought some himself?

A..Some others he did.

Q..He told you that?

A..Yes, sir.

Q..Without telling you the amount?

A..Yes, sir.

Q..Without telling you whom he bought them of?

A..Yes, sir.

Q..Or what he gave for them?

A..Yes, sir. He made me understand that that conversation had induced him to buy bonds. That is what you wanted to get at.

Q..It had induced him to buy bonds?

A..Yes, sir.

Q..Without you?

A..Yes, sir.

Q..Without your agency?

A..Yes, sir.

Q..The bonds you refer to as having been bought on the 21st May, were bought by you, were they?

A..Yes, sir.

Q..Then they were not the bonds that he had bought without your agency, on the strength of the conversation?

A..No, sir; I told you that.

By Mr. Blandy:

Q..These bonds that your memorandum shows you purchased on the 21st May, 1874, were also purchased on the strength of the information you derived?

A..Solely on that information.

Mr. Bangs..Just now you said the contrary.

The witness..I said nothing of the kind. If you think so, you misunderstood me.

Mr. Bangs..It is down so.

908 The witness..You may confuse me, and make me seem to say what I don't mean to say.

(The witness here left the stand and went to his office to get the information asked for. Upon his return he was examined as follows:)

By Mr. Bangs:

Q..Are you now prepared to state the date at which you made the purchase of the bonds for Owen O'Connor?

A..I am.

Q..Give the date?

A..On the 6th February.

Q..Give the year and the date?

A..1874. I sold 17,000 at 78½c., on account of Duncan, Sherman & Co.

Q..To Owen O'Connor?

A..Yes, sir. February 7th of the same year, twelve thousand, at 78½c., to Owen O'Connor, on account of Duncan, Sherman & Co.

Q..Those are the sales to O'Connor, which you previously testified to, are they not?

A..Yes, sir; those are the sales.

By Mr. Blandy:

Q..You have obtained those dates from what?

A..My note book.

Q..You have since examined your note book?

A..I have. I went there on purpose.

By Mr. Bangs:

Q..Has Mr. Charles Moran been present during your entire examination and cross-examination.

A..Yes, sir.

By Mr. Blandy:

Q..Has Mr. Wm. Butler Duncan been present during the whole of it?

A..He has.

Mr. Blandy for the Objector and Mr. Bangs for the Claimants, consent to waive, and do hereby waive the signing by the witnesses, of their respective depositions.

Caleb Oliver, a witness produced, sworn and examined on behalf of the Objector, deposes as follows:

By Mr. Blandy:

Q..What is your business?

A..Selling goods.

Q..What kind of goods?

A..Rubber goods. I am not in business myself. I have been in that, but am not doing much at it now; but it is the only thing, perhaps, I might say my business is.

Q..Did you know the firm of Duncan, Sherman & Co. during their existence?

A..I knew of the firm of Duncan, Sherman & Co.; not personally acquainted.

Q..Were you the holder of any First Mortgage bonds of the Mobile and Ohio Railroad Company, in the year 1874?

A..Not myself.

Q..Do you mean by that that you did not own them?

A..I didn't hold any bonds. No, sir; not for myself or any one else.

Q..Had you any of them in your posession?

A..I had no bonds in my possession. No, sir.

Q..What did you have in connection with the First Mortgage bonds?

A..I had coupons. Let me understand you. About the First Mortgage bonds, these were coupons of—these were coupons of—yes, sir, interest bonds on First Mortgage.

Q..How many coupons had you?

A..I don't remember how many different coupons I had.

Q..Had you coupons from different First Mortgage bonds, or were they all taken off of one bond?

A..Oh, they were from different bonds. There was more than one coupon; I am sure there was more than one coupon; but how many I cannot say.

Q..They were coupons falling due when?

A..They fell due the 1st November, 1874, or about that time.

Q..What did you do with those coupons?

A..Collected the—took them down for payment and they were paid.

Q..Where did you take them for payment?

A..Duncan, Sherman & Co.'s.

Q..When?

A..On the 1st or 2d of November, 1874.

Q..Did you see either of the firm of Duncan, Sherman & Co. at that time?

A..I don't know that I did, for I don't know either of the gentlemen. I did not at that time.

Q..What took place when you presented your coupons to Duncan, Sherman & Co. for payment?

A..I inquired—

Objected to by Mr. Bangs as incompetent.

(Answer taken subject to objection.)

A..I inquired in the banking house of Duncan, Sherman & Co. if they were paying the coupons of the Mobile and Ohio bonds there that day. I was told they were not paying them there, but were paying them around in Pine street, around the corner; No. 11, I think it was. I then went to No. 11 Pine street and stepped up to the desk where they were paying something, I didn't know what. I inquired if they were paying the coupons of the Mobile and Ohio bonds and they said they were. I then took my place in line, I think, at the time.

Q..And they were paid?

A..They were paid there; yes, sir.

Q..Was anything said when they were paid?

A..No, sir, there was nothing said to me.

Q..And nothing said before you went around to No. 11 Pine street, beyond what you have already testified to?

A..No, sir.

Cross-examination, by Mr. Bangs.

Q..Where is your place of business?

A..44 Dey street is the place where I—

Q..(Interposing) Where you what?

A..Where I—my headquarters. I have no place of business.

Q..I ask where your place of business was?

A..At that time? 44 Dey street.

Q..Where is your place of business?

A..44 Dey street.

Q..Is your name up there?

A..No, sir.

Q..How much business premises do you occupy?

Mr. Blandy..I object to that as immaterial.

(Answer taken subject to objection.)

A..I don't know as I understand your question.

Q..What space do you occupy for the transaction of business?

A..Only office—only desk room.

Q..In an office?

A..In a store.

Q..Have you any clerks?

A..No, sir.

Q..Have you any workmen?

A..No, sir.

Q..Have you any salesmen?

A..No, sir.

Q..Have you any book-keeper?

A..No, sir.

Q..Have you any assistant?

A..No, sir.

Q..Have you any principal?

A..No, sir.

Q..Have you any superior?

A..No, sir.

Q..Have you any subordinate?

A..No, sir.

Q..Then you transact all your business yourself?

A..Yes, sir.

Q..What is your business?

912 A..It is selling rubber goods.

Q..Whose rubber goods? Yours?

A..Yes, sir.

Q..Have you a stock of them?

A..I have not

Q..Where do you get them to sell?

A..I have to buy them.

Q..Do you buy them for orders?

A..Yes, sir.

Q..Do you execute orders, then, for rubber goods?

A..Yes, sir.

Q..Is that your business?

A..I sell rubber goods: that is so; yes, sir.

Q..Whose rubber goods do you sell? Yours or somebody else's?

A..When I sell any goods: I get the goods of some Rubber Company, or turn the orders over to some party to fill. Now, for some months past, I have been doing but little business, and if it was not, you asked me a question: What business I was in? I should consider that I was not in any. But when you want to ask where I am, and what business I am in, I am simply at 44 Dey street, and trying to sell some rubber goods; which I was formerly engaged in selling.

Q..Have you any regular business?

A..No, sir; no regular business, at present.

Q..How long is it since you had any regular business?

A..Before last October. I think it was about the 1st of October.

Q..What was your regular business prior to that time?

A..Clerking; selling rubber goods.

Q..Clerking for whom?

A..For M. S. Schenck.

Q..Where?

A..44 Dey street.

Q..Did you then leave his employment?

A..Yes, sir; the business was closed out; sold out at that time.

Q..By whom?

A..By M. S. Schenck

Q..At public auction, or how?

A..No, sir; private sale.

Q..To whom?

A..F. C. Candee & Co.

Q..Are you in their employment?

A..No, sir.

Q..Do they occupy the premises?

A..They do.

Q..You simply have a desk there?

A..I simply occupy there as—a desk room; to step in and out; that is all.

Q..Where do you live?

A..I live in Brooklyn.

Q..Where did you get the coupons that you collected on the 1st November, 1874?

Mr. Blaudy..Objected to as immaterial.

(Answer taken subject to objection.)

A..They belonged to my employer.

Q..Who was your employer?

A..M. S. Schenck.

Q..You had no interest in them, whatever?

A..No, sir.

Q..Where is Mr. Schenck?

A..M. S. Schenck is a Mrs. M. S. Schenck.

Q..Where is a Mrs. M. S. Schenck?

A..She is in Brooklyn; she resides in Brooklyn, I believe.

Q..Whereabouts?

A..Gates avenue.

Q..Where do you reside?

A..I reside in Jerusalem street.

Q..What was the amount of the coupons?

A..$234.

Q..You do not know the number of coupons ?

A..I do not.

Q..How long had you had them ?

A..I think only that day.

Q..Is $234 the amount you received for them ?

A..No, sir.

Q..What did you receive for them ?

A..I received—there was a little discount of half a cent on them.

Q..Then you mean to say you received $234, less a discount of half per cent. ?

A..Less half per cent.

Q..That is, about $1.17 is taken off ?

A..Well, half per cent. of 234. I have made one error in regard to the amount of coupons, 232.

Q..232 ?

A..I am reckoning it in my head, the interest on those bonds, by taking the per cent. upon the gross amount of the bonds; that is what I am doing, and I made a mistake of a figure.

Q..Please do not make any such reckoning and avoid such mistakes, if you can; I prefer to have you state from memory what amount you received for those coupons ?

A..What amount I received ? It is less the discount, whatever it might be.

Q..What amount did you receive for those coupons ?

A..I haven't that amount in my mind without reckoning it ?

Q..Well, reckon it then, (after a pause.)

Mr. Bangs..Well, we have waited now three minutes and the witness does not answer.

Q..What did the coupons call for on their face ?

A..$232, I think.

Q..How many coupons ?

A..I can't say how many coupons.

Q..What was the amount of each coupon ?

A..I can't say that.

Q..Was it not $40?

A..I cannot say indeed.

Q..You have no recollection?

A..I don't recollect how many coupons I had.

Q..You are certain you received less than the face?

A..Half per cent. less than the face.

Q..Why did you take less than the face?

A..I inquired why there was half per cent. off, and they told me that was simply the exchange on Mobile, or something to that effect.

Q..Then they were not payable in New York?

A..Yes, sir; they were payable here.

Q..What did you allow your debtor to take off a per centage for then?

A..Because he said that was what it cost to get the money from Mobile, or the exchange on Mobile.

Q..Why did you allow your debtor to take off what it cost to get the money from Mobile?

A..Well, I can't say why I did it, only he explained that it was merely the exchange on Mobile.

Q..Who do you mean by "he?"

A..The payer, whoever he was.

Q..Who was the payer?

A..I don't know who the payer was, merely the party that paid the coupons.

Q..He told you that he would not pay the face of them, did he?

A..No, sir; he did not tell me he would not pay the face of them.

Q..He told you he would only pay with the discount?

A..He said there was a discount of half per cent. on them.

Q..And you understood him to be representing the party who owed them, did you?

A..I understood him to be paying the coupons.

Q..Now, do not tell me what I do not ask you.

A..I don't know as I understand the question.

Q..You understood him to be paying the coupons, for you say he took off a per centage?

A..Yes, sir.

Q..How do you reconcile your statement that you went to the person who owed the coupons, or his representatives, and yet did not get your debt paid; but got it with a discount; how came you to let the debtor take the discount off?

A..I don't know as I have any particular reason for it only that was the way they were paying the coupons. That is all I know about it.

Q..How do you know that they were paying the coupons that way?

A..That is what he told me.

Q..Did he say they were paying the coupons that way?

A..He did.

Q..With the discount off?

A..Yes, sir; he did.

Q..You did not ask any explanation?

A..I did ask an explanation.

Q..What did he say?

A..He said the half per cent. was simply the exchange on Mobile—the expense of getting the money from Mobile up here to pay the coupons.

Q..And you did not ask any information why the debtor charged the creditor the expense of raising the money to pay the coupons?

A..I did not.

Q..Whereabouts in 11 Pine street was that?

A..In the basement, I think; that is, what I should call the basement.

Q..Do you mean below the level of the street?

A..A few steps down, I think, from the side walk.

Q..And you say there was a string of people in there?

A..There was a line of persons; yes, sir.

Q..Was it some persons in the line that you spoke to?

A..No, sir.

Q..You said you asked whether they were paying the coupons there?

A..I did ask.

Q..Who did you ask?

A..The party paying them.

Q..The person who was handing out the money?

A..The person who paid the coupons.

Q..You went to the head of the line and made that inquiry?

A..I did.

Q..And you asked what?

A..I asked if they were paying the coupons of the Mobile and Ohio bonds there.

Q..And he said they were?

A..He said they were.

Q..And he did not say anything about discount then, did he?

A..I don't think he said anything at that time about the discount.

Q..But when you got your place in the line and walked your way up to the desk, he told you that they took off a discount?

A..He said there was a discount; yes, sir, he did.

Q..What sort of a person was that? A young man, or old man, or what?

A..I don't remember sufficiently to answer that.

Q..Did you get the coin?

A..No, sir.

Q..Did you get the currency?

A..No, sir.

Q..What did you get?

A..Check.

Q..Whose check?

A..I cannot say.

Q..Did you collect the check?

A..I deposited the check in the bank for collection.

Q..To whose credit?

A..To the credit of M. S. Schenck ?

Q..Did you endorse it ?

A..I did.

Q..By what authority ?

Mr Blandy..I object to that as immaterial and irrelevant.

(Answer taken subject to objection.)

Q..We want to find the check ; by what authority ?

A..M. S. Schenck's authority ?

Q..Had you a power of attorney ?

A..No, sir.

Q..Is she related to you ?

A..No, sir.

Q..You had no power of attorney ?

A..No, sir.

Q..You endorsed it without authority, then ?

A..I had endorsed all her checks for deposit, for some years, as a custom.

Q..Was it to her order ?

A..I think it must have been ; I can't say as to that ; I cannot say as to her order about it.

Q..You do not know whose check it was ?

A..I don't know whose check it was.

Q..You do not know who it was drawn on ?

A..I don't know that.

Q..Of whom had you made the inquiry in Duncan, Sherman & Co.'s office in Nassau street ?

A..I don't know who it was ; I inquired of—

Q..What part of the premises did you inquire in ?

A..On the main floor ; one of the desks ; one of the counters.

Q..You don't know the name of the person, or the position in relation to the firm, which he held ?

A..I do not.

Q..Why did you ask him ?

A..Merely to ascertain where they were paying these coupons.

Q..Why did you not go to Brown Brothers & Co.?

A..I supposed they were paying at Duncan, Sherman & Co.'s.

Q..What made you suppose so?

A..Simply because William Butler Duncan was the President of the road, as I had understood, and I went, of course, to his banking house to have the coupons paid.

Q..The usage of business, then, is to pay at the office of the President, is it, as you understood and understand?

A..If he was a banker in the city, as he was.

Q..You said you went there because he was President?

A..And I supposed they were payable at his banking house, from that fact?

Q..What made you suppose so? Are coupons paid at the banking houses of Railroad Company Presidents generally?

A..I don't know that they are.

Q..In that particular instance what made you go there?

A..Because I supposed that Mr. Butler Duncan, being the President of the road, that he would do the banking for the company.

Q..Had you never been there before?

A..I had been to Duncan, Sherman & Co.'s house before.

Q..With coupons, I mean.

A..No, sir, I never had.

Q..Did you, yourself, take these coupons off the bonds?

A..No, sir, I did not.

Q..Where did you get them?

A..They were handed to me by the party who held the bonds for safe keeping.

Q..Who was the party?

A..Mr. Blossom?

Q..How do you know he held the bonds?

A..Because, I think I went with him to where he had them deposited, and I think then and there he cut off the coupons. I won't be positive about that. At any rate he gave me or handed me the coupons. Whether I was with him when he cut off the bonds, I don't know.

Q..Will you swear you ever saw the bonds ?

A..No, sir.

Q..Will you swear that Mrs. Schenck ever had them ?

A..I did see the bonds. I did see the bonds on one occasion; yes, sir.

Q..Will you swear that Mrs. Schenck ever had them ?

A..In her possession ?

Q..Yes. Of course in her possession; where else should she have them ?

A..I don't know that she ever did.

Q..When and on what occasion did you see them ?

A..I can't say when it was. But it was on an occasion when I went with Mr. Blossom to where he kept the bonds, and I remember his showing them to me then and there.

Q..How many ?

A..I can't say how many.

Q..What was the place where he showed them to you ?

A..The Safe Deposit place.

Q..The Safe Deposit Company.

A..Yes, sir, Company.

Q..Did he go with you on purpose to show them to you ?

A..I think not. I think we went there for some other matters, and while there looking over various things that belonged to M. S. Schenck, among others these were shown, and we took them out and took a little memorandum, if I remember right, of some of the items; among them these were shown. I recollect seeing them on one occasion.

Q..What relation was he to Mrs. Schenck ?

A..He held her valuables for safety in one sense. What, business relation, do you mean ?

Q..What business relation, yes ?

A..He held her valuable papers.

Q..Was he a lawyer ?

A..No, sir.

Q..What was he ?

A..As for as his relation to her, was as an adviser in business.

Q..Medical adviser?

A..No, sir; in business matters.

Q..What was his business?

A..I can't say what his business was.

Q..Where was his residence?

A..His residence was in Brooklyn.

Q..Where was his place of business?

A..His place of business at that time I think was in Pearl street.

Q..Was he employed at the same place where you were, 44 Dey street?

A..No, sir.

Q..Was Mrs. Schenck in the habit of attending there at 44 Dey street, to do business?

A..Yes; she would go there frequently to look after things, and business.

Q..Did she buy and sell?

A..No, sir.

Q..Did she keep books?

A..No, sir.

Q..Did she make deposits?

A..No, sir.

Q..Did she make bargains?

A..No, sir.

Q..Who superintended her business?

A..I did, with the direction of Mr. Blossom.

Q..Mr. Blossom had a place of business in Pearl street?

A..In Pearl street, yes, sir.

Q..You superintended Mrs. Schenck's business under the direction of Mr. Blossom?

A..Partially his and partially hers.

Q..And you kept her bank account?

A..I kept her bank account, yes.

Q..And you drew checks?

A..No, sir.

Q..Who drew the checks?

A..Mr. Blossom always signed the checks, by power of attorney, or Mrs. Schenck.

Q..Who was the attorney?

A..Mr. Blossom was the attorney.

Q..Then he did have power of attorney from her?

A..He had the power of attorney.

Q..But still did not attend there at Dey street to do the business?

A..No, sir.

Q..Is he still in Pearl street?

A..No, sir.

Q..And yet you don't remember how many bonds he showed you?

A..I do not.

Q..And that was the only occasion on which you collected the coupons?

A..The only time.

Q..You do not remember the amount of the coupon?

A..The amount of each coupon?

Q..Yes.

A..No, sir; not the amount of each coupon?

Q..Can you say whether or not they were $40 each?

A..I cannot.

Q..Did you make any record or entry of the transaction anywhere?

A..I entered it on the books of M. S. Schenck.

Q..Were they all payable in currency?

A..I don't remember about the payment; about their being paid in currency.

Q..You do not remember whether they were payable in currency or Sterling money? You do not remember whether they were payable in American money, or money of the United States, or Sterling money, do you?

A..No, sir, I do not.

Q..It payable in American money, you don't remember whether they were payable in gold or currency?

A..All I know is I took a check that drew the currency; that is all I know.

Q..How do you know it drew the currency?

A..That is to say, I took an ordinary check; which was not a gold check, I think.

Q..Are you sure of that?

A..I am quite sure of it; yes, sir.

Q..Will you swear to it?

A..If the word "gold" was in it I have overlooked it. I would not swear that it was not in it, but I deposited it as a currency check.

Q..I want you to swear, whether one way or the other, if the check called for gold or not.

A..I believe the check called for simply currency.

Q..That is your recollection, is it?

A..That is my recollection of the circumstances?

Q..Was the coupon printed in red, or blue, or black ink?

A..I don't remember.

Q..Where was it payable?

A..Where was the the coupon payable?

Q..Yes, on its face?

A..I don't remember.

Q..Who was it signed by?

A..I cannot say that.

Q..How did you know Mr. Duncan was president?

A..Seeing his name, I think, in connection with the road or heard it. I cannot say whether I saw it in any book or heard it.

Q..You will swear that you had heard that he was president.

A..I came to that knowledge—that information, some way.

Q..Before that time?

A..Yes, sir.

Q..That you swear to?

A..Yes, sir.

Q..Without hesitation?

A..Yes, sir. I came to that knowledge; I supposed that was so. How I got it, I cannot say.

Q..And it was on the 1st November, 1874, was it?

A..That I collected the coupons?

Q..Yes.

A..On the first or second.

Q..Did you buy these bonds for Mrs. Schenck?

A..I did not.

Q..Do you know who she bought them of?

A..I do not.

Q..Is Mrs. Schenck a married lady?

A..She is a widow.

Q..Who asked you to attend here as a witness?

A..Mr. Blossom asked me to come down here as a witness.

Q..When did he ask you?

A..Well, I cannot—some day this week, I cannot say what day it was. A few days ago.

Q..Where are those bonds now?

A..I don't know.

Q..Did you continue to act for Mrs. Schenck until last fall sometime?

A..Yes, sir; until last fall.

Q..Under her power of attorney, or in her employment?

A..In her employment only.

Q..You continued to attend to her finances?

A..I did.

Q..You never saw those bonds or coupons and never collected any coupons afterwards?

A..No, sir.

Q..Did you ever hear that a foreclosure suit was pending against the Mobile and Ohio Railroad?

A..I don't know that I ever did.

Q..You do not know it now, do you?

A..No, sir; I do not know it now.

By Mr. Blandy:

Q..You say you saw the bonds. Do you remember

William Butler Duncan, a witness produced, sworn and examined on behalf of the coupon holders.

By Mr. Bangs:

Q..Have you been present during the taking of the depositions of Mr. Dougherty, Mr. Thorburn, Mr. Petty and Mr. Oliver?

A..I have.

Q..You were President of the Mobile and Ohio Railroad Company, in fact, in May, 1874, and afterwards, were you?

A..I was; that is to say, I was after I assented to the thing. I objected to taking the presidency for some time, but finally consented and became President in May, 1874.

Q..Did you know Mr. Thorburn, the witness, before you saw him sworn here?

A..I have known him for a number of years.

Q..Have you ever sought him for the purpose of getting him to do business for you?

A..He has acted as my broker sometimes; I can scarcely say that I have sought him.

Q..How came he to act as your broker?

A..By calling at my office and seeking business as a broker.

Q..As a broker in securities, I suppose?

A..In securities.

Q..And in paper, mercantile paper?

A..No.

Q..You had no transactions through him in mercantile paper, had you?

A..Not to my recollection.

Q..Do you remember any instance in which you applied to him to render service for you, as a broker?

A..I do not.

Q..You do remember instances in which he applied to you for employment as a broker?

A..I do.

Q..Did you know Mr. Charles Moran and his firm in May, 1874?

whether you saw these coupons detached from the bonds, on reflection?

A..Whether I saw them cut off?

Q..Yes.

A..No, sir; I don't know that I did.

Q..You knew that they were cut off of bonds that were held by Mrs Schenck?

A..Yes, sir.

By Mr. Bangs:

Q..How do you know that they were cut off bonds that were held by Mrs. Schenck?

A..I am trying to remember whether I saw those bonds cut off or not. I don't think I did.

Q..What made you say you knew they were cut off from Mrs. Schenck's bonds?

A..For this reason: that Mr. Blossom held the bonds, and Mr. Blossom handed me these coupons, and that is all I know about it.

Q..That is the reason you swear you knew they were cut off?

A..Yes, sir.

Q..Do you know Mr. Moran?

A..I do not.

Testimony in support of the claim proved before the Master in this cause, by Alexander Duncan, William H. Hayes and others, taken before EDWARD L. OWEN, *Esq., U. S. Commissioner, at No.* 71 *Wall street, in the city of New York, April 13th,* 1877.

The parties appear.

It is stipulated and agreed by and between the respective Solicitors that the testimony of the witness William Butler Duncan be taken by a Stenographer, and that his minutes, when written out and subscribed by the witness, be certified by the Commissioner with the same effect as though taken by him.

A..I knew Mr. Charles Moran personally, and knew of his firm.

Q..How long have you known him?

A..I think for a number of years—I can't say—before that date.

Q..Do you remember at that time, or about that time, any conversation with Mr. Moran upon the subject of the Mobile and Ohio Railroad or its affairs?

A..I do not.

Q..Do you remember, or is it a fact, that Mr. Thorburn, in May, 1874, or anywhere near that time, asked you for any information concerning the Mobile and Ohio Railroad Company or stated the object of seeking any such information?

A..He constantly spoke to me about the affairs of the Mobile and Ohio Railroad.

Q..Have you any recollection of any specific conversation with him which you can distinguish from any other?

A..No, not specific.

Q..Is it the fact that in any conversation with him after the 1st May, 1874, you omitted to state the fact that the Company had not provided for the coupons maturing at that time?

Mr. Blandy..I do object to that upon the ground that it appears upon the testimony of the witness that he has no distinct recollection of any specific conversation.

Mr. Bangs..No, not any specific conversation, as distinguished from another.

Mr. Blandy..I will stand on my objection.

(Answer taken subject to objection)

A..Not if that question was the subject of conversation.

Q..What was your practice, if the matter of these coupons was a subject of conversation?

A..Unhesitatingly, to state that the company was not paying their coupons.

Q..Did Mr. Moran, at any time between May, 1874, and November, 1874, ask you anything in relation to that fact?

A..Not to my knowledge.

Q..Had you, at that time, any knowledge or information that he was interested as a holder of the security of that road?

A..I had not.

Q..In the month of May, 1875, did Mr. Moran, in any form, state to you the possession of an interest by him in the securities of the road?

A..Not to my recollection.

Q..In May, 1875?

A..I beg your pardon; in May, 1875, he did.

Q..Oral or written?

A..Written.

Q..Can you produce the writing itself?

A..The writing is on file, I think, in the Court. I can produce a copy of it.

Q..On the files of this Court in this suit, in Mobile?

A..I think so. I can produce a copy of it.

Q..Will you produce the copy?

A..I will.

Q..Produce it now I mean?

(Witness produces a paper.)

The paper is offered in evidence by Mr. Bangs.

The following is a copy:

NEW YORK, May 4, 1875.

MESSRS. WM. B. DUNCAN AND A. F. ELLIOT, *Trustees of First Mortgage Bonds of M. & O. R. R. Co., of Alabama:*

DEAR SIRS—The Mobile & Ohio Railroad Company having defaulted on the first instant in the payment of the coupons due that day, on their First Mortgage Bonds of various issues, we, the undersigned, holders of said bonds, hereby request that you take possession of said Railroad and appurtenances, and take such other measures as may be necessary to protect the interest of the First Mortgage

Bond holders in accordance with the terms of the mortgage of which you are now the trustees.

Respectfully your obedient servants,

Holders 178,000 First Mort. } **MORAN BROS.**
" 29,500 Int. Bonds. }

Holders 147,000 First Mort. } **G. T. BONNER & CO.**
" 59,500 Int. Bonds. }

Q..Did you receive the original of that letter?

A..I did.

Q..From whom did you receive it?

A..From Moran Brothers.

Q..Did you act upon it?

A..I did, in conjunction with others of a similar character.

Q..Did Mr. Moran ever subsequently make any writing or place in your hands any written statement with reference to the state of his interest in the securities?

A..He did.

Q..Where is the written statement?

A..It is on file in the Court in Mobile.

Q..In this Court?

A..In this Court.

Q..Have you a copy of it?

A..I have.

Q..Please produce it.

(Paper produced by the witness and marked "X 5.")

Paper offered in evidence by Mr. Bangs.

The following is a copy:

"X 5.—The undersigned, holders of the First Mortgage "bonds of the Mobile and Ohio Railroad Company, having "learned of the matter in controversy in these two causes, "and of the application of Morris Ketchum to remove "Messrs. William Butler Duncan and Andrew Foster "Elliot as Trustees and Receivers of the said First Mort-"gage, approve the appointment of said Duncan and Elliot, "as such Receivers, and protest against their removal and "the substitution of any appointee of the said Morris

930 "Ketchum as sub-receiver, believing that such a change " would be injurious to the interests of all classes of creditors of the Mobile and Ohio Railroad Company.

"New York, 1st April, 1876.

" In the presence of :

" Moran Brothers, " James H. Fay, " Holders of	$225,000 First Mort. Bonds. 29,500 " " Int. Bonds.
" James H. Fay, witness, " Plock & Co., " Representing	$185,000 First Mort. Bonds. 5,400 Fund. Int. Bonds.
" James H. Fay, witness, " Adrian Iselin, Att'y.	$87,000 First Mort. Bonds. 3,000 Interest Bonds.
" James H. Fay, witness, " E. Pavenstadt & Co., " Representing about	$180,000 First Mortgage.
" James H. Fay, witness, " James Tinker, " Representing	$ 5,000 First Mort Bonds, and over 100,000 Interest Bonds.

Q..Have you computed, as a matter of arithmetic, the difference between the extent of the ownerships of First Mortgage bonds on the part of Moran Brothers, stated in the first paper, and the amount stated in the second; if not please do, and state the difference ?

Mr Blandy..I object to that as immaterial.

(Answer taken subject to objection.)

A..The difference is $47,000 of First Mortgage bonds.

Q..Increase or decrease ?

A..Increase with interest.

Q..Do you remember seeing a petition of Mr. Moran, sworn to in this case, on the 22d November, 1876, in which he stated the extent of his then interest ?

A..I do.

Q..Is that petition on the files of this Court ?

A..That petition is on the files of this Court.

Q..What then did he state was the extent of his interest ?

Mr. Blandy..Objected to as incompetent, on the ground that the petition will speak for itself.

(Taken subject to objection.)

A..$360,000 First Mortgage bonds.

Q..Was it not $300,000?

A..No; $360,000.

Q..How much interest?

A..$30,000, I think.

Q..Did the default of the Mobile and Ohio Railroad Company in the payment of its coupons on the 1st May, 1874, have any effect on the market for those bonds between then and the 1st November?

Mr. Blandy..I object to that, upon the ground that there is no evidence showing that there was any default on the 1st May, 1874.

(Answer taken subject to objection.)

A..Yes, sir; very material effect.

Q..In what way, up or down?

A..A decline in the price of the bonds from 10 to 12 per cent.

Q..Did the default in the payment of interest on the 1st November, 1874, have any effect on the market for those bonds; and if so, which way, and to what extent?

Mr. Blandy..I object to that upon the ground that there is no evidence showing that there was any default on the 1st November, 1874.

(Answer taken subject to objection.)

A..They declined a further 10 per cent. between November, 1874, and May, 1875.

Q..What have been the fluctuations, if any, in the prices of those bonds in New York from May, 1875, down to this time?

Mr. Blandy..Objected to as immaterial.

(Answer taken subject to objection.)

A..They gradually declined to 40 and under, almost immediately, during the summer of 1875. In 1876 a scheme of reorganization was suggested, and seemed practicable—

Mr. Blandy..Perhaps, as I cannot protect myself against this—would not you instruct the witness not to give any more than an answer to a particular question, and then you can bring that out by questions, so that I can object to the questions.

Mr. Bangs..I cannot give him any such instructions. I want an answer to that question, and he has answered it.

Mr. Blandy..You asked for the fluctuations and he has given it.

Mr. Bangs..You can object to the answer.

Mr. Blandy..I object to that portion of the witness' answer which refers to the scheme, upon the ground that it is not responsive.

(Mr. Duncan is requested by Mr. Bangs not to pursue that answer.)

Q..Please state the extremes of the fluctuations and intermediate fluctuations in the price of those bonds between May, 1875, and the present time, without referring to contemporaneous or associated events or causes, at present, and if you can, fix the dates of the prices which you give.

Objected to as immaterial, as before, by Mr. Blandy.

(Answer taken subject to objection.)

A..Ranging from 30 to 40 between May, 1875, and October, 1876; advancing to 45 or 46 about November; declining in the latter part of 1876 and beginning of 1877 to 30 and 35, and advancing to about 40 at the present time.

Q..You mean they started at about 40 in May, 1875, and ran down to 30 by October, 1876?

A..I think so; I am not positive.

Q..With some intermediate fluctuations?

A..Many intermediate fluctuations.

Q..What occurred in relation to the property in October, 1876?

Mr. Blandly..Objected to as incompetent and immaterial.

(Answer taken subject to objection.)

A..The probable success of the presentation of a supposed practical scheme for the re-organization of the property—

Q..(Interrupting) Was Mr. Moran a party to that scheme?

Mr. Blandy..Objected to as immaterial.

(Answer taken subject to objection.)

A..He was not.

Q..When did the next decline occur, and in connection with what event?

Mr. Blandy..I object to that portion which refers to an event.

[Answer taken subject to objection.]

A..Shortly after the promulgation of the scheme referred to, circulars were issued by Mr. Moran, and apparently had the effect of reducing the price to somewhere about 33, I think.

Q..Have they risen since?

A..They have risen since to about 40.

Q..Is it true that you ever stated, in answer to any inquiries, that the Company had paid its coupons which matured May 1st, or July 1st, or November 1st, 1874, or January 1st, 1875?

Mr. Blandy..Objected to on the ground that it is not in contradiction to the testimony of any individual witness, and if it is, that the question is too general; the party, name and time must be associated with the question.

[Answer taken subject to objection.]

A..I did not.

Q..Did you ever so state to Mr. Thorburn?

A..I did not.

Q..Which statement have you made to Mr. Thorburn on that subject?

A..The general statement that I made to any person inquiring of the condition of the property.

Q..Which was what?

A..That the Company had not the means to pay its coupons, and that the encashment of the coupons was arranged for outside of the Company.

Q..How came you to say that to Mr. Thorburn?

Mr. Blandy..I object to that, upon the ground that the witness has not testified distinctly that he said that to Mr. Thorburn.

934 Q..How came you to state that to Mr. Thorburn, and on what occasion did you state it?

Same objection.

[Answer taken subject to objection.]

A..Just prior to the 1st May, 1874, and up even to the 30th of April, it was a matter of great doubt whether the coupons would be provided for in any way.

By Mr. Blandy:

Q..Grave doubts as to whether they could be taken care of?

A..Whether they could be taken care of. Hopes were entertained even as late as the 28th of April that the Company might possibly raise the money, and my recollection is that Mr. Thorburn was cognizant, and discussed them, as far as I would discuss such a matter with a broker, of the facts.

By Mr. Bangs:

Q..Do you remember anything about the convertible bonds in that connection?

A..An effort was being made up to a late date in April to secure means for the Company by the sale of the Convertible Bonds.

Q..Had you any conversation with Mr. Thorburn about that?

A..I am not sure.

Q..Since the 1st May, 1874, have you conversed with Mr. Thorburn about the securities?

A..As a broker, frequently.

Q..On what occasions?

A..When he has desired to sell me bonds, or to induce me to sell him bonds.

Q..Have you ever applied to him to buy or sell bonds?

A..I may have done so, but not problably; I may have done so, very likely; I could not recollect.

Q..You have no distinct recollection?

A..I have no distinct recollection.

Q..Have you any recollection of having made any sale or purchase to him, or from him, or through him?

A..Some very unimportant sales or purchases may have been made through him, but I cannot recollect.

Q..Have you a statement of the amount of your transactions in the securities of the Mobile and Ohio Railroad Company since the 1st January, 1874?

A..I have.

Q..Please produce it?

A..From the 1st January, during the year 1874.

[Paper produced by the witness.]

Q..Will you look and say whether you made any sale on the 21st May, 1874?

Mr. Blandy..I object to the witness reading from the memorandum in his possession, until some foundation is laid as to what the memorandum is.

By Mr. Blandy:

Q..What is that memorandum you have in your hand?

A..Memorandum of the transaction referred to, made by me or my firm, during that year.

Q..When was that particular paper written out?

A..Yesterday, I think.

Q..In whose hand writing is it?

A..It is in the hand writing of the Cashier of Mr. Shipman, the assignee.

Q..Copied from what?

A..Copied from the books of the late firm of Duncan, Sherman & Co.

Q..The entries in the books were made by whom?

A..Made by him, I think.

Q..Not by you?

A..Not by me.

Mr. Blandy..I object to the witness refreshing his memory by referring to that paper. Can you answer without reference to it?

Witness..Not in detail.

By Mr. Bangs:

Q..Did you make any sale on the 21st May, 1874?

Mr. Blandy..Let us understand one thing. You must not answer that question by referring to that paper, Mr. Duncan, until we have some understanding.

Mr. Bangs..There is my question.

(Answer taken subject to objection.)

A..I don't think I did. What date was that?

Mr. Bangs..21st May, 1874.

The witness..Why do you make it May 21st?

By Mr. Bangs:

Q..That is the sale made by Mr. Thorburn of the purchase of Dean, McGuiness & Co.?

A..I did not.

Q..Did you sell any through Dean, McGuiness & Co.?

A..I did not.

Q..At any time?

A..At no time, to my knowledge.

Q..Did you ever know from Mr. Thorburn, that he was acting or proposed to act, or was asked to act for or on behalf of Moran Brothers or Mr. Moran, or for the purpose of having them act upon his or your information, in 1874?

A..I did not.

Q..Do you recall a sale or sales of bonds to the amount of $17,000 or 27,000, or any like sum?

A..Yes, sir; my recollection is that we sold—

Q..(Interposing.)..Was that before or after the 1st May, 1874?

A..Before the 1st May.

Q..What month was it?

A..I think in January, or February.

Mr. Bangs..This memorandum that you have testified to in answer to Mr. Blandy's questions, and which was copied from your books, is offered in evidence.

Objected to as incompetent and inadmissible by Mr. Blandy.

The paper is put in evidence subject to objection. The following is a copy:

"Memo.—M. & O. R. R securities bought and sold during the year 1874, by D., S. & Co.:

"*First Mortgage* 6 *per cent. Sterling Bonds:*

"January 22....Bought \$ 4,000 @ $77\frac{1}{2}$ less $\frac{1}{4}$.
" " 27....Bought \$29,000 @ 77 less $\frac{1}{4}$.
"February 7....Sold 17,000 @ $78\frac{1}{2}$ less $\frac{7}{8}$.
" " 10....Sold 12,000 @ $78\frac{1}{2}$ less $\frac{1}{8}$.
"April 18... Bought 3,000 @ 74.

"*First Mortgage* 8 *per cent. Bonds:*

"November 24....Bought \$2,000 @ $93\frac{5}{8}$—$\frac{1}{8}$.
1,000 @ 95

"**L. H. Leclerc.**

"*First Mortgage* 8 *per cent. Arrearage Bonds:*

"January 27....\$6,000 @ 80—$\frac{1}{4}$ Bought.
"April 15.... 3,000 @ 75— "
" " 20.... 8,000 @ 75—$\frac{1}{8}$ Sold.

"*Second Mortgage* 8 *per cent. Bonds:*

"January 27....Bought \$7,500 @ 75—$\frac{1}{4}$.
" " 29....Bought 5,000 @ 75—$\frac{1}{4}$.
" " 29....Sold 5,000 @ 75—$\frac{1}{8}$.
"Dec'br 24....Bought 200 @ par.

"**Wesley & Charbick.**

"*Convertible Bonds:*

"January 17....Sold \$ 2,500.
"April 29....Sold 10,000.
"Jan'y 17,'75....Bo't 10,000.

"**Sam R. Smith.**

"*Second Mortgage* 8 *per cent. Arrearage Bonds:*

"January 27....Bought \$2,000 @ 75—$\frac{1}{4}$."

Q..Did you keep books for the purpose of recording your purchases and sales?

A..Yes sir.

Q..Were they kept correctly?

A..They were.

Q..Did you personally, in general, superintend the purchases and sales of these particular securities, or direct them?

A..I did.

Q..Did you ascertain at the time whether or not they were correctly entered on your books?

A..Not specifically. I had confidence in my clerks.

Q..Have you any doubt that this is a correct record of of the transaction ?

Mr. Blandy..Objected to as immaterial.

(Answer taken subject to objection.)

A..Not the least.

Mr Bangs..The paper is again offered in evidence.

Mr. Blandy..It is still objected to on the same grounds, and upon the further ground that it is not a paper in the handwriting of the witness, or in the handwriting of any person, made at or about the date of the transaction; even if it was, it would only then be competent to refresh his recollection. It is not an original entry.

Q..Speak from your recollection, what was about the aggregate amount of First Mortgage 8 per cent. Bonds, if you remember ?

A..Ten to twenty-thousand; not exceeding ten to twenty-thousand, I think.

Q..What was the extent of your transactions in First Mortgage 8 per cent. Arrearage Bonds ?

A..Very small.

Q..What was the amount of your transactions in Second Mortgage 8 per cent. Bonds.

A..A very few thousands.

Q..What was the extent of your transactions in the Convertible Bonds ?

A..10,000 one way or the other.

Q..What was the extent of your transactions in the Second Mortgage 8 per cent. Bonds ?

A..I can't recollect; very small.

Q..Did Mr. Thorburn ever mention his principals to you in his conversation with you relating to his purchase and sales of Mobile and Ohio securities ?

A..He has done so; he is rather fond of that.

Q..Did he ever mention Mr. Moran as one of his principals ?

A..Lately, he has.

Q..When?

A..During the last winter.

Q..In the latter part of 1876 and the early part of 1877?

A..I think so.

Q..Did he mention them as large buyers?

A..As all brokers do, he did.

Q..He was anxious to impress you with the importance of his connections, I suppose?

A..I don't know his object.

Q..Did he tell you the prices at which Mr. Moran was buying?

A..He told me the price, but whether it was Moran or Amy, I don't know.

Q..It was either Moran Bros. or H. Amy & Co?

A..It was.

Q..Do you remember whether he represented them "bulls" as "bears."

Mr. Blandy..I object to that as immaterial.

(Answer taken subject to objection.)

A..He did not represent them as either.

Q..In May, 1874, was your firm interested in the securities of the Mobile and Ohio Railroad Company?

A..It was.

Q..In what classes of the securities?

A..First Mortgage, Interest, Arrearage, Second Mortgage, Convertible and Stock.

Q..To what extent were they stockholders?

A..They were stockholders to the extent of 9,000 shares, about.

Q..What was the extent of their interest in the Stock in November, 1874?

A..The same that they had in May.

Q..What extent of interest had they in the convertible mortgage bonds in May and November, 1874?

A..Upwards of $78,000.

Q..And in the senior securities had they interest?

A..They had.

940 Q..In each class of the senior securities?

A..In each class of the senior securities.

Q..Can you tell about the extent of their interest in the first mortgage, six per cent. sterling bonds in May, 1874; was it small or large?

A..Very small.

Q..Then your larger interest was as shareholders, and in the subordinate securities?

A..It was.

Q..You had then a large interest in carrying the unpaid coupons of May and November for the protection of your subordinate interests?

A..We had.

Q..You know something of the method of dealing in railroad securities, &c., in this stock market, do you not?

A..I do.

Q..You know more than some; you know considerable?

A..I do.

Q..From an experience of some years?

A..I do.

Q..You understand the phrase "regular delivery of bonds," do you not?

A..I do.

Q..And you heard what Mr. Thorburn testified to on that subject?

A..I did.

Q..Is it or not the fact that what is called a regular delivery of bonds requires that all unpaid coupons should be attached?

A..Not always.

Q..Is that the universal signification of the term "regular delivery" that all unpaid coupons should be attached?

A..Not always.

Q..Have you known of instances besides that of the Mabile and Ohio Railroad Company where a delivery was reglar without the unpaid coupons?

A..It often occurs. I have known of two or three instances to my knowledge: The cases of the First Mortgage Bonds of the Mississippi Central, the First Mortgage Bonds of the New Orleans, Jackson and Northern, and many—I believe it was applicable also to some of the securities of the C., C. & I. C. Railroad; where the provision having been made that the coupons should be purchased, a regular delivery is made without reference to the fact that the coupons have not been paid by the company, and carried with it only the coupons for which some provision has not been made, either by purchase or otherwise.

Q..Is it not common for coupons maturing or about to mature, to be detached from the bonds and to be circulated as equivalent for cash?

A..Very often.

Q..The sale of a bond without coupon does not mean that the coupon has been paid, does it?

A..Not necessarily.

Q..Did you ever have any conversation with Mr. Thorburn in Mr. Hayes' presence about those securities; I do not ask what it was, but whether you did or not?

A..I have had conversations about Mobile and Ohio securities, in the presence of Mr. Hayes and Mr. Thorburn.

Q..Do you know Owen O'Connor?

A..I know him now.

Q..Do you know him as the holder of about $100,000 of the First Mortgage Bonds?

A..He has so informed me. I don't know from any other source.

Q..He has conversed with you frequently about his ownership of those bonds?

A..Within the last six months.

Q..Has he ever charged you with having sold $17,000 or $27,000 of those bonds to him through Mr. Thorburn, on the representation that the Company had paid the interest on the 1st May, 1874?

A..Certainly not.

Q..And the only sale of any such amount of bonds as

$17,000 or $27,000 that you made, was made before the 1st May, 1874, was it not ?

A..To the best of my recollection.

Q..You made no such sale of any such amount after the 1st May, 1874 ?

A..To the best of my recollection, I did not.

Q..Does Mr. O'Connor reside in this city ?

A..He does.

Q..Is he a well-known man ?

A..I believe he is.

Q..A man reputed to be wealthy ?

A..He is reputed to be wealthy.

Q..And easily found ?

A..And easily found.

Q..Mr. Moran being now present at this examination, and having been present at the examination from the beginning, will you state for his information, what is the address of Owen O'Connor ?

A..Mr. O'Connor's address is Grand Circle Hotel, at the corner of 8th Avenue and 58th street.

Q..Has he any business address down town, so far as you know, and if so, where is it ?

A..His business address is with his son at the Astor House.

Q..Is his son a Counsellor at Law ?

A..His son is a Counsellor at Law.

Q..You heard the account that Mr. Oliver gave of himself, did you not ?

A..I did.

Q..As between the two men, which could Mr. Moran most easily find as a witness, Mr. Oliver or Mr. O'Connor ?

Mr. Blandy..I object to that, unless Mr. Duncan shows the sources of knowledge or information that were possessed by those whose duty it was to subpœna the witnesses on our side or procure them.

Q..I will alter the question in this form: Which could you most readily find as as a witness, taking the account that Mr. Oliver has given of himself and what you know of Mr. O'Connor?

Mr. Blandy..That I object to as immaterial.

Mr. Bangs..We will take Mr. Duncan's judgment, and if he says he can find Mr. O'Connor, he is at your service. Mr. Duncan will serve a subpœna on Mr. O'Connor for you. I would like to have Mr. Duncan answer the question.

Mr. Blandy..I must express my regret that Mr. Bangs did not propound that question to Mr. Duncan yesterday, or that he did not impart this information to Mr. Moran, in order that Mr. Moran might have procured the attendance of this Mr. O'Connor in time, and have him here to-day.

Mr. Bangs puts down upon the record "that he admires the innocence of Mr. Blandy, in permitting himself to be humbugged by Mr. Moran into the belief that Mr. Moran has not known for many months what Mr. O'Connor's address is, and has not tried to draw him into his scheme.

Mr. Moran states that yesterday was the first time that he ever heard the name of Mr. O'Connor in connection with that transaction, and he is sorry that Mr. Bangs and Mr. Duncan volunteer to give that, as they did not give it to him before. "I should certainly have had him here the other day."

Mr. Bangs..Does Mr. Moran say this under oath?

Mr. Moran..I will take my oath to it, yes sir.

Cross-examination, by Mr. Blandy:

Q..Have you a distinct recollection of the conversation testified to by Mr. Thorburn with you on the 21st May, 1874.

A..No.

Q..Have you any recollection of the interview?

A..I have a distinct recollection in my own mind that the conversation testified to by him, was not had with me, as testified by him.

Q..And what is your distinct recollection predicated upon?

A..Upon the fact that I have invariably—never have

944 made any such statement as that which Mr. Thorburn said I made.

Q..But it is not predicated upon any distinct recollection of the presence of Mr. Thorburn in your office, in conversation with you, on the day he testified to?

A..On the specific day, no.

Q..Have you any recollection of the sale of any bonds through Mr. Thorburn on the 21st May, 1874?

A..Having refreshed my recollection, I have a distinct recollection. I refreshed my recollection by reference to my books—that I made no sale on that day to Mr. Thorburn.

Q..Do you remember how many conversations you had with Mr. Thorburn with reference to the Mobile and Ohio Bonds between the 1st May, 1874, and the 1st May, 1875?

A..I should think once a month.

Q..Do you remember a conversation that took place between yourself and Mr. Thorburn at the time Mr. Hayes was present, in reference to those bonds?

A..No sir; my conversation was probably with Mr. Hayes at that time.

Q..Do you remember any conversation with Mr. Thorburn about the 21st May, 1874, in reference to these bonds?

A..No, sir.

Q..Do you remember having had any transactions with Mr. Thorburn in reference to those bonds, on or about that date?

A..I do not; I have none.

Q..Have you examined your books to see if you had any such transactions?

A..I did.

Q..Between what dates did you look?

A..Between the 1st January, 1874, and the 1st January. 1875.

Q..Now, when you have a transaction of that kind with a broker, do you enter the transaction in the name of the broker or in the name of the principal?

A..The broker's name does not appear on the books.

Q..Whose name does appear?

A..The name of the security.

Q..Not the name of the principal for whom the broker acted?

A..No, sir.

Q..I understand you to say that in answer to the general inquiries, it was not your custom to make statements similar to the statement that was testified to by Mr. Thorburn, or words to that effect; you have stated that?

A..I never made such a statement, if I am correct in my recollection of what Mr. Thorburn said.

Q..Do I understand you distinctly contradict or deny that you had the conversation with Mr. Thorburn that Mr. Thorburn testified to?

A..The substance of the conversation I would like to see before I deny it. Am I right in my recollection of what Mr. Thorburn said.

Q..I ask you now whether you had a distinct recollection of having had a conversation with Mr. Thorburn on or about the 21st May, 1874?

A..No.

Q..Have you a distinct recollection that you never had any such conversation with him on that day?

A..I probably had a conversation at that time.

Q..You probably had?

A..Probably.

Q..Did I misunderstand you, if I understood you to say a few minutes ago that you never had such a conversation with Mr. Thorburn on the 21st May, 1874?

A..No; you did not understand me that.

Q..I misunderstood you, did I?

A..Yes, sir.

Q..What did you mean by saying that you had had no transaction in these bonds later than (I think you said) the 18th April?

A..Later than the list here?

Q. . Later than the first item. Tell me which is the latest date ?

Mr. Bangs. . That is, on the list produced and offered in evidence by me ?

Mr. Blandy . . Yes, sir.

Witness. . Later than the 29th April, I think. That is a transaction which shifted itself so that it really was not. I bought and sold—it is under the latter part of April—the latter part of April. Do you ask me what is the reason I say that I had no transactions ?

Q. . Yes ; what did you mean by saying that you had no transactions in these bonds later than the 18th of April ?

A. . Because I am obliged to obtain the information from the books of Duncan, Sherman & Company, which are in the hands of their assignee, and that has been furnished me from those books.

Q. . That I understand. How does this exhibit offered in evidence to-day by Mr. Bangs, called a memorandum of Mobile and Ohio securities, bought and sold during the year 1874, tend in any way to assist you in your recollection as to any conversation with Mr. Thorburn ?

A. . It was not given for that purpose.

Q. . For what purpose was it given ?

A. . At the request of the examiner.

Q. . You have used this in your testimony to fix a date, have you not ?

A. . No ; I have not.

Mr. Bangs. . It was offered for the purpose of showing his transactions.

Q. . Have you any recollection of Mr. Thorburn calling upon you in the month of May, 1874, to make inquiries in reference to the prospect of the coupons falling due on the 1st May, 1874, being paid ?

A . . Nothing but his own statement.

Q. . But you have no recollection of your own from his visit ?

A. . I have not.

Q..You heard his testimony, and heard what he stated took place between you and him at the time, did you not?

A..I did.

Q..Do you wish to be understood as denying that any such conversation took place?

A..Denying the unqualified character of the conversation.

Q..What is your denial based upon?

A..That it was not my habit to make any such unqualified statements as he claims I there made.

Q..But it is not based upon any distinct recollection of the interview with Mr. Thorburn?

A..No; except that I deny that he has a better recollection of it than I would have.

Q..Your memory has not been distinctly charged with that conversation since it took place up to the present time?

A..Not as much as his own.

Q..Well, what do you mean by that?

A..It has not been.

Q..You are not a judge of whether his memory has been charged with that conversation more than your own, are you?

A..No.

Q..You said inquiries had been made quite frequently of your firm about that time, in reference to the condition of this road?

A..They were.

Q..Were inquiries being made during the month of April, immediately preceding the 1st of April, and after the 1st of May, as to the prospects of the coupons due on the 1st May being paid?

A..They were.

Q..Do you remember whether any inquiries were made by Moran Bros. about that time as to whether those coupons would be paid?

A..I do not.

Q..Do you remember the names of the parties who in-

948 quired of you during the month of April, 1874, as to the prospects of the coupons payable on the 1st May, being paid?

A..Yes, sir.

Q..Give us the name of one?

A..Goellet & Co.

Q..When did they make their visit to you?

A..Just prior.

Q..Just prior to the first of May?

A..Yes, sir.

Q..Do you remember any others who called at that time?

A..G. T. Bonner & Co., William H. Hays, William M. Clark, Adrian Iselin and many others whose names I cannot recollect.

Q..Did they call immediately before the 1st of May, or did they call after the 1st of May?

A..Before the 1st of May, and after also.

Q..How soon before the 1st of May?

A..Oh, it was a matter of conversation among these gentlemen for a month before the 1st of May.

Q..Did they call upon you for the express purpose of putting the question to you: what the prospects were of the coupons being paid on the 1st May, 1874?

A..They did.

Q..Do you remember the conversation you had with the first named gentleman?

The witness..Mr. Goellet?

Mr. Blandy..Yes, sir.

A..I remember the substance.

Q..Do you remember the substance of the conversation you had with all the other gentlemen?

A..Yes, sir.

Q..But you do not remember the conversation you had with Mr. Thorburn?

A..No; because he was to unimportant a person.

Q..Then at the time the gentlemen whose names you have mentioned, outside of Mr. Thorburn, made their inquiries about these coupons payable on the 1st May, 1874, were you cognizant of the bonds they held or their relation to the road?

A..I knew in general terms that they were interested in the securities of the road.

Q..At the time Mr. Thorburn called, did you know the purpose he had in making the enquiries?

A..To make a commission, I suppose. He was a broker.

Q..Would that circumstance affect the answer that you would give to the general enquiry as to the prospects of the coupons of the Bonds due the 1st May, 1874, being paid, in contradistinction which you would give to the other gentlemen whose names you have mentioned?

A..If he asked me a specific question, similar to the others, I would give him the same answer.

Q..Then the circumstance of his being an unimportant person would not in any way affect your answer, would it?

A..Except that I would volunteer information to them, and I certainly would not to Mr. Thorburn.

Q..Then a question that would be put by Mr. Thorburn would be more apt to elicit from you a cautiously framed answer?

A..No, it would not. That is to say, there was no occasion for caution in reference to this particular matter.

Q..I understood you to say, in answer to Mr. Bangs, that it was not a fact that you omitted to state that the Company was not paying their coupons in May, 1874. Will you please state whether you notified any person that the Company was not paying their coupons on the 1st May, 1874?

A..To the best of my recollection, I unhesitatingly stated to any parties whose interest was such as to warrant the information, the condition of the Company, and its inability to meet its maturing interest.

Q..After the 1st May, 1874?

A..After the 1st May, 1874, I have unhesitatingly stated–

Q..(Interposing.) Can you give the name of any one person to whom you stated that?

950 A..I stated it invariably—well, let me answer it correctly. These various parties I have referred to before as having had conversations with; and I should think a large bond-holder named Sheppard, I am not quite sure; I should think very likely. Anyhow, the persons largely interested whom I came in contact with.

Q..Did you state to all parties enquiring after the 1st May, 1874, that the Company had defaulted in the payment of its coupons due on the 1st May, 1874?

A..I stated that I had provided the means for the purchase of the coupons, and that the Company did not pay them.

Q..Did you state that fact to all parties enquiring of your concern, after the 1st May, 1874?

A..I undoubtedly did.

Q..Then do you mean to say that you stated to Mr. Thorburn that the Company had defaulted?

A..If he asked me the question I should have undoubtedly stated to him—

By Mr. Bangs:

Q..That the Company had defaulted?

A..That the Company had not paid the coupons.

By Mr. Blandy:

Q..That you state upon the authority of your usual method of doing business, and not from any distinct recollection of having told him?

A..No not from any distinct recollection, because Mr. Thorburn is a person whose opinion in reference to any security is not entitled to a straw of value.

Q..Do you advance that opinion upon your own judgment?

A..Upon my own judgment, and upon the judgment of the street.

By Mr. Blandy:

Q..If the judgment of the street should place an equal opinion upon you—

Witness..Of course they are entitled to it.

Mr. Blandy..You would not think that your judgment, in that case, entitled to any less consideration because of the opinion of the people on the street ?

Witness..No; he is entitled to the same consideration; but his business is that of selling.

Q..Did you state that fact to Mr. Bonner and Mr. Goellet, the two persons you have mentioned ?

A..Unhesitatingly.

Q..You told them that ?

A..I told them that, and they were aware of the fact.

Q..How were they aware of the fact ?

A..Because I endeavored to arrange to borrow the money from them.

Q..They knew it from that fact, did they ?

A..They knew it from that fact, and from the conversations they had with me, and from their general knowledge of the condition of the property and its finances.

Q..But as a fact, the coupons were paid on the 1st May, 1874, were they not ?

A..The owners of the coupons touched the money value on some.

Q..By paying them ?

A..That is a matter—by paying them, no; they were purchased by parties who purchased them, the Company did not pay them.

Q..The holders of coupons payable on the 1st May, 1874, and who presented their coupons received the money for them ?

A..They got value of them ; yes, sir.

Q..The holders of coupons payable on the 1st November, 1874, on presenting those coupons received the money for them in the same way they did for May, 1874 ?

A..The same as they did for May, 1874, but in neither case did they receive the money on presenting them.

Q..How did they receive it ?

A..They were presented and not paid.

Q..The first time ?

A..They were afterwards, at sometime, sold, and they received the money for them.

Q..But, then, as a fact, the holders of the coupons did receive their interest on the 1st May, 1874, and on the 1st November, 1874?

A..They received an equivalent for their coupons.

Q..The same as they did on the 1st May, 1873?

A..No, sir.

Q..Why not?

A..Because on the 1st May, 1873, the Company paid their coupons.

Q..But they gave the holders of the coupons the equivalent—the money that was provided for by the coupons?

A..No; they gave them the value of the coupons provided by the Company.

Q..And the party paying the coupons on the 1st May and 1st November, 1874, did precisely the same thing, did they not?

A..No; they did not.

Q..Less a small rebate?

A..An entirely different course of procedure.

Q..I am not speaking of the course of procedure; but the same result was reached to the holders of the coupons?

A..It was not.

Q..Have you any distinct recollection of a conversation with Mr. Thorburn, wherein you informed him that the encashment of the coupons was arranged for outside the Company, about May, 1874?

A..If Mr. Thorburn asked me any question, I undoubtedly made that statement. I have no recollection of any definite—

Q..(Interposing.)..You have no recollection of any specific conversation wherein you imparted that knowledge to him?

A..I have not.

Q..Then that is predicated upon the circumstance, as you have testified before, that if any such question was asked you, you would give that answer?

A..It is.

Q..And not from any recollection?

A..And upon the fact that in all the testimony that has been furnished, nobody has made a contrary statement.

Q..Have you any recollection of any particular conversation wherein you notified Mr. Thorburn that you had grave doubts whether the coupons due the 1st May, 1874, would be paid?

A..Not specifically with him.

Q..Nor have you any distinct recollection of any specific conversation wherein you notified him that the Company was endeavoring to take care of itself?

A..Not specifically with him, although I had such conversations during the whole month of April.

Q..You testified in answer to Mr. Bangs that from an inspection of the books of your old firm, no sale of those bonds was made on the 21st of May, 1874, why did you testify to that?

A..Because I refreshed my memory from the statement furnished to me from my books.

Q..Then, were you not under the impression that Mr. Thorburn had testified that the 21st May, 1874, was the day on which he had this conversation with you, and that on that day he had made a purchase of your firm of bonds of this particular road?

A..I had no impression of any kind whatever; I was simply answering the question.

Q..When you testified in answer to that last question that I have referred to, were you not under the impression that Mr. Thorburn had testified that the purchase on the 21st May, 1874, was made through your house?

Mr. Bangs..I object to that. The question has just been put and just been answered.

(Answer taken subject to objection.)

A..I was not.

954 Q..Why did you testify that you did not sell through Dean & McGinness any of your bonds on the 21st May, 1874?

A..Because I was asked the question.

Q..Can you give me the market fluctuation between the 1st May, 1874, and the 1st November, 1874, of these bonds?

A..I cannot, except what I have learned from brokers, by hearsay, I have made no operations.

Q..Can you give me the market fluctuation between the 1st May, 1874, and the 1st November, 1875?

A..The same answer to that.

Q..You testified that the circumstances of some coupons being detached from the bonds would not eliminate them from a "regular" sale, and you have given some instance by reference to railroad companies?

A..Yes, sir.

Q..Were all of those companies embarrassed?

A..Embarrassed in the same manner that the Mobile and Ohio was; in no other way.

Q..Except to a greater extent?

A..I don't know to a greater extent.

Q..Can you recall the circumstances now that any of these particular companies was more embarrassed than the Mobile and Ohio was?

A..No; I cannot.

Q..The regularity of the sale of their bonds with the coupons detached was brought about by special provision being made for the coupons that were detached, was it not?

A..Yes, sir; certainly.

Q..And that special provision made it a "regular" sale?

A..It was the provision for the encashment of the coupons.

Q..But for that circumstance, the detachment of the matured unpaid coupons would make it an irregular sale?

A..Yes, sir.

By Mr. Bangs:

Q..You do not mean to say that a sale would be void of a bond which had coupons detached, do you?

A..That is a matter between the buyer and seller.

Q.."Regular" is a stock broking term?

A..A stock broking term.

Q..Just as "flat" is?

A..Just as "flat" is. The object of the provision is that a purchaser buying a bond should not be at a disadvantage from the fact that he did not see the bond. If any arrangement had been made by which matured coupons were provided for, all of a certain maturity the bond was just as "regular" without those coupons as it was with them.

Q..You use "regular" in the stock broking sense?

A..The stock broking sense.

Q..You are aware that brokers have ideas of their own concerning what "regular" and "irregular" are, I believe?

A..I am.

Q..Before May, 1874, had or had not the Mobile and Ohio Railroad Company defaulted in the payment of interest?

A..It had not altogether defaulted in the payment of interest.

Q..Had it paid its interest regular when it fell due from 1860 to 1874?

A..It had defaulted for a number of years.

Q..A number of years in succession, had it not?

A..For nine years.

Q..And there was what were called "Interest Arrearage Bonds" out, representing arrears of interest?

A..There were.

Q..So that the past embarrased condition of the Mobile and Ohio Railroad was a matter of notoriety, was it?

A..A matter of notoriety.

Q..Were you not of the opinion, after the 1st May, 1874, and at that time, that the Mobile amd Ohio Railroad Company was ultimately good for its debts?

A..I thought so, with the prospective improvement in business and increased economy in the management.

I further certify that I am not of counsel for either of the parties, nor in any manner interested in the result of said case.

In testimony whereof, I have hereunto subscribed my name and affixed my seal, this 14th day of April, in the year of our Lord, one thousand eight hundred and seventy-seven, and the Independence of the United States the one hundred and first.

{ L. S. }

Edward L. Owen,
U. S. Com. for So. Dist. New York.

[Endorsed.] *United States Circuit Court.*

W. B. DUNCAN, ET AL., *vs.* MOBILE & OHIO R. R. CO. } Testimony of witnesses taken at New York before me.

By me sealed up, directed to James Gillette, Esq., U. S. Circuit Court, Mobile, Ala., and deposited in General Post Office at New York, this 14th day of April, 1877.

Edward L. Owen, U. S. Commissioner.

Received by mail, published and filed, April 19th, 1877.
JAMES GILLETTE, Special Master.

959 *Exceptions to report of James Gillette, special master, filed May 3, 1877.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM B. DUNCAN & ALS., TRUSTEES, &c., *vs.* THE MOBILE AND OHIO R. R. CO. & ALS. } On bill, &c.

Exceptions taken by the trustees of the 2nd mortgage, defendants, and by L. J. Belloni, Charles Moran, & als., objecting creditors, to the report of James Gillette, special master in said cause, filed May 3d, 1877.

15TH EXCEPTION.—For that the said master, on the 21st February, 1877, pending the reference before him, refused the motion of E. L. Andrews, solicitor for exceptants, for a subpœna duces tecum to T. Haskins DuPuy, to produce the minute-book of said railroad company of 1870, 1871, and 1872, returnable in one hour; and also refused a like motion by same solicitor for subpœna to same T. Haskins DuPuy, returnable in two hours; and also refused a like motion for the minute-book
960 of 1871, returnable in two hours; and also refused a like motion for a subpœna duces tecum, returnable in three hours; and also refused a like motion for a subpœna duces tecum, returnable at any time during the said day before 10 o'clock p. m., and for that the said master refused the said subpœnas duces tecum on the ground that exceptants had no right to the books named; whereas the said master ought to have granted the said motions, and ought to have ruled that exceptants had a right to said books as evidence in the cause.

16TH EXCEPTION.—For that the said master, on the 21st February, 1877, pending the reference before him, on the motion of E. L. Andrews that a subpœna issue, returnable at 12 m. on the 22d February, 1877, for the production of the minute-books of the directors and of the executive committee of the said railroad company from 1870 to 1872, both inclusive; for the telegram-books and letter-books of the Mobile and Ohio Railroad Company, for the same period, and for such minutes, letters and telegrams, for the same period, not in the form of books, and
961 for resolutions, and copies of the same, of the said directors and executive committee not in the form of books, ruled that the subpœna be granted, returnable at 12 m. on 22nd February, 1877, for the books and papers in question, so far as the same pertain to the question under consideration, viz, the bonds known as Tennessee substitution bonds; whereas the said master ought to have granted the said subpœna, as asked by said motion, without the qualification contained in his said ruling.

17TH EXCEPTION.—For that the said master refused the motion of E. L. Andrews, solicitor for exceptants, made on the said 21st February, 1877, in writing, as follows: "After the declaration of counsel in court that portions of the books called for would be sealed, I move for the production of the books named in my previous motion without any qualification in the subpœna"; whereas the said master ought to have granted the said motion.

18TH EXCEPTION.—For that the said master refused a motion made on behalf of exceptants on the 30th March, 1877, for a subpœna
962 duces tecum to T. Haskins DuPuy for the production of the stock-books, and stock-registers, and stock-transfer books of the Mobile and Ohio Railroad Company for the years 1873 and 1874, and also

any other books and papers in his possession as agent of receivers, showing by and to whom proxies to vote on stock were given in those years; whereas the said master ought to have granted the said motion.

19TH EXCEPTION.—For that the said master refused a motion made on behalf of exceptants on the 30th March, 1877, for a subpœna duces tecum to T. Haskins DuPuy for the correspondence, telegrams, and entries in telegram-books of the Mobile and Ohio Railroad Company and its officials, with W'm Butler Duncan and Duncan, Sherman & Co., and any one representing him or them, in reference to the coupons on the company's bonds which fell due in November, 1873, and January, 1874, and also for all books and papers of the Mobile and Ohio Railroad Company containing entries in reference to any advances or claims of Duncan, Sherman & Co., or W'm B. Duncan, or any one else acting for them or him, in the years 1870, 1871, 1872, 1873, 1874, and 1875;
963 whereas the said master ought to have granted the said motion.

20TH EXCEPTION.—For that the said master refused a motion made on behalf of exceptants on the 30th March, 1877, for a subpœna duces tecum for the production of the general ledger or any special ledger of the Mobile and Ohio Railroad Company for the year 1870, containing the accounts of the company with W'm Butler Duncan and Duncan, Sherman & Co., and also for the production of the correspondence of the company, and telegrams, and the telegram books of the company for that year, containing copies of correspondence by telegram with the same parties, and also refused a motion for a subpœna to the same party for the production of the books, correspondence, and telegram books containing the accounts and correspondence of same parties for each succeeding year down to 1875 inclusive; whereas the said master ought to have granted the said motions.

21ST EXCEPTION.—For that the said master, on the motion made on behalf of the exceptants, on the 2d April, 1877, pending the reference before said master, for a subpœna duces tecum to T. Haskins Du-
964 Puy, agent of the receivers in this cause, and proved to be the
custodian of the books and papers of the insolvent defendant corporation, requiring him to produce before the master forthwith all correspondence or copies of letters or telegrams and originals of correspondence or telegrams between the Mobile and Ohio Railroad Company, or any officer thereof, and William Butler Duncan and Duncan, Sherman & Co., in the year 1874, in reference to the coupons of the first-mortgage, maturing 1st May and 1st November that year, and also in reference to all remittances made during that year by the company to Duncan, Sherman & Co., made a ruling denying the said subpœna except in so far as such telegrams and correspondence pertain to the question at issue; whereas the said master ought to have granted the said motion without restriction or qualification.

22ND EXCEPTION.—For that the said master, on the 2d day of April, 1877, pending the reference before him in the said cause, one William Butler Duncan then being examined as a witness on the part of exceptants, excluded from evidence the answers of said William
965 Butler Duncan to the following questions then put to him by
counsel for said exceptants, viz:

"Question. In whose name did a majority of the capital stock of the company stand in 1872? If you can't answer from memory please refresh your memory by looking at the stock-book which is in your custody."

"Question. By whose and in whose names was the majority of the stock voted in 1872 at the annual meeting? Were not proxies given

for a portion of that stock? If so, to whom? If you cannot answer from memory, refresh your recollection by looking at the stock and transfer books now in your custody as receiver. If those proxies for 1872, if there were such proxies, were voted by the persons to whom they were given, under the direction or request of William Butler Duncan, or any person requesting to act for him or Duncan, Sherman & Co., please state the names of the persons giving such instructions or making such requests, and also the names of the persons so voting on the proxies; also were not proxies, and if so what amount of stock, voted on the
966 annual election of 1872 at the request of W'm Butler Duncan, or some one indicated in the preceding paragraph of this question for certain persons indicated by said Duncan?

"Question. How many shares of stock stood in the name of W. B. Duncan, in that of Andrew F. Elliott, and in those of W'm Watts Sherman, Francis H. Grain, Alexander Duncan, George A. Lecte, and Duncan, Sherman & Co. at the time of the annual election of 1872? Refresh your memory by looking at the stock-books for that year, and answer the question. I ask the same question in reference to each of the years 1872, 1873, 1874, and 1875, respectively.

"Question. What commissions or charges in any and all respects, were made for loans or procuring loans to or for the company by yourself or Duncan, Sherman & Co., in the years 1871, 1872, 1873, 1874, and 1875? I mean the average percentage. If you cannot state from memory, refresh it by looking at your books, and answer.

"Question. What changes were made in the board at the annual meeting for 1874, and at whose suggestion were such changes made?

"Question. Did not W'm H. Hays, W'm H. Pratt, Moses War-
967 ing, and Henry Hall become directors of the company at the annual meeting of 1874, and were they not put into the board at your suggestion or that of some one acting for you?

"Question. Is not the W'm H. Hays who then became a director, the same Hays who is named in a scheme of certain parties in reference to the Mobile and Ohio Railroad Company, annexed to the deposition of yourself under the commission issued by the master herein, and were not W. H. Hays, W'm H. Pratt, and Moses Waring continued as directors at the annual meeting in the year 1875, and, if so, at whose instance were they so continued? Was it not at your instance, or at the request of some one acting for you?

"Question. Did not M'r Beers, the auditor of the Mobile and Ohio Railroad Company, in March, 1874, write to you that the floating creditors were absorbing the revenues of the road?"

Whereas the said master ought to have allowed and required the said witness, William Butler Duncan, to answer each and all of said recited questions and ought to have admitted his answers to the same in evidence in said cause.

968 23RD EXCEPTION.—For that the said master, on the 3d day of April, 1877, pending the reference before him in said cause, one William Butler Duncan then being examined as a witness on the part of exceptants, excluded from evidence the answer of said William Butler Duncan to the following question then put to him by counsel for said exceptants, viz:

"Question. Is not $75,000 of first mortgage sterling bonds the entire interest of Alexander Duncan in the bonds of this road? If not, what is his interest in the bonds and what class of bonds?"

Whereas the said master ought to have allowed and required the said

William Butler Duncan, witness, to answer the said question, and ought to have admitted his answer to the same in evidence in said cause.

24TH EXCEPTION.—For that the said master, on the 16th day of April, 1877, pending the reference before him in the said cause, one Moses Waring then being examined as a witness on the part of exceptants, excluded from evidence the answers of said Moses Waring to the following questions then put to him by counsel for said exceptants, viz:

969 “Question. Did you not express to persons in the city of Mobile dissent or objection to the account of Duncan, Sherman & Co., rendered to the Mobile and Ohio Railroad Company, in which they charged as paid some thousands of dollars, about twenty-five thousand of notes and drafts in 1874, out of monies remitted from the Mobile & Ohio Railroad Company, or obtained by Duncan, Sherman & Co.?

“Question. Was there not an arrangement made by the company with a large part of floating creditors of the Mobile and Ohio Railroad Company in 1874, whereby they extended the time of payment of paper of the company, and which extension was upon the faith and understanding with the parties so extending, that no payments of floating claims or paper of the company should be made to any of the holders thereof?

“Question. Did not Duncan, Sherman & Co., in violation of the arrangement made by the company with the floating creditors, appropriate moneys received by them on account of the Mobile & Ohio Railroad Company to account of unsecured claims held by them in 1874?

970 “Question. Who voted a majority of the stock at the meeting of April, 1874?

“Question. Can you state by what payments, and to whom, the floating debt of the Mobile and Ohio Railroad Company standing at $1,166,492.19, on December 31, 1874, was reduced from that amount on May 8, 1875?

“Question. What class of securities is referred to by the item in the report at the meeting of April 20, 1875, when you were director of the company, to the following effect: Paid on account of floating debt to prevent sacrifice of securities belonging to the company?”

Whereas the said master ought to have allowed and required the said witness, Moses Waring, to answer each and all of said questions, and ought to have admitted his answers to the same as evidence in said cause.

25TH EXCEPTION.—For that the said master denied the motion made by counsel of said exceptants, on the 16th April, 1877, pending the said reference before him, for a subpœna duces tecum to T. H. DuPuy, for the production of books and papers of said railroad company, 971 defendant, for the year 1873, in reference to the payment of interest on sterling bonds of the first mortgage; whereas said master ought to have allowed the said motion and required the production of said books and papers as evidence in said cause.

26TH EXCEPTION.—For that the said master denied the motions made in behalf of said exceptants, on the 16th April, 1877, pending the said reference before him for a subpœna duces tecum to T. H. DuPuy, for the production of the stock register and ledger of said railroad corporation, defendant, of 1874, and also for the production of any existing record of proxies to vote on stock in 1874, and also for the production of the stock register, and any existing record of proxies to vote on stock in 1875. Whereas the said master ought to have allowed each and all of

said motions, and required the production of each and all of said stock registers, ledgers, and records of proxies as evidence in said cause.

27TH EXCEPTION.—For that the said master, on the 23d April, 1877,
pending the reference before him, excluded from evidence in said
972 cause the record in the case of Morris Ketchum vs. The Mobile
and Ohio Railroad Company, pending in said court, offered as
evidence on behalf of the trustees of the 2d mortgage, exceptants, under
their answer in the present cause, of Duncan & al. vs The Mobile &
Ohio R. R. Co. & als. Whereas the said master ought to have admitted
the said record as evidence in the said present cause.

28TH EXCEPTION.—For that the said master, on the 23d April, 1877, pending the reference before him, excluded from evidence the record "In chancery, at Mobile, No. 3594, W'm H. Hays vs. Morris Ketchum, W'm Butler Duncan, A. Foster Elliot, the Mobile and Ohio R. R. Co., & others." Also the writ of injunction restraining Morris Ketchum from proceeding in this court, for the protection of the rights declared by the decrees of this court; which records in the last-stated causes were offered not only as records, but as an admission of the Mobile & Ohio R. R. Co., and of the cestuis que trust under its mortgage.

Whereas the said master ought to have admitted each and
973 every of said records and writ of injunction as evidence in this
cause.

29TH EXCEPTION.—For that the said master, on the 25th April, 1877, pending the reference before him in this cause, excluded from evidence as irrelevant a notice published in the Mobile Register by W'm H. Hays, William S. Pierson, and T. Haskins DuPuy, committee, sworn to by said Du Puy, a witness before said master. Whereas the said master ought to have admitted the said notice as relevant testimony in said cause.

30TH EXCEPTION.—For that the said master, on the 25th day of
April, 1877, pending the reference before him in said cause, refused to
require T. Haskins DuPuy to produce a letter in his possession of one
W'm Butler Duncan, to the Mobile and Ohio R. R. Company, or to one
of its officers, which letter said Du Puy had with him in the master's
office (and in his manual possession as agent of receivers), in obedience
to a subpœna duces tecum issued by said master, and which said letter
was called for by counsel for trustees of the 2nd mortgage, as evidence
in said cause, after being read by the witness, the master, and
974 M'r P. Hamilton, one of the counsel for complainants in said cause,
and after said DuPuy had declined to produce the same, and after
M'r Stewart, as attorney of said railroad company, "had instructed
said witness, DuPuy, as vice-president of said railroad company," that
he need not produce it unless, in his judgment, it had reference to the
matters under investigation. Exceptants aver that said letter contains
important evidence in said cause, and they state that the master had no
right to decline the motion to direct the witness to produce the same as
evidence, after the same had been privately inspected by the witness,
counsel for the complainants, and said master, and that said master
ought to have required the production of said letter as evidence in the
said cause.

31ST EXCEPTION.—For that the said master, on the 25th day of April,
1877, pending the reference before him in said cause, declined to take
the testimony of T. H. DuPuy, a witness in said cause, called for by
counsel of the trustees of the 2nd mortgage in reference to resolutions
of the board of directors of said railroad company produced
975 by said DuPuy, and filed in said cause, marked Exhibits F 1 and
F 2, and prohibited the examination of said DuPuy by said

counsel. Whereas the said master ought to have allowed the examination of said DuPuy in the premises, and ought to have taken his testimony therein.

32ND EXCEPTION.—For that the said master arbitrarily adjourned his reference sine die, pending a motion by counsel for second-mortgage trustees for a subpœna duces tecum to rebut testimony taken to sustain the claim of title of the complainants in said cause. Whereas said master ought not so to have adjourned said reference, but ought to have heard and granted said motion for subpœna duces tecum, and ought to have examined witnesses in rebuttal of said testimony.

33RD EXCEPTION.—For that the said master, in excluding the record in the case of Morris Ketchum vs. The Mobile and Ohio Railroad Company & als., infringed the rule of practice in courts of equity of the
United States, providing that "all affidavits, depositions, and
976 documents which have been previously made, read, or used in the
court, upon any proceeding in any cause or matter, may be used
before the master."

Wherefore, and because of each and all of such exceptions, the said trustees of 2nd mortgage, defendants, and the said Belloni and Moran & als., objecting creditors, except to the said master's report, and appeal therefrom to the judgment of this honorable court.

Dated Mobile, May 30, 1877.

E. H. GRANDIN,
Of Counsel for said 2d Mortgage Trustees.
E. L. ANDREWS,
Sol'r of said Belloni, Moran & als., Objecting Creditors.

34TH EXCEPTION.—For that the said master, on the 25th April, 1877, pending the reference in said cause, one Oliver S. Beers then being examined as a witness on the part of the trustees of the 2d mortgage, excluded from evidence the answer of said witness to the following question put to him by the counsel of said trustees, viz:
"Question. M'r Beers, did not M'r Murdock, president, tell you
977 that he had purposely avoided holding further communications
with M'r Ketchum, in New York City, after the war, because M'r
Ketchum was insisting on his trusteeship, or words to that effect?"

Whereas the said master ought to have allowed and required the witness to answer the said question, and ought to have admitted his answer to the same as evidence in said cause.

Wherefore, and because of said exception, the said trustees of 2nd mortgage, defendants in said cause, except to the said master's report, and appeal therefrom to the judgment of this honorable court.

Mobile, May 30th, 1877.

E. H. GRANDIN,
Of Counsel, &c.

978 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama. In equity.

WILLIAM BUTLER DUNCAN & AL., trustees, &c.,
vs.
THE MOBILE AND OHIO RAILROAD CO. & ALS.
} On bill, &c.

Exceptions taken by W. D. Dunn & al., trustees of the second mortgage of the said the Mobile and Ohio Railroad Company, defendants in the said-entitled cause, and by L. J. Belloni and Charles Moran & als., objecting creditors, to the report of James Gillette, esq., special master in said cause, filed May 3rd, 1877.

FIRST EXCEPTION.—For that the said master has, in and by his said report, reported as to the coupons of May and November, 1874, claimed by Alexander Duncan and others, that the mode and manner of payment of them in London and New York was not the usual mode.
Whereas the said master ought to have reported that said
979 coupons were paid in London and New York in the usual mode, or,
at least, that there was no evidence before him to the contrary.

SECOND EXCEPTION.—For that the said master has in and by his said report reported that in New York the evidence is that they, said coupons, were not paid in the usual manner, and that the holders were informed that they were being purchased and held uncancelled. Whereas it is apprehended by exceptants that said master ought to have reported that in New York the evidence is that only some of said coupons were paid or purchased by Duncan, Sherman & Co., agents of the said The Mobile and Ohio Railroad Company, and that holders were not generally informed that they were being purchased and held uncancelled, and that the evidence is that only some of the holders were so informed, and that no special printed or written notice was given as to the purchase of said coupons.

THIRD EXCEPTION.—For that the said master hath reported in his said
report that it is in proof that the railroad company did not pay
980 said coupons, and supplied no money for their payment. Whereas
it is apprehended by exceptants that the evidence taken by said master proves that the said railroad company did pay said coupons, and did supply money for their payment.

FOURTH EXCEPTION.—For that the said master in his said report hath reported that the May and November interest for 1874 on first-mortgage bonds stands on the company's books as unpaid and in default. Whereas exceptants allege that said company's books were not produced before the said master, and there was no legal and competent testimony as to their contents, and he ought not to have reported as standing on the company's books what was not proved before him by the production of said books or by legal and competent testimony as so standing.

FIFTH EXCEPTION.—For that the said master hath in and by his said report reported that it does not appear that the Mobile and Ohio Railroad Company paid one of these coupons or that it intended so
981 to do. Whereas it is apprehended by exceptants that it does appear that said The Mobile and Ohio Railroad Company paid all of said coupons, and that it intended so to do, and said master ought so to have reported.

SIXTH EXCEPTION.—For that the said master hath in and by his said report reported that the proof is full as to the intent of Duncan, Sherman & Co. and their agents, the Bank of Mobile, Credit Foncier, &c.,

with the assent of the company, not to pay or satisfy said coupons so as
to extinguish them, but, on the contrary, their plainly-expressed intention
was that they should be purchased and remain uncancelled with all the
rights that purchasers should have; that their taking up the coupons
without extinguishment was with the consent of the company, by the
express agreement with its officers, that they were to be purchased with
all lien rights as existing mortgage security preserved, and held until
the company could pay them. Whereas the said master ought
982 to have reported that the proof is that what coupons were taken
up or purchased by said Duncan, Sherman & Co., and said Bank
of Mobile and said Credit Foncier, &c., as agents of said Duncan, Sherman
& Co., were so taken up or purchased by and in pursuance of their
own volition, without any assent of the company, and that it is not in
proof that there was any consent of the company by express agreement
with its officers that said coupons were to be purchased, with all their
lien rights as existing mortgage security preserved, and held until the
company could pay them; and said master ought also to have reported
that it was not competent in law for said company or its said officers to
give any such consent or make any such express agreements, and that
the tendency of the whole evidence before him is to prove that said company
and its officers never did give any such consent or make any such
express agreement.

SEVENTH EXCEPTION.—For that the said master hath in and by his said
report reported as to said coupons that payment was not made at
983 the treasurer's counter as usual. Whereas it is apprehended by
exceptants that the master ought to have reported that the mode
of payment of said coupons at the treasurer's office was substantially as
usual.

EIGHTH EXCEPTION.—For that the said master hath, in and by his
said report, reported, as to said coupons, that the purchasing-agencies
and the officers of the company fully understood the transaction;
whereas it is apprehended by exceptants that said master ought to have
reported that the evidence shows that Duncan, Sherman & Co., the head
of which firm was William Butler Duncan, the president of said The
Mobile and Ohio Railroad Company, J. J. Walker, W'm H. Pratt, W'm
H. Hays, and A. Murdoch, directors of the said company, P. Hamilton,
retained counsel of said company, G. J. Bonner, Otto Plock, Adrian
Iselin, and perhaps one or two other holders of some of such coupons
alone, fully understood the transaction of the taking up or purchasing
of said coupons by said Duncan, Sherman & Co., and their
agents.

984 NINTH EXCEPTION.—For that the said master hath, in and by
his said report, reported curtly that evidence offered to show that
the matter was kept secret failed; whereas it is humbly apprehended by
said exceptants that the said master ought to have reported as the
effect of the evidence before him, that the matter of the payment or
purchase of said coupons in manner and form as it is claimed on the
part of Alexander Duncan the same were paid or purchased, was kept
secret from the general public and from the body of the bondholders
of said railroad company; that only those who inquired were informed
of the way the thing was done; that only those who accidentally were
put upon inquiry, or who accidentally saw a notice written in blue pencil,
alleged to have been posted up or pasted on the counter of th
treasurer's office of said company, were informed at all upon the ma
ter; that the great body of the bondholders were purposely by the sa
company left uninformed that the said company was not in funds

**pay its coupons of May and November, 1874; that the official
985 statements of the net earnings of said company were calculated
to deceive and mystify the great body of the bondholders of said
company; that there is not on the minute-book of the directors of said** company any record of any arrangement whatever between said directors and said Duncan, or Duncan, Sherman & Co., under which he, said Duncan, or they, Duncan, Sherman & Co., were to buy and hold said coupons uncancelled, and that whatever arrangement of the kind was made, if any such was made at all, was made in secret, and the evidence thereof has been suppressed.

TENTH EXCEPTION.—For that the said master hath, in and by his said report, reasoned and agreed in support of the claim of said Alexander Duncan on said coupons; whereas it is humbly apprehended by exceptants that he ought only to have reported his conclusion upon the evidence.

ELEVENTH EXCEPTION.—For that the said master hath, in and by his said report, reported that it is undeniable that the defendant corporation did not pay said coupons; whereas said master ought
986 to have reported that it is deniable and denied that the said defendant corporation did not pay the same.

TWELFTH EXCEPTION.—For that the said master, in and by his said report, hath reported that the coupon-holders received the money, but it was not the money of the company, whose books failed to show the payment of one first-mortgage coupon of May and November, 1874, or since these dates; that it was claimant's money which purchased the coupons for full value, and he holds them uncancelled, with all the rights and liens of the bonds from which they were taken; whereas it is apprehended by exceptants that the said master ought to have reported that the books of said company were not examined before him, and that he does not know by legal and competent evidence what they show or what they fail to show; that the money paid to said coupon-holders was not the money of said claimant, but was the money of said company advanced to it by Duncan, Sherman & Co., and the agents of
said firm, on the credit of said Duncan, Sherman & Co., and on
987 the credit of said company, and hypothecation of securities;
that said claimant became the owner of said coupons by purchase or transfer after their maturity and after they had been detached from the bonds to which they belonged, and taken up from the bondholders, and that he does not hold the same uncancelled with all the rights and liens of the bonds from which they were taken.

THIRTEENTH EXCEPTION.—For that the said master, in and by his said report, finds and reports to the court that the claim of Alexander Duncan for the detached coupons of 1874 is a just and lawful claim, and should be allowed, with interest from the time or times when due, as a valid subsisting lien of the same force and effect as other coupons of the first mortgage unpaid, with all the liens applicable to said mortgage; whereas it is apprehended by said exceptants that said master ought to have found and reported to the court that the said claim of Alexander Duncan is not a valid subsisting lien at all on the property of said de-
fendant corporation; but, if a debt at all, is a debt of said corpora-
988 tion to Duncan, Sherman & Co., or to said Alexander Duncan, as
their transferee, unsecured, of the same force and effect as the other floating unsecured debts of said corporation.

FOURTEENTH EXCEPTION.—For that the said master excluded evidence offered by exceptants, trustees of the second mortgage of said company, in support of their answer to the bill of complaint of said complainants, and by exceptants Charles Moran & als., and Belloni in support of their objections, in various particulars, which appear in the minutes of the proceedings of, and evidence taken before, said master accompanying said report, to which said minutes and exceptants' exceptions to the rulings of said master shown thereby, exceptants, to avoid prolixity, crave leave to refer and to make each of said exceptions or exception to said report of said master; whereas said master ought to have admitted said evidence in each of said various particulars for the information of the conscience of the court.

989 Wherefore, and because of each and all of said exceptions, the said W. D. Dunn & al., trustees of the second mortgage of said defendant corporation, defendants in said entitled cause, and the said L. J. Belloni and Charles Moran & als., objecting creditors, except to the said master's report, and humbly appeal therefrom to the judgment of this honorable court.

Dated Mobile, May 29th, 1877.

E. H. GRANDIN,

Of Counsel for said Dunn & al., Trustees, &c., and of Counsel for said Charles Moran & als., and L. J. Belloni, Objecting Creditors.

E. L. ANDREWS,

Sol'r of said Moran & als. & Belloni, Objecting Creditors.

Filed May 29th, 1877.

N. W. TRIMBLE, *Clerk.*

990 *Exceptions Alexander Duncan et als. to objections of Louis Belloni.*

In the circuit court of the United States, southern district of Alabama, at Mobile. In equity.

W'M BUTLER DUNCAN & ANDREW F. ELLIOTT, trustees,
vs.
THE MOBILE & OHIO RAILROAD COMPANY et als.

On reference, before James Gillette, esqr., special master, on the exception of Louis Belloni.

Alexander Duncan, together with W'm H. Hayes, W'm S. Pierson, and T. Haskins DuPuy, trustees & holders of coupons of the Mobile and Ohio Railroad Company in the interest of said Alexander Duncan, now here file their exceptions to the special report of said James Gillette, special master, in respect to the opposition and objections made by said Louis Belloni on the question of the coupons for interest on the bonds of the said Mobile and Ohio Railroad Company, secured by the first mortgage of said company. And for cause of exception to said special report they shew and say:

991 1st. That the said special master has reported that the said coupons which fell due and were payable on the first day of May and on the first day of November, in the year 1874, were properly held for payment to said Alexander Duncan, and that they held liens on the property of said company for their satisfaction on the property mortgaged by said company by their first deed of mortgage, but that said master did not report the order of payment in respect to them out of the property so mortgaged for their payment, and should have reported the order of payment they were entitled to on the foreclosure of said mortgage and out of the mortgaged property.

2nd. That the said special master should have reported to the court, in his said report on said coupon question, that the said coupons, due in 1874, and which had not been paid, should be entitled, and were entitled, and should be paid in full out of the proceeds of said first mortgage property next and first after the payment of all necessary expenses, and after the payment of all unpaid coupons outstanding and not 992 funded, which may have remained unpaid on said first mortgage bonds, and which were due and payable before the year 1874, and that the said coupons due in 1874 should then next be paid and satisfied to the said holders thereof out of all moneys, incomes, and profits of the company and property mortgaged, so far as said funds in the hands of said receivers and all property subject to said first mortgage may extend, with preference and priority over all other demands, out of said trust funds. All which exceptions it is prayed may be noted and reported by said special master with his report to the court.

May 30, 1877.

(S'gn'd) ALEXANDER DUNCAN, AND
W'M H. HAYES,
W'M S. PIERSON, &
T. HASKINS DUPUY,
Trustees,
By GEORGE N. STEWART,
Their Solicitor.

Filed June 1st, 1877.

(S'gn'd) N. W. TRIMBLE, *Clerk.*

993 *Order of court admitting Merian et als. as def'ts.*

United States circuit court, southern district of Alabama.

W. B. DUNCAN, A. F. ELLIOT, AS TRUSTEES, &c.,
versus
THE MOBILE AND OHIO RAILROAD COMPANY, Rudolph Merian, et als.

And now come Rudolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard, and move in open court that they may be admitted as parties defendant to the bill herein, with leave to file an answer thereto, with all the rights of parties to said bill.

After hearing counsel, and the court being duly advised, it is ordered that the said Rudolph Merian, Eugene Renevier, Charles Carrard, and Cephese Chuffard be, and they are hereby, admitted as part*ners* defendant to this suit, and that they have leave to file an answer to the bill herein, and they have and exercise all the rights and privileges 994 of parties to the record herein.

(S'gn'd) JOSEPH P. BRADLEY,
C. Justice.

(S'gn'd) W. B. WOODS,
Circuit Judge.

Filed June 5th, 1877.

(S'gn'd) N. W TRIMBLE, *Clerk.*

995 ***Order of court allowing W'm H. Hayes et als. to prosecute for Alexander Duncan.***

At a stated term of the circuit court for the United States for the

southern district of Alabama, held at the court-house in the city of Mobile, on the 5th day of June, 1877.

Present, Hon. Jos. P. Bradley, associate justice, &c., W. B. Woods, circuit judge.

W'M B. DUNCAN & ANDREW F. ELLIOT
vs.
THE MOBILE & OHIO R. R. CO. ET ALS.

The parties appearing in open court by their respective solicitors & counsel, and consenting to this order, on motion of M'r F. N. Bangs, solicitor, and of counsel for W'm H. Hayes, William S. Pierson, and T. Haskins DuPuy, claiming to be the assignees and owners of the claims of Alexander Duncan, exhibited before the master in this cause under an order made March 6, 1876, it is ordered that said W'm H. 996 Hayes, W'm S. Pierson, and T. Haskins DuPuy be, and they are hereby, admitted to prosecute the claims of the said Alexander Duncan in this court, and if so advised, by appeal, review, and otherwise, as they may be advised, in the same manner and with the like effect and to the same end and intent with which the said Alexander Duncan can prosecute the same or could have prosecuted the same if he had continued to be the holder of such claims.

(S'gn'd) JOSEPH P. BRADLEY,
C. Justice.

" W. B. WOODS,
Circuit Judge.

Filed June 5th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

997 *Answer of Rodolph Merian, Eugene Renevier, et als.*

Circuit court of the United States, fifth circuit and southern district Alabama.

WILLIAM BUTLER DUNCAN & ANDREW FOSTER Elliot, complainants,
vs.
THE MOBILE & OHIO RAILROAD COMPANY and others, defendants.
In equity.

The answer of Rodolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard to the bill of complaint filed in the above-entitled cause by William Butler Duncan and Andrew Foster Elliot.

Come now the said Rodolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard, and protesting that the said complainants are not trustees of the first sterling mortgage of the Mobile & Ohio Railroad, and that they have no such interest, right, or title in said railroad or in the other property of said company as in said bill of complaint they have stated and set forth, and further protesting that said Duncan, Iselin, and Wilson have not, nor has any holder of 998 the said securities known as Tennessee substitution bonds, any interest, right, or title to or in that part of said railroad which is within the State of Tennessee, without waiving or in any wise consenting to the same, and reserving all their rights in relation thereto and all manner of exception to said bill, nevertheless for answer to said bill of

**complaint, or to so much thereof as they are advised it is material for them to make answer, answering, say: That they are not (nor is any of them) citizens of or residents within the United States of America, but they are aliens and foreigners; that the said Merian, Renevier, and Carrard are, and each of them is, a citizen and resident of the Republic of Switzerland, and that the said Chuffard is a citizen and resident of the French Republic, and that they are the holders and owners of bonds of the Mobile and Ohio Railroad Company of the class denominated and
described in the said bill of complaint as first mortgage sterling
999 bonds, and which are secured by the mortgage to said Ketchum,
Hallett, and Palmer, and thereby entitled to all the rights, liens,
and securety by the same provided, to the total sum of forty thousand dollars in par value, and they file this their answer as well in behalf of other holders of like bonds, to the amount of over six hundred thousand dollars, as for themselves.**

Further answering, these defendants say that the said Mobile and Ohio Railroad Company has not made default in the payment of the instalments of interest which accrued, matured, or fell due upon its said first sterling mortgage bonds upon the first days of May and November, 1874, respectively, and that it has not refused payment thereof, but on the contrary, they say that the same were at and after the said respective dates of their maturity, to wit, May 1st, 1874, and November 1st, 1874, fully paid and discharged to the holders thereof, by the said
Railroad Company, and the same are not in equity outstanding
1000 debts of said company or in any manner secured by said mort-
gage.

Further answering, these defendants say that the said interest, which so accrued and matured on said first days of May and November, 1874, was evidenced by coupons or interest warrants originally attached to bonds, from which they were cut or detached by the holders and owners thereof for presentation to and payment by said railroad company; that they are now presented and claimed to be held & owned by William H. Hayes, William S. Pierson, and T. Haskins Du Puy by transfer from Alexander Duncan, who is claimed to have acquired them when overdue, from the firm of Duncan, Sherman and Co., who claim to have purchased the same from the holders thereof, partly at, but principally after, their maturity.

Further answering, these respondents say that said Alexander Duncan is, and said Duncan, Sherman & Co. were and are estopped to claim
that said interest is unpaid.

1001 That the complainants were, at the maturity thereof, both part-
ners of said firm, both directors of said company, whereof said
Duncan was president and ex-officio chairman of its executive committee, and said Duncan, Sherman & Co. were and had long been the financial agents of said company; that said interest was paid with funds and moneys provided by said Duncan, Sherman & Co. in the usual manner to the holders thereof, without any knowledge on their part that the same were not paid, and without any intention of selling the same, at times when said *said* Duncan was in full possession and control of all the income and assets of said company, and the same were pledged by the board of directors thereof to the payment of the interest upon said first-mortgage bonds and were placed in the hands of
said Duncan, Sherman & Co. as such financial agents for that
1002 purpose and were sufficient for that purpose, but were and are
claimed by said Duncan, Sherman & Company to have been by

them diverted from such application and applied to the reduction of the unsecured debt of said company to themselves and others.

And having fully answered, these defendants pray to be hence dismissed.

(S'gn'd) **GEO. HOADLEY,**
" **E. L. ANDREWS,**
Solicitors for Defendants.

Filed June 5th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1003 *Replication of Duncan & Elliot.*

Circuit court of the United States, southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOT
vs. } In chancery.
MOBILE & OHIO RAILROAD COMPANY ET ALS.

The said W'm Butler Duncan and A. Foster Elliot, by their solicitors, as to the answers of the said several defendants in the cause aforesaid, who have filed answers under the leave of the court, for replication thereto say, that the answers aforesaid are untrue, insufficient, and do not contain any manner to bar the prayer for relief in the bill of the plaintiffs, and that the said bill is just and true, and the prayer for relief ought to be granted, and this they are ready to verify; wherefore they pray the judgment of the court, as they have already prayed, in the bill aforesaid.

(S'gn'd) J. A. CAMPBELL,
Sol. for Pl'ffs,
& P. & T. A. HAMILTONS,
For Compl'ts.

Filed June 5th, 1877.
N. W. TRIMBLE, *Clerk.*

1004 *Motion for confirmation of master's report.*

Circuit court of the United States, southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOT
vs.
MOBILE & OHIO R. R. CO. ET AL.

The plaintiffs move for a confirmation of the master's reports, notwithstanding the objections and exceptions filed thereto.

(S'gn'd) J. A. CAMPBELL,
(") P. HAMILTONS,
Sols. for Compl'ts.

Filed June 5th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1005 *Order of court consolidating the causes.*

At a stated term of the circuit court of the United States for the so. dist. of Alabama, held at the court-house in the city of Mobile, on the 5th day of June, 1877.

Present, Hon. Jos. P. Bradley, associate justice, &c.; Hon. W. B. Woods, circuit judge.

W'M B. DUNCAN & ANDREW F. ELLIOT,
trustees, &c.,
vs.
THE MOBILE & OHIO R. R. CO. ET AL.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO R. R. CO. ET AL.

DORELLI ZEIGLER ET ALS.
vs.
THE MOBILE & OHIO R. R. CO. ET AL.

**The parties in these several causes appearing in open court by their respective sol's and counsel, and consenting to this order, and it appearing to the court that the above entitled suits are instituted
1006 for the common purpose of securing a sale of the Mobile & Ohio Railroad, and other property of the Mobile and Ohio Railroad Company, under the first mortgage thereof, and disputes having arisen as to the legal title of and in said first mortgage, which might embarrass the sale of the mortgage premises, and it appearing to the court that all the parties claiming said legal title are before the court, and likewise the cestuis que trust of said mortgage, and that a full and perfect title to said railroad and other mortgage property may be obtained under decrees in all of said suits combined, it is therefore ordered that the above causes be consolidated and proceed concurrently before this court to final decree.**

And it is further ordered that all the proofs taken, orders made, proceedings had in the cause first above entitled may be read upon the hearing of the causes so consolidated in the same manner and
1007 with the same effect as if taken, made, and had in all of said causes, and that the evidence taken before the master in said first mentioned cause be read and used as evidence on the final hearing of said causes; and that said causes be set down for final hearing on the pleadings, proofs, orders, and proceedings forthwith.

June 5th, 1877.

(S'gn'd) JOSEPH P. BRADLEY,
Circuit Justice.
(") W. B. WOODS,
Circuit Judge.

The above order is made without prejudice to and saving the rights of W'm B. Duncan, Richard T. Wilson, and Adrian Iselin as trustees for the Tennessee substitution bondholders (so called), who have not assented to this order; and the cause is to proceed to decree without them.

(S'gn'd) JOSEPH P. BRADLEY,
Circuit Justice.
(") W. B. WOODS,
Circuit Judge.

Filed June 5th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
et als.

In the circuit court of the United States, in and for the fifth judicial circuit and southern district of Alabama.

To the honorable the judges of the circuit court for the fifth judicial circuit and southern district of Alabama:

Your orator, Morris Ketchum, a resident of the county and State of New York, and a citizen of said State, brings this his bill of complaint against the Mobile & Ohio Railroad Company, a body corporate, constituted by and organized under an act of the general assembly of the State of Alabama, approved February 3d, 1848, entitled "An act to incorporate the Mobile & Ohio Railroad Company;" and under
1009 an act of the legislature of the State Mississippi, approved February 17, 1848, and entitled "An act
; and under an act of the general assembly of the State of Tennessee, approved February 20, 1848, entitled "An act to incorporate the Mobile & Ohio Railroad Company and the Tennessee Railroad Company;" and under an act of the legislature of the State of Kentucky, approved February 26, 1848, entitled "An act to authorize the Mobile & Ohio Railroad Company to extend their railroad from the south boundary line of the State of Kentucky to the Mississippi and Ohio rivers;" and under the acts of the legislatures of the said States amendatory of and supplemental to the aforesaid acts, and against William B. Duncan and Andrew F. Elliott, as receivers of the Mobile & Ohio Railroad Company as aforesaid; and against William D. Dunn, George H. Young, and William Dickson; the said Dunn and Dickson being residents and citizens of the State of Alabama, and the said Young a resident and citizen of the State of Mississippi.

That in and by the acts of the legislatures of the States above referred to, the said Mobile & Ohio Railroad Company was authorized to purchase, hold, and dispose of real and personal estate, to borrow money, to make contracts for the loan of money, and to give evidences of debt and securities for the payment of the same by pledge, mortgage, or otherwise, as it should deem necessary and proper.

That on or about the first day of November, in the year 1853, the said defendant The Mobile & Ohio Railroad Company purposed to contract and negotiate a loan of six millions of dollars, to complete and equip its said railroad, and to that end prepared to execute and dispose of by sale six thousand bonds, a copy of one of which bonds is hereto attached, as forming a part of this bill of complaint, and is marked "Exhibit A."

That each of the said bonds was to be for the sum of two hun-
1010 dred and twenty-five pounds sterling, and payable in thirty years from the date thereof, with coupons attached for interest, payable semi-annually, and each coupon being for six pounds fifteen shillings sterling, and the said bonds were to be numbered from No. one to No. six thousand, inclusive.

That to provide a full, fair, and available security for the principal and interest of the said loan, and for the bonds and coupons represent-

ing the same, and to insure to those who might invest therein the payment of the interest and principal money thereof, in all respects, according to the true intent and meaning of the said bonds, was the chief and leading purpose of the conveyance hereinafter recited. That therefore, and in consideration of the premises and the sum of five dollars, the said Mobile & Ohio Railroad Company granted, bargained, sold, aliened, assigned, transferred, conveyed, and confirmed to your orator, Morris Ketchum, and to John J. Palmer and William R. Hallett, by the conveyance of said company, duly executed and delivered to your orator, the said Morris Ketchum, and to said Palmer and Hallett, bearing date the first day of November, 1853, the following property, part of which was at the time of the execution of the said conveyance constructed, and part of which was to be thereafter constructed, purchased, acquired, held, possessed, and owned by the said Mobile & Ohio Railroad Company, and which said property is described and set forth in said conveyance in the words and figures following, to wit: "All and singular of the rights and privileges of every name and kind, as hereinafter set forth, being the first and only conveyance of title, grant, or mortgage, hereby guaranteeing and warranting the described items, assets, and real estate free from all liens and incumbrances done or suffered to be done by the said party of the first part, and "all the said Mobile & Ohio Railroad Company, lying between its respective termini, constructed or to be constructed, together with all and singular the railways, rails, bridges, fences, warehouses, fixtures, privileges,
1011 rights, real estate, and all other property owned and which may hereafter be owned by said company, including the said lands donated by act of Congress hereinbefore referred to, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting, as by the certificate of the Department of the Interior, to $419,528\frac{56}{100}$ acres in the State of Alabama, to $737,630\frac{36}{100}$ acres in the State of Mississippi—total $1,156,658\frac{92}{100}$ acres, with certain exceptions of lands and certain reservations of a lien in favor of the State of Tennessee;" and for a fuller description of the property, rights, and franchises conveyed by said deed of mortgage, your orator refers to the true copy of said mortgage annexed hereto, as forming a part of this bill of complaint, marked "Exhibit B." That your orator and said Palmer and Hallett were, as provided in said conveyance, "To have and to hold the said granted and described premises, property, and franchises; in trust, nevertheless, for the benefit, security, and advantage of the person or persons, or corporations, or any other party who might become holden of the bonds hereinbefore described or any of them, issued or to be issued by the said company, and for the payment of the interest coupons thereon, as the same should respectively fall due."

That your orator, Morris Ketchum, and the aforesaid John J. Palmer and William R. Hallett duly accepted the conveyance of the property above described, and the deed above mentioned, and likewise accepted the trusts therein set forth, and thereupon became the mortgagees of the said property in trust for the holders of the bonds above described.

That said Mobile & Ohio Railroad Company, after the execution, delivery, and acceptance of said conveyance by said trustees, and after the same was in due form of law recorded in the proper counties in Alabama, Mississippi, Tennessee, and Kentucky, in which the said property thereby conveyed was and is situated, did execute large amounts
1012 of its said bonds of the denominations and to the purport in said mortgage mentioned, and the said Mobile & Ohio Railroad Company did afterwards negotiate said bonds to bona-fide holders thereof,

the same being negotiable by delivery, and the said bonds or most of them are now outstanding, and are valid claims against said company, and valid liens against and upon the property and income and assets of said company.

That the holders of said bonds and of the interest thereon unpaid by said Mobile & Ohio Railroad Company are entitled by reason of the premises to payment of said interest, as well as of the principal thereof, out of the premises, and the income thereof so conveyed to your orator, and to Palmer and Hallett aforesaid, in trust for the holders of said bonds, and have, by virtue of said conveyance in trust, the elder and prior and paramount lien on said premises, and the income thereof, and are entitled to payment out of the same in preference to any and all other claims against said company, arising in any manner whatsoever.

That in and by the third paragraph of the mortgage above referred to it is provided, in reference to the lands conveyed as security for the bondholders, as follows:

"The said Ketchum, Palmer and Hallett shall at once have possession and control of the lands donated by act of Congress, and set forth in the before-mentioned certificate of the Secretary of the Interior, dated February 4, 1853, for 1,156,658 $\frac{2}{100}$ acres, and any other lands that may be obtained for the said company by the present or by future act of Congress, with authority to devise and determine rules of management of sales, of investing the net proceeds in such funds as will suitably and safely create a sinking-fund for the redemption or payment of said bonds."

And it is further provided in said mortgage that the party of the sec-
ond part, themselves or regularly constituted attorney, are hereby
1013 invested with authority to issue proper and sufficient deeds and
muniments of title.

That on or about the first day of February, 1861, the directors of the Mobile & Ohio Railroad Company applied to and requested your orator, notwithstanding and in defiance of the aforesaid provision of the mortgage, to sign, execute, and deliver deeds of the lands conveyed by said mortgage in trust as aforesaid for the benefit of the bondholders, without tendering or in any way offering to your orator any consideration or equivalent for such proposed deeds; and the said directors furthermore requested your orator to permit the said directors to have and to exercise complete power and control over the said lands, in contravention of the terms of the mortgage conveying the title and possession thereof for the benefit of the first-mortgage bondholders of the Mobile & Ohio Railroad Company to your orator and his co-trustees.

That your orator refused to execute or deliver the proposed deeds unless he received proportionate amounts of bonds or money in consideration therefor, according to the tenor of the mortgage above set forth, or to confer upon the directors of the Mobile & Ohio Railroad Company any power over said lands which was by the said mortgage devolved upon him in trust for the equitable mortgagees.

And your orator further shows and avers that his co-trustees, John J. Palmer and William R. Hallett, both deceased on or about the first day of January, 1861, and left your orator, Morris Ketchum, the sole surviving trustee of the first mortgage of the Mobile & Ohio Railroad above described. That it is provided as follows by the mortgage to your orator above described: "And it is further covenanted and agreed between the said parties that if either of them, the said Ketchum, Palmer, and Hallett, shall, at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company and the said Ketchum, Palmer, 1013½ and Hallett, or either of them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver all and singular such other and further instruments or assurances as may be necessary to enable such person or persons so selected to act in the execution of these presents. But until such selection of some person or persons to fill such vacancy or vacancies, and the execution of the papers requisite to enable him or them to act, the act or acts of the other shall, notwithstanding such vacancy, be in all respects legal and valid.

That to your orator's best remembrance and belief, after the death of his co-trustees aforesaid, your orator offered the directors of the Mobile & Ohio Railroad Company to comply with the terms of the mortgage aforesaid, in reference to the appointment of new trustees, and made every effort on his own behalf, and with the said directors, to prevail upon them to conform to the requirements of the mortgage, and to fill the vacancies in the board of trustees thereof.

That your orator submitted to said directors the forms used in like circumstances by your orator and the other trustees of the Illinois Central Railroad Company, both in reference to the release of lands in the mortgage hereinbefore referred to, as well as to the appointment of trustees, and the proceedings under which has been highly advantageous to the bondholders of said Illinois Central Railroad Company, who had been paid in full, and urged that the spirit and letter of the mortgage should be complied with, by appointing a resident of New York and a resident of Mobile to the vacancies in the said trust, according to the residences of the original trustees then deceased.

That the board of directors of the Mobile & Ohio Railroad Company persistently refused to execute the said trust in reference to the appointment of successors to the two original trustees aforesaid, unless 1014 your orator would surrender the rights of his cestui que trust in the lands belonging to them as aforesaid, or would appoint new trustees who would so violate their trusts. That your orator declined to accede to the above terms, or any of them, and the said vacancies in the said board of trustees have remained unfilled to the present day, and your orator still remained and now remains the sole surviving trustee of the mortgage aforesaid.

That your orator is informed that soon after the matters just above recited had transpired, and on or about the fifth day of December, 1861, and nearly nine months after the State of Alabama had adopted an ordinance of secession from the United States, and several months after the commencement and existence of armed hostilities between the so called Confederate States, of which the State of Alabama formed a part, and the United States, and long after all intercourse with the said Confederate States and the said State of Alabama had been prohibited by law to the citizens of the United States and of the State of New York, where your orator then resided, and to the government of which he owed allegiance, the directors of the Mobile & Ohio Railroad Company applied to a court of chancery then sitting in the said Confederate States, so called, and within the territory of the State of Alabama, for an order declaring the removal of your orator from the trusteeship of the first mortgage aforesaid.

That your orator is likewise informed that the proceeding in which his removal was sought averred, as its foundation, that your orator was "a citizen of New York, and an alien enemy to the Confederate States" aforesaid.

And your orator further shows to your honors that he never heard of, or in any way had any knowledge of, the said pretended proceeding to divest him of his property as trustee as aforesaid, until after the termination of armed hostilities between the said Confederate States and State of Alabama, and the United States, in the year 1865.

1015 That notwithstanding your orator was in entire ignorance of the said pretended proceeding, and was prevented by force and prohibited by law from appearing and responding thereto, and on the above account could not and did not appear or respond thereto, a certain order or decree was obtained therein, on or about the seventh day of April, 1864, as your orator is informed, purporting to remove your orator from the said trust, and deprive him of the estate aforesaid, in his absence, both in person and by attorney, and while he was ignorant that any such proceedings were instituted or pending, and on the sole ground that he was "a citizen of New York, and an alien enemy to the Confederate States."

And your orator charges that the said proceedings of said court of chancery were and are entirely null and void, and without jurisdiction to divert the title of a citizen of the United States, residing in the State of New York, during the pendency of hostilities between said State of New York and the political authorities of the territory where such court was sitting, and no notice of which was brought to the knowledge of your orator, and the ground of which was loyalty of your orator to the lawful authority and government of the territory where the said court was sitting.

That on or about the first day of April, 1875, certain William B. Duncan and Andrew F. Elliott were engaged in conducting the business of Duncan, Sherman & Co., which firm had conducted and were then engaged in conducting certain financial transactions with the Mobile & Ohio Railroad Company. That the said Duncan and Elliott were directors of the Mobile & Ohio Railroad Company in the month of April, 1875, and the said Duncan represented the stockholders as the president of said company. That the said Duncan procured a certain Charles Walsh, who had been named as trustee under the pretended decree aforesaid, to present a form of resignation. That said Duncan soon thereafter procured said Walsh to withdraw said resignation, and the same was never accepted.

1016 That notwithstanding the said resignation had no validity, the said Duncan procured the said letter of resignation of Walsh to be exhibited to G. H. Young and A. Jackson, who had also been named trustees under the invalid decree above mentioned, with a request that they would likewise resign, and thereupon the said Young and Jackson did formally resign. That immediately thereafter, and notwithstanding the pretence to said Young and Jackson that said Walsh had resigned, whereby their resignations had been procured, the said Duncan procured the said Walsh to act as a trustee, and to appoint himself, the said Duncan, and his associate in business, the said Elliott, trustees. in the place and stead of said Walsh, Young and Jackson. That the Mobile & Ohio Railroad Company claimed to exercise the joint power of appointment with said Walsh, and said Elliott being then a director of said company, and the said Duncan its president, and a large stockholder thereof, and the said Duncan representing the unsecured and floating claims of Alexander Duncan, his father, which claims are in direct hostility to the rights of the first-mortgage bondholders, as hereinafter set forth, they, the said Elliott and Duncan, pretending to represent the Mobile & Ohio Railroad Company, promptly concurred in the said pretended appointment of themselves as such pretended trustees.

That your orator has entirely disregarded and ignored the aforesaid pretended invalid and void proceedings of said tribunal sitting under the authority of the Confederate States, whereby the property of your orator, as a loyal citizen of the United States, was attempted to be taken from him without notice or jurisdiction, and on the specific ground that he was performing his duty as a loyal citizen of the United States and an alien enemy of the Confederate States. And your orator has likewise disregarded and ignored all the subsequent proceedings of the parties aforesaid pretending to act under said void and unlawful decree,
as well the proceedings of said Walsh, Jackson and Young, as
1017 of their pretended successors, the said Duncan and Elliott.

That your orator has always and continuously, from the time of his appointment as an original trustee under said mortgage down to the present time, continued to act as such trustee, and performed the duties of the said office, and has acted with and connected with his cestuis que trust, during all said time, for the protection of the rights of the bondholders.

That he has not in the slightest manner abandoned his trust, if such abandonment there could be, but, on the contrary, the directors of said Mobile & Ohio Railroad Company have unlawfully and persistently endeavored to abandon the trusteeship of your orator, for the purpose of carrying out the fraudulent and improper designs upon the trust property as hereinbefore and hereinafter set forth.

That after the said William B. Duncan and Andrew F. Elliott had intruded themselves into the trusteeship as aforesaid, and, under color of the void and fraudulent proceedings above recited, had filed a bill of complaint in this court, and been appointed, and taken possession as receivers of the Mobile & Ohio Railroad Company, though representing the fraudulent claims of Alexander Duncan and others, as hereinafter set forth, your orator deemed it prudent and advisable to wait the expiration of the three months' limitation provided in the mortgage, and then and thereafter has been diligently engaged in consulting with his cestuis que trust, the bondholders, and with his counsel, and in preparing his proceedings for the protection of the property of the bondholders and the execution of the trusts devolved upon him.

And your orator further shows and avers that the said Mobile & Ohio Railroad Company has failed to pay the interest on any of said first-mortgage bonds which fell due on the first day of May, 1875, and the
interest on any of said bonds which has fallen due since the date
1018 last mentioned, | and all of said interest so due and in default
still remain wholly due and unpaid, though the same has been duly demanded, and has remained so due and unpaid more than three months after it became due and payable, and that the amount now overdue and payable for interest on the first-morgage bonds exceeds the sum of $338,000.

That the holders of the bonds secured to be paid by the mortgage above referred to are very numerous, and are in great part unknown to your orator, and your orator avers that the number of said holders is so great that it is impracticable to make them parties to this suit. That your orator has been requested by a number of the holders of said bonds, owning bonds to a large aggregate amount, to institute these proceedings upon the default in the payment of interest aforesaid.

And your orator further shows that the said railroad company, by the terms of its charter, and the laws of the States of Alabama, Mississippi, Tennessee, and Kentucky, before and at the time of the execution and delivery of said conveyance to you orator and his co-trustees as aforesaid, was authorized and had full and competent power and authority to construct, maintain, and operate a railroad from the city of Mobile, in the State of Alabama, through the several counties in the States of Alabama, Mississippi, Tennessee, and Kentucky, mentioned in the mortgage herein, to the Ohio River, in the State of Kentucky, and that at the time said conveyance was made and delivered to your orator, and the co-trustees aforesaid, said company was actively engaged in the business of building said railroad so far as the same had not been previously constructed, and in operating the same so far as then completed, and that said company now has in operation its said railroad from Mobile, in the State of Alabama, to Columbus, in the State of Kentucky, with certain branches and leased lines, and with a large amount of rolling stock necessarily used in said business, and supplies and tools and implements of all descriptions.

1019 And your orator further avers, that the said Mobile & Ohio Railroad Company likewise executed a second mortgage of the premises and property secured by the first mortgage aforesaid, of which William D. Dunn, George H. Young, and William Dickson, hereinbefore named, are trustees for the holders of certain bonds, which have been issued and are now outstanding in whole or in part, and that the said mortgage created a second and subordinate lien upon the property mortgaged to secure the bonds represented by your orator.

And your orator also avers that the said Mobile & Ohio Railroad Company also executed several other mortgages, some of which are valid and some invalid, and all of which are subordinate and inferior liens to your orator's mortgage, and purport to be such inferior liens, and none of the trustees of said mortgages can be herein joined without ousting the jurisdiction of this court.

And your orator alleges that the said Mobile & Ohio Railroad Company is largely indebted, otherwise than is hereinbefore stated, to a large number of persons, and is greatly embarrassed in its business and affairs, and is, in fact, utterly insolvent and unable to pay its debts and meet its engagements.

And your orator is likewise informed and verily believes, and therefore avers, that notwithstanding the payment of the coupons of the first mortgaged bonds, which fell due on the first day of November, 1874, and the first day of May, 1874, and the first day of November, 1873, by the Mobile and Ohio Railroad Company, in the ordinary and accustomed manner in which said coupons had been theretofore paid, it is claimed and set up by the directors of the Mobile and Ohio Railroad Company that on the first day of January, 1875, there remained outstanding coupons matured and unpaid to the amount of (\$735,415$\frac{32}{100}$) seven hundred and thirty-five thousand four hundred and fifteen dollars and thirty-two cents.

And your orator is informed and believes that the said coupons so claimed to be matured and outstanding are the same coupons which were presented by the holders thereof to the Mobile and Ohio Railroad Company and by it received and presumably cancelled.

1020 That the said coupons were not cancelled, as of right they should have been, but were *but were* by the then president of the company, and by William B. Duncan, and the directors thereof, delivered to Alexander Duncan, the father of the said William B. Duncan, and other persons, as pretended security for certain claims of said Alexander Duncan and others upon said Mobile and Ohio Railroad Company; that the said coupons are still in the possession of said Alexander Duncan and other persons, and are claimed by them to constitute a subsisting first prior and paramount lien upon the property conveyed to your orator in trust, as aforesaid. And your orator is informed and believes that the said Alexander Duncan and others claim and pretend, and will endeavor to use said coupons, which have been paid, and should be of right canceled, to bid for and obtain control of and title to the said Mobile & Ohio Railroad Company upon the sale thereof by foreclosure under your orator's mortgage.

And your orator further shows, that in and by the mortgage hereinbefore described, and in addition to the other property therein conveyed to secure the holders of the first-mortgage bonds aforesaid, all the tolls, incomes, issues, and profits of said property and of the railroad hereinbefore described were mortgaged to your orator in trust for the bondholders aforesaid, to secure the payment of the interest and principal of their bonds. That the net income of the mortgaged estate is represented by Duncan & Elliott aforesaid to be only about thirty-eight thousand dollars for the six months preceding December 1st, 1875, while the annual interest payable on the bonds of which your orator is trustee is $360,000 per annum.

1021 That ever since the failure to pay the interest on the said bonds, the tolls and income of the said company have exceeded the expenses of operating the same, and large sums of money have properly accrued, as your orator is informed and believes, as net profits from the income and tolls of said railroad; but even the said tolls and income, such as they are, have not been applied to the payment of the interest or any part thereof upon the said bonds, and will not be so applied unless this honorable court intervenes in the premises, for the protection of the holders of said bonds, by the appointment of proper persons as receivers of said property and its tolls and incomes.

And your orator further shows unto your honors that all the property so conveyed to him and his co-trustees, and now vested in him as aforesaid, as surviving trustee, in trust for the holders of the bonds hereinbefore described, as well as that which was subsequently acquired by said company, together with all the corporate rights, privileges, and franchises of said company, and the tolls, rents, incomes, issues, and profits of the railroad above described, and the lands, claims, and demands of said company, are held and bound by said first mortgage first above set forth, for the payment of the bonds and coupons lawfully remaining unpaid as aforesaid, and they have priority over every other demand and claim whatsover in the premises.

And your orator likewise shows that he is totally remediless to enforce the said claims and liens at law, and without the intervention of and process of a court of equity.

In consideration of all the foregoing matters your orator prays process of subpœna against the said Mobile & Ohio Railroad Company and against the said William D. Dunn, George H. Young and W'm Dickson, and against W. B. Duncan and A. F. Elliott as receivers, commanding them and each of them to appear and answer this your orator's bill of complaint.

1022 And to the end that the said defendant, the Mobile & Ohio Railroad Company, may, if it can, show why your orator should not have the relief hereby prayed, and may upon its knowledge and remembrance, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth under its corporate seal, to wit:

I. Whether it did not, as hereinbefore charged, make, execute, and deliver to your orator and John J. Palmer and William R. Hallett the mortgage with the conditions and powers hereinabove mentioned.

II. Whether it did not make and negotiate its bonds and secure the payment thereof as hereinbefore set forth by said mortgage.

III. Whether the said bonds are not outstanding and unpaid, and the interest which became due theron, as hereinbefore alleged, does not remain unpaid or otherwise.

IV. Whether the said John J. Palmer and William R. Hallett are not deceased.

V. Whether it did not make application to a court sitting in Alabama during the existence of armed hostilities between the governments then styled the Confederate States and the State of Alabama, and the United States, and while your orator was residing in the State of New York, for the removal of your orator from the trusteeship of the first mortgage of the Mobile & Ohio Railroad Company, upon the ground that your orator was a citizen of New York, and an alien enemy of the Confederate States, and did not thereupon obtain some order of such court purporting to remove your orator from the office of trustee aforesaid, upon the sole ground of his being an alien enemy to the Confederate States.

1023 VI. Whether the interest coupons of its first-mortgage bonds which became due before the first day of May, 1875, were not paid by it, and the said coupons surrendered to it.

And whether said coupons paid by it before the first day of May, 1875, were not afterwards delivered by it to Alexander Duncan and other parties, or to William B. Duncan for Alexander Duncan, and such other parties, or to some other person for them.

And whether said coupons are not now out of the possession and control of it, the said Mobile & Ohio Railroad Company, to the amount of $700,000 or thereabouts.

VII. Whether it is not destitute of the means of paying the overdue interest on the coupons of its first-mortgage bonds which fell due on the first day of May, 1875, and thereafter, and its affairs embarrassed as stated. And whether its property is not inadequate to pay its debts and liabilities.

And as to such of the defendants who may be out of the jurisdiction of this court your orator prays that process may be issued to make them parties, and compel them to appear and answer this bill of complaint, if they should come within such jurisdiction; and if not, such proceeding may be had in regard to such defendants, by publication or otherwise, as may be according to the forms of the statute in such case made and provided.

And your orator prays your honors to make such interlocutory and final orders, and orders of injunction, and decrees, and restraining orders as may be necessary to keep and sustain said railroad and its appurtenances in proper repairs, order, and condition for use, and to have the same used and operated until it can be sold and disposed of, for the benefit of the bondholders, and in the mean time the incomes and profits thereof paid, appropriated, and applied, according to the true meaning, purpose, and intent of the mortgage hereinbefore described.

1024 And until the final hearing of this cause can be had, and said mortgaged premises may be sold and disposed of for the benefit of the bondholders, and in the mean time be preserved and taken care of, and said railroad of said company operated, and the business of said company prosecuted and carried on to the best advantage of the holders of the bonds secured by the mortgage above described, and the incomes and tolls of the said railroad applied according to the tenor of the said mortgage and the rules of a court of equity, your orator prays that your honorable court appoint a receiver or receivers of all the property hereinbefore described, with such powers as may be adequate for such purposes, or may place your orator in possession of said mortgaged estate, under the terms of the conveyance to him.

And to ascertain, fix, and determine what amount is due and owing by said railroad company, for principal and interest upon its bonds issued by said railroad company, and secured by the first mortgage herein mentioned, and what is otherwise due and owing by said company, that an account may be made, taken, and stated before a master to be appointed by this court, of all the debts of said company, with power to report on the priorities of liens or said property, according to the course and practice of a court of equity.

And to the end that the said property may be applied to the satisfaction of the said liens and debts according to their lawful claims, that it may be ordered, adjudged, and decreed that the said railroad, its appurtenances, rolling stock, lands, franchises, rights, credits, and effects, and all the lands of the said Mobile & Ohio Railroad Company conveyed by said mortgage be sold, and the proceeds of said sale distributed among the holders of the said bonds, according to their respective rights, and as shall be found to be proper in a due and lawful execution of the trust to be executed by your orator.

1025 And on the final hearing and pendente lite, may it please your honors to grant your orator such other and further and different relief as may be equitable in the premises.

And your orator also prays this honorable court of equity, that it may instruct and direct your orator in the execution of his trust hereinbefore set forth, and for said purpose your orator herewith submits his said trust to this court.

And your orator will ever pray, &c.

(Signed) MORRIS KETCHUM.

EDWARD L. ANDREWS,
Solicitor for Complainant and of Counsel.
LABATT, ARVIN & CLINTON, B. F. JONAS, *of Counsel.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Morris Ketchum, being duly sworn, deposes and says:

That he is the complainant named in the foregoing bill of complaint, and is the surviving trustee of the first mortgage of the Mobile & Ohio Railroad Company.

That he has read the aforesaid bill of complaint, and knows the contents thereof; that the said bill of complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) MORRIS KETCHUM.

Sworn to before me, this 1st day of March, 1876.

(Signed) EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

Filed March 14th, 1876.

(Signed) N. W. TRIMBLE, *Clerk.*

(Copy of deed of trust.)

Deed of trust.

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and fifty-three, between the Mobile and Ohio Railroad Company, of the first part, and Morris Ketchum and John J. Palmer, of the city of New York and State of New York, and William R. Hallett, of the city of Mobile and State of Alabama, of the second part,

Witnesseth, whereas the legislature of the State of Alabama passed an act of incorporation, approved the third day of February, 1848, creating certain associates therein named, and their survivors, a body politic and corporate, by the name of the Mobile and Ohio Railroad Company, and by that name to sue and be sued, plead and be impleaded, to make and have a common seal, and the same break, alter, and renew at pleasure; vested with all powers, privileges, and immunities which are or may be necessary to carry into effect its purposes and objects; authorized and empowered to locate, con- 1027 struct, and finally complete a single, double, or treble railroad or way, from some suitable point in the city of Mobile, in a western or northwesterly direction to the mouth of the Ohio River, in such route as shall be deemed most expedient, and to transport, take, and carry property and persons upon said railroad or way, by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them which said company may choose to apply; and, for the purpose of constructing said railroad or way, the said company is authorized to lay out the road not exceeding one hundred feet wide through the whole length; and for the purposes of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation in relation to the business of said company, and also to make joint stock with any other railroad corporation. Further, the State of Mississippi incorporated the said Mobile and Ohio Railroad Company, by act of its legislature approved the seventeenth day of February, 1848; the State of Tennessee did also incorporate said Mobile and Ohio Railroad Company, by act of the legislature approved the twentieth day of February, 1848; and also the State of Kentucky invested said Mobile and Ohio Railroad Company with corporate rights, by an act of its legislature approved the twenty-sixth day of February, 1848, constituting the Mobile and Ohio Railroad Company a full and complete corporation through the said State, authorized to purchase, hold, and dispose of real and personal estate; to borrow money; to make contracts for the loan of money; and to give evidence of debt and securities for the payment of the same, by pledge, mortgage, or otherwise, as it shall deem necessary and proper.

And whereas said Mobile and Ohio Railroad Company, in pursuance of the authorities vested by said charters, have surveyed and located the line of said road from the city of Mobile to or near the junction of the Mississippi and Ohio Rivers, secured the rights of way, obtained depot grounds and valuable assets, all of which are of record in the records of said company, and of record in the counties intersected.

And whereas the said roadway is under contract for the complete work of the road-bed from its respective termini, and in progress of construction, the said Mobile and Ohio Railroad Company, parties of
the first part, resolved by vote of the board of directors, and in
1028 pursuance of the power and authority in said company vested,
to raise a sum of money not exceeding six millions of dollars for the purpose of completing said road, viz, the purchase of the iron and laying the same, the necessary turnouts, depots, and equipments; and for the purpose to execute, issue, sell, and transfer the bonds of said company, in sums of two hundred and twenty-five pounds sterling each, of even date with these presents, payable in thirty years from date, each with coupons attached for interest, payable semi-annually; each coupon being for £6 15s. sterling; both the principal and coupons, and interest on said bonds, until paid, payable at the counting-house of George Peabody & Co., bankers, in London, England, each of said sterling bonds being the same as one thousand dollars, money of the United States of America, and not exceeding six thousand bonds, each to be numbered respectively from number one to six thousand inclusive, and for security for the payment of said bonds to transfer to the said parties of the second part, all and singular, all the rights and franchises of said company, together with all its personal property of a fixed character, real estate, including its depots, warehouses, lots in town and country, and especially all lands donated by act of Congress, under date of the twentieth day of September, one thousand eight hundred and fifty, transferred in fee simple to the said company, party of the first part, by act of the legislature of the State of Alabama, approved December first, one thousand eight hundred and fifty-one; by act of the legislature of Mississippi, approved January twenty-eighth, one thousand eight hundred and fifty-two; said lands having been duly selected, set apart, and confirmed to said railroad company, party of the first part, and designated by described tracts, as will appear by the act of the Commissioner of the General Land Office at Washington, certified, affirmed, and ratified by the act of the honorable the Secretary of the Department of the Interior, one of the executive departments of the Government of the United States of America, dated Washington, D. C., February the fourth, A. D. one thousand eight hundred and fifty-three.

Now, therefore, this indenture further witnesseth that the said Mobile and Ohio Railroad Company, the better to secure the payment of said bonds and every part thereof, with interest, according to the tenor thereof, and in consideration of the sum of five dollars unto the said company, well and truly paid by the said Ketchum, Palmer, and Hallet, at or before
the ensealing and delivery of these presents, the receipt whereof
1029 is hereby acknowledged, have granted, transferred, set over, and
conveyed, and by these presents do grant, transfer, set over, and convey unto the said Ketchum, Palmer and Hallett, the survivors or successors of them, in fee simple, all and singular of the rights and privileges of every name and kind as hereinafter set forth, being the first and only conveyance of title, grant, or mortgage, hereby guaranteeing and warranting the described items, assets, and real estate free from all liens or incumbrances done or suffered to be done by the said party of the first part.

The said items as set forth are as follows: All the said Mobile and Ohio Railroad lying between its respective termini, constructed and to be constructed, together with all and singular the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned, and which may hereafter be owned, by said company,

including the said lands donated by act of Congress hereinbefore referred to, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting, as by the certificate of the Department of the Interior, to 419,528 56-100 acres in the State Alabama; to 737,130 36-100 acres in the State of Mississippi—total 1,156,658 92-100 acres; saving and excepting therefrom so much as lies in township four south, range one west, of lands subject to entry in the S't Stephen's land office, Alabama, being 692 78-100 acres, more or less; saving and excepting also the lots and tracts in the county of Mobile, State of Alabama, outside of the line of the railway, outside of its depots, and outside of the corporate limits of the city of Mobile, being lots and lands derived by private purchase not yet fully paid for, and not included in the list of lands in Mobile County derived under and by the act of Congress; and saving and reserving the rights and liens that may attach to the roadway and construction thereon in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that said State in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz, one hundred and eighteen miles, which aid is provided for by law of that State, and, if used by said Mobile and Ohio Railroad, the said prior lien in favor of said State will be to the extent of said State aid, not exceeding ten thousand dollars per mile. To have and to hold the said premises hereinbefore set forth to the said Ketchum, Palmer, and Hallett, their survivors or successors, for the benefit, security, and advantage of the person or persons, or corporations, or any other party who shall or may be holders
1030 of the before-described bonds, or any of them, conditioned as follows:

The said Ketchum, Palmer, and Hallett shall at once have possession and control of the lands donated by act of Congress, and set forth in the before-mentioned certificate of the Secretary of the Interior of February fourth, one thousand eight hundred and fifty-three, for 1,156,658 92-100 acres, and any other lands that may be obtained for the said company by the present or by future acts of Congress, with authority to devise and determine rules of management, of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds; said Ketchum, Palmer, and Hallett rendering an exhibit and account of their doings on or before the first days of January of each and every year during the period of the trust herein made, to the said parties of the first part. The said Ketchum, Palmer, and Hallett shall have full authority to appoint an agent or agents to attend to said land business, who shall account for his or their doings to them, paying over to them all the proceeds of sales or rents, or profits derived from said lands. It is provided, however, that unless the said railroad company should be in default on any obligations connected with said bonds no sale of said lands shall be made, except by and with the advice and consent of said company. The said party of the second part, themselves, or regularly constituted attorney, are hereby vested with authority to issue proper and sufficient deeds of muniments of title. As to other items of assets of real estate, tolls, or income of said company, they are to remain in the possession or under the control of the said company, except the said company become in default for the payment of said bonds or interest, or any portion thereof; in such case the said party of the second part is hereby vested with full authority to take possession and control of all and singular the entire estate and properties of whatsoever name or kind, and hold the same for the benefit of any and all creditors, with such other action and disposition as shall be equitable to all concerned, provided the said party of the second part shall not claim to take such possession and control unless said company remains in default of payment of the said bonds or interest for the space of three months after being due and payable.

The Mobile and Ohio Railroad Company further covenant and agree to make to said party of the second part, their survivors or successors, any further assurance or instrument as may be necessary at any future time to carry out the equitable intentions of this deed; and the
1031 said company, for themselves, their successors, and assigns, do hereby covenant and agree with the said Ketchum, Palmer, and Hallett, or their successors, in behalf of the bondholders, that the money received on the said bonds shall be applied in good faith, on the construction and completion of said road, and putting the same into operation.

And on the failure of the said company to do and perform any and all the covenants herein agreed, the said Ketchum, Palmer, and Hallett, or survivors or successors, upon the request in writing of any one or more of the bondholders, may and shall take actual possession of all said railroad, and the other property and effects of said company hereby conveyed, transferred, and assigned, or so intended to be, and through the agency of such person or persons as they may from time to time appoint, may receive and collect the tolls, incomes, and profits of the same, for the purpose of the security hereinbefore declared, and may sell and dispose of the said road and other property hereby mortgaged, conveyed, or assigned, or so intended to be, and all benefit and equity of redemption of the said company therein, always with the benefit of franchise, and subject to the conditions thereof, at public auction, giving reasonable public notice of the time and place of sale, and as the attorney or attorneys of the said company for that purpose, by these presents duly constituted, to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance for the real estate, in fee-simple or otherwise, according to the title of said company therein, and good and proper transfer and assignment of the personal property, and out of the money arising either from the income or profits of the said road, and other mortgaged, conveyed, or assigned property or effects of the sale thereof, after deducting the expenses incurred in carrying on the business of the road, and in keeping the same in repair, together with the costs, charges, and counsel fees incurred in their proceedings, and a reasonable compensation to themselves for their services; in case of such sale, to apply so much of the residue as may be necessary to pay the principal and interest which may be due on said bonds issued as aforesaid, rendering the balance of said moneys, if any shall remain, to said company. And the sale so made shall be a perpetual bar against the said parties of the first part, and the persons claiming by, from, or under them. Provided, however, and it is hereby expressly understood and agreed, that neither of them, the said Ketchum, Palmer, and Hallett, or their successors or assigns, shall in no manner be liable or responsible for any act of the other to which he does not expressly
1032 assent, and that they shall be accountable only for the exercise of reasonable care and diligence in their management in the premises.

And it is further covenanted and agreed between the said parties that if either of them, the said Ketchum, Palmer, or Hallett, shall at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company and the said Ketchum, Palmer, and Hallett, or either of them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver all and singular such other and further instruments or assurances as may be necessary to enable such person or persons so selected to act in the execution of these presents. But until such selection of some person or persons to fill such vacancy or vacancies, and the execution of the papers requisite to enable him or them to act, the act or acts of the other shall, notwithstanding such vacancy, be in all respects legal and valid. And it is expressly understood that the conveyance made by this indenture is only on and for the present rights, interest, and property, and in the future to be acquired rights, interest, and property, and appurtenances of the parties of the first part as do or may exist on the line of said railroad from the city of Mobile to the mouth of the Ohio River. And it is hereby further provided, and these presents are upon the express condition, that upon the payment or satisfaction of the principal and interest of the aforesaid bonds, the estate hereby granted and conveyed to Ketchum, Palmer, and Hallett, their survivors or successors, and the property and effects mortgaged, conveyed, or transferred to them, shall cease and become void; and the said company shall thereupon be fully and immediately reinvested with the same both in law and equity, and in fact, without any entry or other act whatever.

In witness whereof the parties of the first part have caused these presents to be acknowledged by their president, and attested to in their
behalf by their president and secretary, and their common seal
1033 thereunto affixed; and the said parties of the second part hereunto set their hands and seals the day and year first above written.

[SEAL.] (Signed) SIDNEY SMITH,
President Mobile and Ohio Railroad Company.

A. F. IRWIN,
Secretary M. & O. R. R. Co.

We accept the above trust.

MORRIS KETCHUM,
JOHN J. PALMER,
W. R. HALLETT,
Trustees.

1034

EXHIBIT B.

A.

(Copy of bond.)

No. .] UNITED STATES OF AMERICA. [No.

First Mortgage Bond of the Mobile & Ohio Railroad Company.

£225 stg.] Six per cent. bond of £225 sterling, for superstructure and equipment of their railroad from Mobile to the Ohio River. [£225 stg.

This certifies, That the Mobile and Ohio Railroad Company is indebted to or bearer, in the sum of two hundred and twenty-five pounds sterling, for value received. In consideration whereof, the said

Mobile and Ohio Railroad Company do hereby promise and agree to pay to or bearer, the said sum of two hundred and twenty-five pounds sterling, on the presentation of this bond at the counting-house of Geo. Peabody & Co., London, on the 1st of November, A. D. 1883. And the said Mobile and Ohio Railroad Company do hereby promise and agree to pay interest thereon at the rate of six per centum per annum, semi-annually, on the first days of May and November, in each and every year ensuing the date hereof, until said principal sum shall be paid, upon the presentation and delivery of the coupons hereto annexed, at the counting-house aforesaid, as they severally become due and payable.

This bond is one of six thousand, of like tenor and date, issued by the authority of the board of directors of the said Mobile and Ohio 1035 Railroad Company, and in accordance with its charter, for a loan of thirteen hundred and fifty thousand pounds sterling for the superstructure and equipment only of said road. And the holder is entitled to the security to be derived from a deed of trust, bearing even date herewith, on the said railroad, its rights, and franchises of every description, on the real estate of said company, and on the lands donated by act of Congress, of date 20th of September, 1850, to the States of Illinois, Mississippi, and Alabama, to aid in the construction of a railroad from Chicago, State of Illinois, to Mobile, State of Alabama. Said lands have been selected and located to the extent of 1,156,658 acres, as described in the certificate of the General Land Office, approved and certified by the honorable Secretary of the Department of the Interior, at Washington, 4th February, 1853. The fee of said lands has been transferred by the legislatures of Alabama and Mississippi to this company, with full power and authority to dispose of them, as shall secure the construction of said railroad, as will more fully appear in said deed of trust, executed and delivered to John J. Palmer and Morris Ketchum, of New York, and William R. Hallett, of Mobile.

The said Mobile and Ohio Railroad Company further agree that this bond, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery.

In witness whereof the said railroad company have caused this bond to be signed by their president and treasurer, and the corporate seal to be affixed, at their office in the city of Mobile, this first day of November, A. D. 1853.

[SEAL.] (Signed) SIDNEY SMITH,
President.

(Signed) A. F. IRWIN, *Treasurer.*

1036 (Copy of endorsement on the bond.)

£225 sterling.

UNITED STATES OF AMERICA.

Mobile and Ohio Railroad Company bonds for superstructure and equipment.

Six per cent. interest, payable semi-annually. Coupons each £6 15s., payable at the counting-house of George Peabody & Co., London, £6 15s. on 1st of May and £6 15s. on 1st of November.

The principal secured by a first and only mortgage of railroad, equipments, and chartered rights, and by a deed of trust upon, viz:

100,000 acres town sites and 1st quality land, worth 42 shillings per acre......	£210,000
1,056,658 acres of other lands, various qualities, and heavily timbered, worth 10 shillings per acre..........	528,329
Subscriptions partly paid, and all payable by 1st January, 1855, in cash and completed contracts	924,264
Total value of lands, and cost of railroad, exclusive of Tennessee loan of £196,000, is..........	2,990,000
Total issue of bonds is..........	1,350,000

Countersigned.

MORRIS KETCHUM,
J. J. PALMER,
W. R. HALLETT,
Trustees.

Each bond may be used in the purchase of any of the company's land designated for sale, and at the selling price. The proceeds of all lands sold, except for bonds, to be invested by the trustees as a sinking-fund for the redemption of the bonds.

INTEREST SECURED

by a pledge of the surplus income from the earnings of the completed portions of the road, and the other property of the company.

Trust-deed recorded in the office of records of Mobile County, State of Alabama, an authenticated copy of the same in the hands of George Peabody & Co., London.

1037 *Order allowing compl'ts leave to sue receivers.*

United States circuit court, in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS TRUSTEE, &C.,
vs.
MOBILE & OHIO RAILROAD COMPANY, WILLIAM B. DUNCAN, and ANDREW F. ELLIOTT, as receivers of the Mobile & Ohio Railroad Company et al.

Upon the bill of complaint herein verified, and on motion of E. L. Andrews, esq., and B. F. Jonas, esq., of counsel for complainant, for leave therein to sue and implead William B. Duncan and Andrew F. Elliott, as receivers of the Mobile & Ohio Railroad Company, under the orders of this court, it is hereby ordered that the complainant in said bill, Morris Ketchum, have leave to implead and sue herein the receivers of the Mobile & Ohio Railroad Company, as such receivers, and to file amended and supplemental bills herein against such receivers, and take any other proceedings against such receivers herein.

March 11th, 1876.

(Signed) W. B. WOODS, *Judge.*

(Endorsed:) Notice acknowledged. (Signed) J. A. Campbell, for Duncan & Elliott. Filed March 14th, 1876. (Signed) N. W. Trimble, clerk.

Circuit court of the United States for the fifth judicial circuit and the southern district of Alabama, at Mobile.

MORRIS KETCHUM, SURVIVING TRUSTEE, &C., complainant,
vs.
THE MOBILE & OHIO RAILROAD COMPANY, W'm D. Dunn, George H. Young, and W'm Dickson and W'm Butler Duncan & A. Foster Elliott, defendant, as receivers.
} In equity.

The President of the United States of America to the Mobile and Ohio Railroad Company & W'm D. Dunn, George H. Young & W'm Dickson, and W'm B. Duncan, of the State of New York, & A. Foster Elliott, of the State of Louisiana, who are citizens of the district aforesaid and of the State of Alabama, greeting:

You and each of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you and each of you personally be and appear before the judge of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, at Mobile, at the clerk's office of the said court in the city of Mobile, at rules to be had on the first Monday of May (being the 1st day of said month) next, to plead to, answer, or demur to a bill of complaint exhibited against you in the said court by Morris Ketchum, surviving trustee, &c., who is a citizen of the 1039 State of New York, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit. And have there then this writ.

To the marshal of the United States for said district to execute.

Witness honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court at Mobile, this the 15th day of March, in the year of our Lord one thousand eight hundred and seventy-six, and the Independence of the United States of America the ninety-ninth year.

Attest:
[SEAL.] N. W. TRIMBLE,
Clerk, &c.

NOTE.—The defendants are required and hereby notified to enter appearance in the above-entitled cause, in the clerk's office of said court in the custom-house building, in the city of Mobile, on or before the rule day next ensuing, to wit, the first Monday of May, anno Domini 1876, or the bill may be taken pro confesso against them.

N. W. TRIMBLE,
Clerk, &c.

E. L. ANDREWS, LABATT, ARIONE & CHATAU, B. F. JONAS,
Complainant's Solicitors.

Marshal's return.

Received in office this 15th day of March, A. D. 1876, and executed by serving a copy of the within subpœna on William D. Dunn, T. Haskins Du Puy, March 15th, 1876; W'm Butler Duncan, April 5th, 1876.

R. W. HEALY,
U. S. Marshal,
By MICHAEL NUGENT,
Special Deputy.

United States circuit court, fifth judicial circuit, southern district of Alabama.

MORRIS KETCHUM, AS TRUSTEE, &c.,
vs.
MOBILE AND OHIO RAILROAD CO. ET AL.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

An amendment to an original bill in equity entitled as above, and heretofore filed in this court on the 14th day of March, 1876.

On the second line of the first page of the body of the bill, after the words "of the" insert "Town of Westport," and on the same line, after the words "State of" insert the word "Connecticut."

On the fifth line of the same page, after the words "Railroad Company" insert the words "a citizen of the State of Alabama, having its principal office in the city of Mobile, in the said State, and against
1041 William B. Duncan, Samuel L. M. Barlow, Robert T. Wilson, all
residents of the city of New York and citizens of the State of New York, and against Andrew F. Elliott, a resident of the city of New Orleans and a citizen of the State of Louisiana, and against William D. Dunn, Robert C. Crawford, and John Reid, j'r, residents of the city of Mobile and citizens of the State of Alabama."

After the foregoing amendment insert as follows: "And thereupon your orator complains and says that your orator is a resident of the town of Westport and is a citizen of the State of Connecticut, and that the defendant, the Mobile and Ohio Railroad Company, is".

On the tenth line of the second page, after the words "aforesaid acts" insert "and the said Mobile and Ohio Railroad Company is a body politic and corporate, incorporated under the laws of the State of Alabama, and is a citizen of the State of Alabama, and its corporate existence has been recognized by the laws of the States above mentioned, and
1042 it has and holds property in said States, and the said corporation
became and is a single and the same corporation, and should be held as an entirety, and all the property held under the mortgage hereinafter mentioned is held as an entirety, and the said Mobile and Ohio Railroad Co. has its principal office and place of business in the city of Mobile and State of Alabama."

On the 17th line of 2d page, after the word "Mississippi" insert "that the defendants William B. Duncan, Samuel L. M. Barlow, Robert T. Wilson, and Adrian Iselin are citizens of the State of New York; *that the defendants William B. Duncan, Samuel L. M. Barlow, Robert T. Wilson, and Adrian Iselin are citizens of the State of New York;* that the defendants William D. Dunn, William Dickson, John Reid, j'r, and Robert C. Crawford are citizens of the State of Alabama; that the said George H. Young is a citizen of the State of Mississippi;" that the defendant A. Foster Elliott is a citizen of the State of Louisiana.

On the 22d page, 25th line, after the words "your orator" insert the following: "And your orator also avers that the said Mobile &
1043 Ohio Railroad Co. executed a mortgage of the premises and prop-
erty secured by the first mortgage aforesaid and situated in the State of Tennessee, being that part of the line of said railroad situated

in said State; that the said mortgage was executed to Adrian Iselin, William B. Duncan, and Robert T. Wilson aforesaid as trustees for the holders of certain bonds which have been issued and are now outstanding in whole or in part, and that the said mortgage constituted a subordinate lien upon the property mortgaged to secure the bonds represented by your orator."

And your orator further avers that the said Mobile and Ohio Railroad Co. has a mortgage upon its line of railroad known as the Gainesville branch to William D. Dunn, Robert C. Crawford, and John Reid, j'r, as trustees for the holders of certain bonds which have been issued and are now outstanding in whole or in part, and the holders of the bonds secured by your orator's mortgage are entitled to the surplus of the income from said Gainesville branch after the payment of the interest on said bonds, and are entitled to the surplus arising from the sale of said Gainesville branch after the payment of the principal of said Gainesville branch bonds. 1044

Strike out all of the paragraph on the 22nd and 23rd pages, commencing at 27th line of the 22nd page and ending at 7th line of the 23rd page.

On the 26th page, 16th line, after the words "tolls and income" insert the following: "That your orator is a trustee as aforesaid, and that he has no personal interest in the said bonds; that his sole object, purpose, and desire is to perform his duty as such trustee towards the bondholders, and to protect their interest and defend the trust; that many doubtful questions arise as to his duties in the premises; that he needs and claims the protection of the court and its instructions so that he may properly discharge his trusteeship in accordance with law."

1045 Insert on the 2d line of page 22, after the word "May" the words "upon its corporate oath and according to its best and utmost," and after the word "incumbrance" insert the words "information and belief," and after the word "numbered," on the 25th line of the 26th page, insert the word "mentioned," and after the word "seal," on the 26th line of the 26th page, "as by the note hereunder written it is required to answer, that is, to say."

EDWARD L. ANDREWS,
Solicitor for Complainant and of Counsel.

To the Mobile and Ohio Railroad Company, W'm B. Duncan, Andrew F. Elliott as receivers.

To N. W. Trimble, clerk of the circuit court of the United States for the southern district of Alabama.

Marshal's return.—Filed April 5th, 1876.—*N. W. Trimble, clerk.*

Received in marshal's office April 6th, 1876, and executed on the same day by delivering copy of the within amendment to original bill to W'm Butler Duncan and a copy to F. Haskins Du Puy this 6th day of April, 1876, at 11.50 a. m.

R. W. HEALY,
U. S. Marshal.
By GEO. COTTIN,
Deputy.

U. S. circuit court, fifth judicial circuit, southern district of Alabama.

MORRIS KETCHUM
vs.
MOBILE & OHIO RAILROAD CO. ET ALS.

Comes William Butler Duncan, who, being duly sworn, on his oath saith:

He does not admit that complainant is the trustee of the first mortgage sterling bonds of the Mobile & Ohio R. R. Co.—said Ketchum was one of the parties originally appointed trustees in said deed. Deponent, on information which he believes to be true, states that said Ketchum did not faithfully perform the duties of the trust, but neglected the same and sought to use his powers as trustee to his private advantage; refused, upon the death of his co-trustees, to unite with said company in the appointment of proper successors, and demanded conditions of the company which were dangerous to the trust and injurious to the company and the trust property.

The said company then sought his removal from said trust, by bill in the court of chancery at Mobile, for good causes alleged in the bill and in the mode pointed out by the laws of Alabama; copies of the letters from the president of the company to M. Ketchum and M'r O. S. Beers, then auditor of the R. R. Co., which were furnished to counsel with instructions to file the bill, are herewith produced (A B). Upon said bill a decree was rendered removing said Ketchum and appointing new trustees, to wit, Charles Walsh, George H. Young, and Alexander 1047 Jackson, in the room and stead of said Ketchum and the deceased trustees; a full and not a partial copy of the record of said course and proceedings will be produced herewith. No appeal has ever been taken from said decree, and no proceedings have been had to vacate or in any manner quailify said decree, and deponent is advised that the same remains and is a valid and binding decree.

Said new trustees accepted the trust, performed the duties thereof, as valid and lawful trustees, without question or challenge by said Ketchum or any person whatever, till their resignation in April, 1875, when deponent and A. Foster Elliott were appointed trustees under said mortgage and deed of trust, by the then continuing trustee and the said corporation, in the mode and manner prescribed by said deed, and have executed the duties of the trust, with right and title unassailed by any person, and not at all by Ketchum, till the filing of his bill in this cause on the 14th March, 1876.

The charges of collusion and deceit made in the bill, as to the mode in which respondent and his co-trustee were appointed, are untrue; they were regularly, in good faith and for honest purposes, and upon resignation, in good faith tendered and accepted, appointed to their present position of trustees.

It is not true that deponent and Elliott were or are partners in business in New York; M'r Elliott was not a member of that firm of Duncan, Sherman & Co., and had no interest in its capital, profits, or business.

It is not true that the only ground alleged by the corporation for the removal of Ketchum from the trusteeship was the charge of his being an alien enemy to the Confederate States. Good causes for his removal existed in his own conduct with regard to the trust property.

Said Ketchum has at no time since the conclusion of the late war, and while the courts and the country have been fully open to him, in any manner whatever asserted his rights as trustee under said mortgage. 1048 He has performed none of the duties of the trust; he has not offered to perform any of them, has not sought to perform them and has, in fact, as this deponent is informed and verily believes made no communication or application on the subject to said R. R. company or any officer thereof, or to the said above-named trustees or any of them. He has taken no step, and has done no act of any kind whatever, in the nature of a single duty under said trust; said Ketchum, in plain fact, during all this time has abandoned the said trusteeship, and so far as he was concerned, has allowed the whole business to shift for itself, without any care or consideration extended to it by him.

This respondent is informed by the deposition of said Ketchum on file in this court, that said Ketchum is not the holder of any bonds of said corporation, or of its stock, so that this deponent saith that said Ketchum has no interest in this suit and trust fund either as trustee or beneficiary.

This deponent saith that, under the powers of the deed, with the assent of the corporation, and on the request of holders of coupons and first-mortgage bonds of said company, in May, 1875, he and his co-trustee took possession of all the property embraced in said mortgage, and have been in possession ever since. That by reason of the nature of the property, its location in four States, and the different liens thereon by mortgages of different dates, and judgments against the company, and the existence of debts of almost every conceivable variety of form, the trustees found themselves in absolute need of the instructions and protection of the courts having jurisdiction over the property, said trustees with the approval of the corporation and of many of the holders of the bonds secured by said mortgage, made that application by bills in equity to the several courts and for the security of all parties, offered to account as receivers, and under such sanction as the court might direct. Such orders have been made, and are part of the records 1049 of this court, and under them this deponent and his associate has been acting, they have filed reports and accounts as directed by the court, these accounts and reports are now under orders of this in process of examination by a master regularly appointed for that purpose.

This deponent denies all collusion in obtaining these orders; they were all obtained on notice to the parties of record, all the parties whom said trustees and receivers could put upon the record. No information has been withheld from persons entitled to knowledge and sought it. The best skill that could be obtained has been secured, and is now busy about the management of the trust property; the utmost economy has been used in the business thus confided to this deponent and his associate. Deponent attaches hereto a letter he addressed to some enquirers, bondholders, and shown to others, and which by their request has been published.

Deponent with this also presents to the court the written approval of a large number of bondholders, and a letter of approval by the agent of the English holders such as could be gathered at the short notice allowed to deponent.

This deponent denies all charges of mis-appropriation of the moneys of the trust; he denies all favoritism to any party or any class of creditors, and that he is seeking the advantage of any party or class. All charges and insinuations of that character he denounces as untrue and false, and known to be so by the parties making them.

The statements of the complainant as to the coupons due in May and November, 1874, are not true; said coupons were not paid by the company nor by deponent or his firm, or by any other person for the company; they were not, after payment, delivered to Alexander Duncan or any other person; they were never paid by or for the R. R. Co. at all. They were not payable in New York but in London, and those with a special agreement thereon at Mobile.

1050 The company knew they could not meet their interest in May, and applied to the firm of deponent to purchase the coupons for that month and retain them. Said firm agreed to do so; the directors of the company being sanguine that their business, then greatly depressed, would revive, and that a little time only was needed to enable them to redeem the coupons so purchased. To effect this, Duncan, Sherman & Co. purchased said coupons, and afterwards borrowed the money so used from Alexander Duncan and others, mainly from M'r Duncan, and subsequently transferred the coupons to them. The same hopefulness existed in the directors as to the interest falling due in November, 1874, and the same arrangements were made regarding them. Neither the coupons for May and November, 1874, were paid by the company at all, nor were they dealt with in the usual manner. At Mobile, after being verified as correct, they were returned by the treasurer of the company to the holder with the information that the Bank of Mobile would advance the value of them. At London those for May were purchased by the Union Bank of London, correspondents of Duncan, Sherman & Co., who charged the costs thereof to the account of that firm and remitted to them the coupons uncanceled. Those for November were purchased by the Credit Foncier of London, in like manner. Some were purchased by deponent's firm in New York, but usually at a discount for trouble of remittance and collection, and no attempt was made to mislead the holder, and any statement to the contrary is false. All said coupons for May and November, 1874, purchased by or for Duncan, Sherman & Co., Alexander Duncan, or any other party now the holder of the same, were afterwards presented to the Mobile & Ohio Railroad Company and payment demanded, which was refused.

Deponent cannot answer what knowledge complainant had of the
matter. He doubts if he had any knowledge, and verily believes
1051 he took no interest in the matter, and now puts the gloss he ap-
plies to the transaction not on any knowledge at all, but at the suggestion of parties hostile to deponent and whose course is not dictated by regard for the bondholders, but to advance selfish schemes in the possession and management of this trust fund. But whether he knew or not, the fact that these coupons had not been paid by the railroad company, but now still outstanding, was distinctly stated in the last annual report to the stockholders at the annual meeting in April, 1875, and which was immediately thereafter published and extensively circulated among all persons interested. Deponent repeats that said coupons were not paid by the railroad company, nor by any moneys of the company, either owned by or loaned to the company; they were purchased at the request and from friendly regard to the company and by means in which the company had no interest and by independent parties, with the design not to press payment then, but holding them with all rights and liens belonging to them for their security, that the railroad company might have a reasonable time to recover its business and pay them off. Any other representation of the purchase of these May and November coupons, 1874, is entirely untrue, and as made in complainant's affidavit is false.

If it is intended, as seems from these statements of complainant, to charge these parties with the intention to pay this claim at the expense of holders of prior claims, or to use the trust power in their hands for that purpose, it is false.

The claims of the holders of these coupons has been brought to the attention of the court and the merits of these and all other claims upon the trust property in the hands of the trustees has been referred to the master for his examination and report. Deponent has been advised that such course was his duty, and he has cheerfully submitted this with all other questions of rights and priorities to the decision of the court, and will as cheerfully obey its instructions.

1052 Further, deponent admits that unsecured claims alleged to be for money, supplies, and materials have been presented to the trustees and pressed upon them. It is equally true that these claims have not been recognized by them. They have submitted the rights claimed to the court for its direction and instruction. The court has referred the facts for investigation to the master, who has returned his report thereon, and upon which the court will doubtless at a proper time make its judgment. Deponent denies that the receivers and trustees have thereby done anything other than they should have done. Their duty is not to pay any claim not clearly right and as such within the orders of the court. They have not paid the claims thus complained of. Said claims stand now as unrecognized by these receivers as they have always stood. Receivers are in no way committed to them or their recognition as to them; they propose to do what the court may direct after learning the facts on which the claims are based and in view of the mortgages and liens, all of which are fully set out in the bill they have filed in the cause.

Deponent denies that in their conduct in this respect they have done other than their duty as receivers of the property, which they hold for the benefit of such parties as the court may find and decree to be entitled thereto.

The statement that deponent has been a dealer and speculator in floating claims against the company is false; it is false that he has misapplied moneys which were remitted for payment of interest to the payment of floating claims held by him or his firm of Duncan, Sherman & Co., and which had been purchased at discount.

Deponent, nor his firm, nor any connection of them or either, was never engaged in such business, and neither he nor W'm D. Shipman for him, in his right, nor any other person for him, holds any such claim.

1053 Deponent did at sundry times, by himself or firm, advance money for the company or the trust prior to 26th July, 1875. The item of $9,740 mentioned in the supplemental affidavit of Ketchum is for money advanced to pay interest on bonds known as convertible. To this amount his firm is a creditor of the company, and it must share the fate of claims of its class after payment of the first and second mortgage debts; neither deponent, nor his firm, nor any person for them, has advanced any other claim for its payment.

The item of $16,429.23 is money advanced to pay for iron purchased for trustees, for the use of the road, and is an item for necessary disbursement in the business of the trust.

The item of $29,945.57 is for money paid to the Government of the United States for a judgment obtained by them in compromise of a claim of over $60,000 principal for duty on iron imported by the R. R. company, and for which suit was pending when the trustees took possession, and for which the United States claimed a lien on the iron in the track. This payment was a necessary disbursement by the trustees and made with the approval of the court.

The item of $20,000 in schedule bills discounted, mentioned in complainant's affidavit, represents an unsettled overdraft on deponent's firm. No portion of this has been paid by receivers, and the amount and merits of the claim remain to be settled under the orders of this court, with the class to which it belongs.

The item of $78,968.78 Walsh, Crawford & Co., is an unfortunate mercantile debt, in no way connected with claims against the R. R. company, and is introduced without reason into this matter, and for malicious motive and intent.

The claims above were not obtained on speculation by this deponent, nor were any others. They were all in legitimate business and are original claims and not acquired from third parties.

Any attempt to implicate deponent or his firm with the dealing
1054 in floating debt of the company, or to obtain payment of the same
for themselves or friends, by any influence or opportunity as trustees or receivers, is without any foundation in fact.

Deponent has not sought, attempted or intended any such thing. He and his co-receiver have sought to obtain the instruction of the court, not to advance their own claims but in good faith for the performance of their whole duty as receivers of the court, and upon presentation of the facts. The virtuous criticism of complainant upon their course is not justified by the facts, and his judgment upon the bearing of the settlement if proper to be made upon the success of a future reorganization of the corporation, has about the same value.

The reduction of the floating debt from $1,166,492.19 in January, 1875, to $529,598 in May, 1875, is not correctly stated, but if made, as alleged in said affidavit, was made before deponent and Elliot became trustees of the property or had the right to the possession on default of the R. R. Comp'ny, and therefore the inference attempted to be made of neglect of duty, and misappropriation of trust funds is false. No such application of the income of the trust property was made by them, and the statement that a large proportion of said payments were made to Duncan, Sherman & Co., for floating debt held by them, is false.

Deponent denies that the conduct of himself and co-trustee and receiver, with regard to this floating debt, and the application of trust money, has been at all wrong or objectionable; he denies that any of the trust fund, which has been received by them, has been wasted, or in any manner misapplied. He denies that anything but the strictest integrity, has been practiced by them, about the business of the trust fund and property and the floating debt of the company.

He denies all the statements of improper conduct, with regard to the coupons due in May and November, 1874. He avers that in all their con-
duct in these particulars, and all others connected with this trust,
1055 that he and his associate Elliot have conducted themselves and
business with fidelity, integrity and care, and that they have in all respects been loyal to the duties of their position, and the interests confided to them. He denies that there is in their past management any reasonable ground to allege any risk or damage of loss or injury to the property in their hands, or that there is any cause to fear such. He denies that their character or past conduct justifies any suspicion or fear of any malpractice or breach of trust on their part, or that they or either of them will do other than deal justly and faithfully with all the interests entrusted to them by the court. He denies that they are so inter-

ested in the lower securities of the company as to render them, or either of them unfit to be continued in the trusts and confidence heretofore reposed in them by the court, or that the commercial misfortunes of deponent have placed him in any such position of dependence as unfits him to execute the duties of receiver of the Mobile & Ohio R. R. Company. He has not neglected the duties of his office, but has given them his regular attention and has frequently at Mobile, whenever his personal presence has been required for any purpose whatever, and the same is true of his associate Elliot, who resides within six hours' run of the chief office of the company, where its general business is transacted. Deponent is frequently on the line of the road, and keeps himself carefully informed of all the matters of its business. The daily details are in the care of competent clerks and subordinates, and the general supervision of the traffic and business of the line, as a common carrier of freight and passengers, is in the charge of a trained, experienced and educated railroad engineer and manager, with whom deponent, when not present personally, is in daily and almost hourly intercourse by mail and telegraph. The accounting department is in the care of a thoroughly trained, educated and experienced railroad accountant, and de-
1056 ponent with pride points to the fact that perfect discipline and order prevails among the employees of the company. The trains are run regularly and safely. The road has been gradually improved with the rolling and locomotive stock, and is being brought to a condition of great efficiency, so as to ensure the largest returns with the smallest outlay. All employees and contractors are regularly paid their just demands, and the dwellers along the line are generally satisfied with the business and workings of the road.

Deponent admits that he has met with commercial misfortunes, and as is not usually the fact in such cases, he has been subjected to many harsh and unjust charges and suspicious, and has been subjected to some annoying suits and legal proceedings.

He denies that he has failed in the performance of any duty or obligation upon him in any fiduciary capacity; on the contrary, he avers that he has faithfully met and performed all such obligations, and with pride refers to the judgment of his character and integrity which has been formed of him by men of high commercial and financial character, who express their approval of his appointment as receiver, and their protest against the change prayed for in this complainant's bill in the paper herewith produced to the court. For a more particular answer to the several allegations of complainant's affidavit as to deponent's private business and that of his firm, this deponent refers to and adopts his answer on file in this court to the petition of Georgie Warnes, and the affidavits and documents therewith filed as to the late refusal of the supreme court of New York, or one of its judges, to vacate an order of arrest against this deponent, as alleged in complainant's affidavit, this deponent states an appeal has been taken to the general term of that court, with the approval and concurrence of the judge who made the order, who desires the law of the case settled. The matter in controversy is less than $2,000, and deponent is contending for principle and to prevent unscrupulous process of blackmail upon him.

1057 This deponent and his co-receiver, Elliot, have invited the fullest investigation of their dealings with this trust property, and with the Mobile & Ohio Railroad Company, and of their accounts therewith, and the same has been ordered by the court, with directions to the master, if desired, to inspect all the books of account of the receivers.

This deponent thus offers the fullest security against peculation and misappropriation which can be given. All the books, vouchers, accounts, and reports in the possession of the receivers are now at the service of the master appointed by the court, for examination and investigation.

Deponent denies that any means of concealment or deception on the master have been reserved to himself and associate, and denies that he or his associate have anything to conceal, and denies there is any ground or reason why any change should be made in the receivership or management of this property. This deponent and his associate have given all the bonds required by the court; their sufficiency has not been assailed by the complainant, and cannot be so assailed.

This deponent further states that said Ketchum is not a fit person for either the trusteeship or receivership, as is abundantly shown by the allegations of the bill filed for his removal, a copy of which the complainant does not give, and by the protest of the bondholders herewith produced.

W. B. DUNCAN.

Sworn, &c.

NEW YORK, *July 20th*, 1860.

MORRIS KETCHUM, Esq.:

DEAR SIR: After fully considering the construction you seem to put on our deed of mortgage, and the exercise of power you claim as surviving trustee under it, it becomes my duty to reply and state the conclusions of my mind on the subject.

1058 The mortgage gives no power to the trustees to sell lands or control the proceeds of sales, unless the company make default in payment of interest or principal of the mortgage-bonds, or be guilty of some fraud or misapplication of the funds. The mortgage provides that the trustees shall have power to make sales and direct the application of the proceeds as a sinking fund, and appoint agents to superintend the same. But this power is only conferred in case of forfeiture, for it is expressly provided that until default in payment no sales of land can be made except by the consent of the company. When, therefore, sales take place before default, they must be made in accordance with the mutual consent and agreement of the company and trustees, acting together for the benefit of all parties interested in the fund. In giving this consent and making this agreement as to the manner and terms on which sales are to be made, and the mode of investing proceeds are of course to be arranged. This is the way in which it was done in the sales heretofore authorized, and is the only way in which sales can be legally made. But now Mess'rs Palmer and Hallett being gone, and you being the sole surviving trustee, you propose to change the entire system, and claim a power which, if granted, would put an entire land fund under your personal control. You claim the power to appoint agents and conduct sales and invest proceeds without consulting the company, or obtaining their approval as to the mode of doing it. You have already informed me that you design to put a M'r Wilson (if I don't mistake the name) in possession of the land department. Whether his seat of power is to be at Mobile or at New York you did not inform me, but I suppose at New York, as that seems to be the point to which you intend in future to transfer the management of our land fund.

In the lifetime of your co-trustee, Col. Hallett, you refused to allow him, or any one else, to make deeds in Mobile for lands sold, by which much trouble and unnecessary expense to the company might have
1059 been saved. Since I have been in this city you were pleased to

express great respect for my business capacity and integrity, and, taking advantage of this seeming confidence, I requested you to authorize me to execute deeds, and offered to give, if desired, bond in any amount you would name that everything should be correctly done. My object was to save the company unnecessary trouble and expense. But you declined this also, saying the deed must and should be executed in New York.

Under instructions from the board of directors, I proposed the names of M'r Charles Walsh, the successor of Col. Hallett in the presidency of the Bank of Mobile, and M'r Parker (another gentleman distinguished for his business capacity and integrity), as trustees to fill the vacancies occasioned by the deaths of Col. Hallett and M'r Palmer. You made no objection to the fitness of either of them for the faithful execution of the trust, but enquired what compensation or salary would be paid to them and you, in the event you consented to their appointment. I replied that no such question had been raised, but that whatever might be paid to either of them would, of course, be paid to you. That certainly no such question ought to be raised as a condition on which you would give your consent to their appointment. You seemed not to be satisfied with this, and took time to consider the matter until next day. At our meeting the next day you informed me that you had come to the conclusion to send a communication to the board of directors ratifying the appointment of either M'r Walsh or M'r Parker, but leaving the other out, and nominating myself in his place. To this I interposed candid and earnest objections, but you overruled my objections and said I need feel no delicacy about it, because the movement was your own, and would be most satisfactory to the bondholders. At last, at your apparent earnest solicitations, and in my extreme desire
to put an end to further conflict, I consented that you might
1060 nominate me as one of the trustees. In giving this consent, I feel
sure that Mess'rs Walsh and Parker, and all others who knew
me, would appreciate my object and acquit me of all selfish motives.

As soon as I had distinctly given my consent, you said you would then address the board of directors, making the nominations, and proposing the "terms" on which they were to be confirmed. I promptly enquired what "terms" you alluded to. You replied that you thought it most proper that you and the board should arrange the matter between yourselves, and that the board should dispose of it in my absence and without my knowledge until after it was closed. I replied that this seemed proper enough, but that if any "terms" as a condition of my appointment were to be imposed, it was proper that I should know what these terms were. You then disclosed to me that the terms to which you referred were that the compensation to be given to the trustees should be first settled. I replied that, for myself, I intended to accept no compensation, and could not allow my name presented to the board with any such terms or conditions annexed. You then declined nominating me, and also declined to confirm the nominations of Mess'rs Walsh and Parker unless your compensation was fixed in advance.

I then appealed to you to consent that the company might sell lands for bonds, the bonds to be canceled and immediately delivered up, as this measure was of great importance as well to the bondholders as to the company; but you declined giving your consent, and our conference closed. I deeply regret this condition of things, but I have done my whole duty, and can do no more. To allow a trustee under a mortgage, every time a measure is proposed necessary for the success of our enterprise, to append, before he will give his consent, a condition for his personal benefit, would put us on "the road to ruin," over which so many American enterprises by similar means have gone.

1061 As to the question of compensation, the trustees have done nothing but sign the mortgage bonds and two or three papers authorizing the sale of lands. For years the company have appealed to you to give your assent to measures of the greatest importance to our success, but no response has been given, and we have been left to struggle on with no "aid" or "comfort" from you. During the last three years, if not longer, there is not to be found, and you cannot exhibit, a single act of the trustees in connection with the affairs of the company or its land fund. The mortgage requires annual reports by you to the company, and you never have made one. Regular reports of our sales have been made to you, and you have never acknowledged the receipt of one. It was your duty to make deeds, but not one has been made. By this our sales have been retarded, because purchasers feared they could get no titles. Purchasers of lands previously sold refused to make payments until deeds were ready for delivery, and we were thereby deprived of the use of money in times of our greatest need. Fifty thousand dollars would not compensate our company for the damage by this neglect.

The trustees saw proper to retain in their hands eighteen thousand dollars of our bonds, with back coupons to the amount of several thousand, making in all some twenty-two or three thousand dollars. This is far, very far, beyond any reasonable compensation for the services performed and hereafter to be performed, to say nothing of the positive damage inflicted on us by a total neglect of duty, to which I have referred. To buy peace and avoid an open rupture, I have proposed to give this up and let it be retained, provided no further claim for services is set up, now or hereafter. But this seems not to be satisfactory. You claim the right to decide on the value of your own services and to fix your own compensation. You further declare you will appoint your own agents, and, of course, fix their salaries and have them responsible to you alone. You further declare that the land-fund must pass
1062 through your hands and through the hands of agents appointed by you, and responsible to no one but you.

These facts and this extraordinary claim of power brings us to a crisis. To have an open rupture with our only surviving trustee is bad enough, for he has the power to do us harm, and force us to make an appeal to the courts of the country for protection and relief.

But to submit to this astonishing claim of power would be worse. It would transfer our entire land-fund from the control of our company, and put it in hands having no interest in the enterprise beyond the fees and emoluments to be extracted from it. The trustee would fix his own compensation from time to time, and the company must pay it. He would appoint his own agents without limit as to number, and fix their compensation, and the company must foot the bills. The expenses of our land system would be run up to ten times what it is now. The seat of power and responsibility would be transferred from Mobile to New York, and the assets of the company would be put beyond the jurisdiction of the courts of the States in which the trust was created and through which the road runs.

But I have extended this communication beyond my original design. In conclusion, I desire to make one more appeal to you, and request you to reconsider the position you have taken. I think there is not a bondholder in Europe or America who will not, when rightly informed of the facts, say that all we have requested you to do is reasonable and to their interests.

Respectfully, yours,

(Signed) MILTON BROWN,
Pres't M. & O. R. R. Co.

NEW YORK, *July 21st*, 1860.

M'r BEERS:

DEAR SIR: Your dispatch met me on my arrival here on the 18th, but the papers referred to have not yet arrived, but M'r Ketchum 1063 has read me his copy, and we have had two long interviews on the subject, besides dining together at his house. His first effort was an appeal to my fears as to the consequences, if I did not agree forthwith to fix his salary and pay up from the signing of the mortgage until now. This failed. He then changed his attack, by making it an appeal to my vanity. He praised my firmness, my ability, and my great success. He said that from the time of my election he knew the enterprise would succeed; that no man had built up such a reputation as I had, and concluded by inviting me to dine with him, saying that he had no doubt we could arrange all our differences satisfactorily. I ate his dinner and drank his wine, and with a warm and confiding shake of the hand we parted, to meet next day. We met accordingly, and he began to hope that by his appeals to my stomach, through his dinner and wine, and to my vanity, by his speeches, he had me in a good condition, and if he could also get my avarice enlisted by the hope of a salary as trustee, that he and I, acting together, "could make a good thing of it," as the Yankees say when they are about to do a smart thing by cheating somebody. The result of our interview, and the facts relating to the whole affair, are carefully stated in my written reply, a copy of which I herewith enclose. It presents a case of corrupt motive and dishonest purpose never before surpassed.

His character is worse than I supposed. No one who knows him has the least confidence in his integrity. In a conversation with M'r Osborn, president of the Illinois Central, the death of Colonel Hallett was referred to, and I remarked that it left M'r Ketchum the sole trustee under our mortgage. He replied, "Then you are in a hell of a fix!" He then went on to tell me that he was one of the trustees under their mortgage, and also a director in the road; that he managed first to get a fixed salary of fifteen hundred dollars a year. Then, not content with that, taking advantage of his position, he carried his frauds so 1064 far that the other two trustees had to take the trust into their own hands, and the board of directors refused to consult with him. In face of all this, he had the impudence to appear at a meeting of the board. On his entering the room he (Osborn) rose and said to him: "How dare you show your face at a meeting of this board?" He enquired if the board allowed the president to use such language towards him, and no reply was given. He then retired. But he still holds on to his office as trustee. The other two trustees perform the duties and he collects his salary.

Osborn thinks that he never will consent to fill the vacancies except upon conditions that will put the company in his power, or unless at least one of those to be appointed is under his influence, and will unite with him in his frauds. But I think he will soon find himself powerless, and if he can get no funds in his hands, as he certainly cannot beyond what he has, he will probably resign. Of course, we can agree to no appointments except such as are in Mobile, or on the line of the road, and are beyond his fraudulent influences. He is very uneasy about the danger of his paying costs in the bill filed against him and the company at Mobile and in other cases that may be commenced. Tell our counsel to see to the question of costs and make him pay them, and, if necessary, take proof as to his conduct. Tell M'r Hamilton to examine the facts contained in the copy of my letter to Ketchum, and other facts of the case, and write me to Jackson, Tennessee: 1st, as to the power of the Alabama courts to remove him; 2d, how we shall reach him for damage already done; 3d, how we can enforce the appointment of trustees to fill the vacancies, and such other suggestions as may occur to him. File the copy I send you for the inspection of our board and counsel, and any that may desire to see it.

Yours truly,
(Signed) MILTON BROWN,
Pres't M. & O. R. R. Co.

1065 P. S.—I understand Ketchum is now hunting up your report of sales, and says he will stop the suit at Mobile by making a deed, and that he will make deeds in all cases. But if he does, costs already incurred he must pay, for he could have made these deeds long before suit as well as now. By setting up to do things himself, without consulting us, he will be apt to make great mistakes. To execute the deeds he will have to advance the fees. He is getting into trouble.

M. B.

A transcript of the record and proceedings had in a certain cause heretofore pending in the honorable court of chancery held at Mobile, for the first district of the southern chancery division of Alabama, wherein the Mobile & Ohio Railroad Company, a body politic and incorporate, was complainant, and Morris Ketchum, a citizen of the city and State of New York, was defendant.

Original bill.

To the Hon. N. W. Cocke, chancellor of the southern chancery division of the State of Alabama, presiding at Mobile:

1. The Mobile & Ohio Railroad Company, a body politic and incorporate, chartered by the laws of Alabama, and also by the States of Mississippi, Kentucky and Tennessee, respectfully shows to your honor that by virtue of its powers so granted by said States respectively, it has constructed a line of railway from Mobile to the mouth of the Ohio River, and is now running and operating the same.

2. The said company further shows that under and by virtue of purchases, and by grant from the Congress of the United States of America, it has obtained title to and possession of a large quantity of land and real estate. Among this property so owned by the company is a large quantity of vacant land in the States of Alabama and Missis-
1066 sippi which this company obtained from the source above named for the purpose of aiding said company in the construction of said road.

3. The said company further shows that to enable it to proceed and complete its said railway, said company has been compelled to borrow large sums of money for the payment of said loan, and also in some instances in payment for work and materials furnished the company by sundry parties, it has issued its bonds for the sum of two hundred and twenty-five pounds, of the currency of Great Britain, each, which are commonly known in the market as sterling bonds. These bonds are made payable in London, England, in the year 1883, at the office of

George Peabody & Co., and bear interest at the annual rent of six per cent., which is payable semi-annually at the place aforesaid on the first days of May and November. Six thousand of these bonds have been executed, amounting to the sum of thirteen hundred thousand six hundred and fifty pounds sterling, English currency.

4. Further your complainant respectfully shows to your honor, that on the first day of November, 1853, said Mobile & Ohio Railroad Company, by its deed of that date, conveyed to Morris Ketchum and John J. Palmer, of the city and State of New York, and to William R. Hallett, of the city of Mobile, and State of Alabama, the better to secure the payment of the bonds hereinbefore described and every part thereof, with interest accruing thereon, the following described property, to wit: All the said Mobile & Ohio Railroad lying between its respective termini, constructed and to be constructed, together with all and singular the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned and which may hereafter be owned by said company, including the said lands donated by the Congress of the United States, that is 419,528$\frac{56}{100}$ acres of land in the State of Alabama, and 737,130$\frac{36}{100}$ acres of land in the State of Mississippi, total 1,156,658$\frac{97}{100}$ acres; saving and excepting therefrom
1067 so much as lies in township 4 S., R. 1 W., of lands subject to entry in the S't Stephen's land-office, being 692$\frac{78}{100}$ acres, more or less; saving and excepting also the lots and tracts in the county of Mobile, outside the line of railway, outside of its depots, and outside of the corporate limits of the city of Mobile, being lots and lands derived by private purchase not yet fully paid for, and not included in the list of lands in Mobile County derived under and by the act of Congress, and saving and reserving the rights and liens that may attach to the railway and construction therein in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that State in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz, one hundred and eighteen miles, not exceeding ten thousand dollars per mile. All which will more fully appear by reference to said deed, which is on record in the office of the judge of probate of Mobile, and a copy whereof in print is herewith filed as an exhibit to and part of this bill.

5. Said deed was executed to said Ketchum, Palmer and Hallett, their survivor or successors, for the benefit, security and advantage of the person or persons, or corporations, or any other party who shall or may be holders of the before described bonds, or any of them, in trust for that purpose, and with certain powers over said property in said deed fully set forth.

It was therein provided that of the said 1,156,658$\frac{97}{100}$ acres of lands donated by the said Congress, the said trustees should be deemed to be in immediate possession, with authority to devise and determine rules of management, of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the payment of said bonds, said trustees to render annually, on 1st January of each year, to the said railroad company, accounts of their doings in the matter of the trust. Said trustees were authorized to appoint an agent to
1068 attend to said land business; but that no sale of said lands should be made so long as said grantor was not in default on any obligations connected with said bonds, except by and with the advice and consent of said company. The other property named in said deed was to remain under the control of said company, unless said company became in default for the payment of said bonds or interest.

6. Your orator further shows to your honor that said deed also contains a provision that if either of the said trustees should at any time or times thereafter die or become, from any cause, incapable of acting in the premises or resign his said office, the said company and the surviving or continuing trustees should select some other person to fill the vacancy occurring, and should thereupon make, execute and deliver such other instrument or assurances as might be necessary to enable such selected person to act in the premises.

7. Your orator shows that said trustees assented to said deed and took upon themselves the burthen of its execution; that since then two of said trustees have departed this life, to wit, William R. Hallett, of Mobile, who died in July, 1860, and John J. Palmer, who died before the said Hallett, and that the only surviving trustee is the said Morris Ketchum, and that said Ketchum is a resident citizen of the State of New York and an alien enemy of the Confederate States of America.

Your orator also shows that at sundry times before the 15th April, 1861, your orator, in pursuance of the terms of said deed of trust, applied to the said Ketchum to unite with your orator in the appointment of trustees to fill the vacancies occasioned by the death of said Hallett and Palmer, but said Ketchum has refused to unite in the appointment of such trustees, and the places of said deceased trustees still remain vacant.

8. Your orator charges that said conduct on the part of said Ketchum
is a breach of the spirit and letter of said trust deed, and that it
1069 has proceeded from selfish and interested motives on his part,
and that he has pursued a course of conduct in relation to the
trust that has embarrassed and operated to the injury of your orator.

Your orator shows that no provision is made in said deed for compensation to the trustees except in event of a forfeiture thereof, which has not occurred, and which your orator hopes will not occur. No services have been rendered by said trustees beyond the simple acts of signing the mortgage-bonds and a few other papers directing and authorizing the sale of a smill portion of the lands. Said trustees have not made any of the annual reports called for by the deed. It was the duty of the trustees to have directed the sale of lands, but they have failed to do so, except to a small extent hereinafter named; such plain duties they have disregarded, whereby great injury has been done to your orator and to the bondholders, retarding and preventing the sale of lands, and thereby impairing the market value of the bonds which were to have been received in payment for lands. The said Hallett, before his death, resided in Mobile, but when applied to he declined acting, stating that the active management of the trust was with his co-trustee, Ketchum; always referring your orator to said Ketchum, and professing to refer all communications to him. Thus having the active management of said trust business, the said Ketchum has used his power oppressively to your orator and for selfish purposes.

When said bonds herein described were signed, the said Ketchum, in the name of himself and co-trustees, retained eighteen thousand dollars, on the pretence of compensation for signing said bonds, and this against the wishes of your orator; and notwithstanding the protest of your orator, which was then made and been repeatedly renewed, said bonds with all the coupons for interest thereon have been withheld from your
orator. Said Ketchum has in addition also demanded regular
1070 salaries at high rates. While your orators would not object to
reasonable compensation for actual services, it has refused to accede to the demands, because they were exorbitant, and could not be

yielded to without submitting to gross wrong. Since the death of his said co-trustees said Ketchum has refused to unite in the appointment of new trustees, except on condition that he shall retain what he has already obtained, and also have a fixed salary at some high rate, to begin about the year 1855, and continue till the maturity of the trust in 1883. Said Ketchum also claims the right to move the management of the land department from Mobile to New York, and then to organize it by committing it to officers appointed by himself, and has notified the president of this company of his having appointed the chief agent or superintendent thereof Your orator, to induce said Ketchum to consent to the appointment of new trustees, has obtained the request of a majority of the bondholders for that purpose, but without avail; said Ketchum has still persisted in his refusal to unite in the appointment of such new trustees.

Your orator charges that these actings and doings of said Ketchum are in violation of his duties as trustee, and that he is an unfit person to continue in his position of trustee.

9. Your orator further shows that by a writing under date of 10th January, 1855, the said Ketchum and other trustees advised and directed the sale of lands embraced in the trust, not exceeding 100,000 acres, in such terms as to price and time of payment as said company by its board of directors should approve, and promise to ratify such sale and execute proper deeds to the lands so sold. In pursuance of said authority your orator has sold a large quantity of land to sundry purchasers, who have complied with the terms of sale, and paid most of the purchase money. Your orator has made due reports of said sales to said Ketchum, and has in all things performed the conditions on
which such sale was to be made, and called for deeds for the
1071 purchases from him as trustee holding the legal title, but he has
refused to ratify the sale and has failed to make deeds for the purchases; said purchasers have demanded of your orator deeds for their lands, and one has filed his bill in this honorable court, to compel the specific performance of the contract with him. Others of said purchasers are threatening to pursue a similar course, and so your orator has been subjected to annoyance and cost, and is likely to be still further injured by the misconduct of said Ketchum in his said office of trustee.

These matters have been urgently presented to said Ketchum by your orator, but he has given no heed to their applications, and not even acknowledged its report to him, and when personally applied to, refused to execute the necessary deeds, except on condition of his demands for past compensation and future salary being complied with.

10. Your orator shows that it is highly important that further sales of land should be made; that such was originally intended to be made, for the purpose of completing said road; and it was expressly declared that the said sterling bonds so issued by the company should be received in payment of lands to be sold. This can only be done by the agency of trustees under said deed of trust. That the lands lie in the States of Alabama and Mississippi, and their management should be confided to persons who can and will superintend their management in those States, and in the city of Mobile, where the trust deed was executed, where the chief business of your orator has necessarily to be executed, and where the trust will have to be executed, and that the removal of the control and direction of this business should be to the manifest detriment and injury of your orator and all others concerned.

It shows that the security of the bondholders requires the active
agency of suitable and a full board of trustees to look after their in-
terest in this property, and that interests so large should not be
1072 left in the control of one person alone, and that the deed was
originally to three, and good faith to the creditors of your orator,
the cestuis que trust, requires that the office shall be full.

Your orator charges that said Ketchum has proved himself an improper person to manage the property as trustee thereof; that he has been unfaithful to said trust. It also charges that said Morris Ketchum is an alien enemy; said property is wholly in the Confederate States, and consists of real property and franchises and personal property, whose chief value arises from its connection with the realty, and can be properly managed only by resident citizens of these Confederate States.

11. Your orator prays that said Morris Ketchum may be removed from his said position as trustee under the said deed of trust herein described; that the vacancies created by the deaths of John J. Palmer and William R. Hallett may be filled, and that some suitable person be also appointed trustee in the place of said Morris Ketchum, and that said trustees so to be appointed be clothed with all the powers conferred by said deed upon the said Ketchum, Palmer, and Hallett.

Your orator prays that said Morris Ketchum be made a party hereto, and that publication be made as provided by the statute in the case of application for the appointment of trustees and for such other and further relief as may be consistent with equity and the nature of its case, and, as in duty bound, will ever pray, &c.

(Signed) GEORGE N. STEWART,
Sol'rs for Compl't.
HAMILTON & OWEN,
Sol'rs Compl't.

Comes Milton Brown, who being duly sworn, saith: He is president
of the Mobile & Ohio Railroad Company; that said Morris Ketchum is
of mature age, and is a resident citizen of the State of New
1073 York, in the United States of America; and further, that he, said
affiant, has read the foregoing bill of complaint, and the allega-
tions thereof are true, to the best of his knowledge, information and
belief.

(Signed) MILTON BROWN.

Sworn to and subscribed before the undersigned this 3d January, A. D. 1862.

(Signed) T. M. BRINDLEY,
J. P., M. C.

(Copy.)

Whereas W'm R. Hallett and J. J. Palmer, two of the trustees under our first mortgage, executed to secure our sterling bonds, have departed this life; and whereas Morris Ketchum, the surviving trustee, has attempted, and, so far as in his power, practised gross fraud on this company and the bondholders; and whereas said Ketchum is a citizen of the State of New York, and an alien enemy, and in all respects disqualified and unfit to act as a trustee:

Therefore, resolved, That our counsel be instructed to apply to the chancery court, or such court as may be most suitable, to have three trustees appointed to act under said mortgage, with power to order sales of land, directing, if they deem it best, the taking of sterling bonds in payment, and to make deeds for lands already sold and to be hereafter sold, and to do all and everything necessary and proper to be done in the due execution of said trust; and be it further resolved, that we recommend the appointment of Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, said trustees, under said mortgage.

I certify the foregoing to be a true copy of a resolution passed by the board of M. & O. R. R. Co. at a meeting of said board on the 5th December, 1861.

[SEAL OF COMPANY.] (Signed) J. P. RUTLAND, *Sec'y.*

JANUARY 6TH, 1862.

1074 MOBILE, *January* , 1862.

I hereby acknowledge myself complainant's security for the costs in this cause.

(Signed) W. H. BLOODGOOD.

Filed January 6th, 1862.

JNO. M. TAYLOR, *Register.*

Exhibit to bill.

(Printed copy. Deed of trust.)

Order of publication.

At rules, register's office, Mobile, Ala., January 6th, 1862.

This being a regular rule day of the court of chancery aforesaid, the following order was made by the register of said court in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY *vs.* MORRIS KETCHUM, TRUSTEE. } At rules, register's office, Mobile, January 6th, 1862.

In this cause it appearing that the defendant, Morris Ketchum, trustee, is of mature age, and that he resides beyond the limits of the State of Alabama, to wit, in the city and State of New York, in the United States of America, it is ordered that he answer or demur to the allegations of the bill of complaint on file on or before the first day of March next.

It is further ordered that this order be published once a week for four consecutive weeks in the Mobile Daily Tribune.

Attest:

JNO. M. TAYLOR, *Register.*

1075 *Decree pro confesso.*

At rules, register office, Mobile, Ala., March 30th, 1863.

This being another regular rule day of the court of chancery aforesaid, the following order was made by the register of said court in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY *vs.* MORRIS KETCHUM, TRUSTEE. } At rules, register's office, Mobile, March 30, 1863.

In this cause complainants, by their solicitors, presents the printed notice of publication heretofore made against the defendant, Morris Ketchum, and proves by affidavits thereto attached that said publication was regularly made, published once a week for four consecutive weeks, in the Mobile Daily Tribune (a newspaper printed and published in the city of Mobile), and that a copy thereof was posted up at the court-house door of Mobile County, all within twenty days of the date of this order of publication; and it appearing that said defendant has failed to appear and plead, answer or demur to the allegations of the bill of complaint in this cause, it is ordered that the allegations of the same be taken as confessed against him.

(Signed)

Attest:

JNO. M. TAYLOR, *Register.*

Decree of reference, &c.

At a special term of the court of chancery aforesaid, held in the city of Mobile, commencing on the first Monday of April, 1863, being the 6th day of said month, Honorable Nathaniel W. Cocke, chancellor of said court, present and presiding, and on the 7th day of April, 1863, 1076 the same being a regular day of special term, the following decree was rendered in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE.

This cause was submitted on the bill, exhibits, and decree pro confesso. The object of the bill is to appoint trustees under a certain deed of trust exhibited by the complainant, of the date of 1st November, 1853, a copy of which is attached to the bill, in place of William R. Hallett and John J. Palmer, who are dead, and also to remove the surviving trustee, Morris Ketchum, for breaches of duty as trustee, and also because he is an alien enemy and incompetent to act, The court is satisfied of the death of said Palmer and Hallett, and of the fact that said Ketchum is an alien enemy; it is therefore ordered, adjudged, and decreed that said Ketchum be removed from his said trusteeship, and further that the prayer of the bill be granted for the appointment of trustees in place of said Ketchum, Hallett, and Palmer *be granted.*

And the said complainant suggests as proper persons to be appointed in place of the former trustees, Charles Walsh, George H. Young and Alexander Jackson, all citizens of the Confederate States. It is referred to the master to ascertain and report whether the above-named parties be suitable persons to receive the said appointment of trustees aforesaid.

Master's report.

And on the 8th day of April, 1863, the same being still another 1077 day of the said special term of said court, the following report was read by the master in this cause, to wit:

MOBILE & OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

The master came into court and reported as follows:

This cause comes before the master with instructions to ascertain and report whether Charles Walsh, George H. Young, and Alexander Jackson are suitable persons to be appointed trustees in place of William R. Hallett and John J. Palmer, former trustees, who are dead, and of the defendant, who has been removed.

The master reports that he gave notice of the time and place of considering the matter referred to him, and was attended by complainant's solicitors; that he examined reliable witnesses introduced, and is satisfied from their testimony that the said Walsh, Young, and Jackson are fit and proper persons to be appointed trustees under the deed of November 1st, 1853, and in place of the former trustees, Hallett, Palmer, and Ketchum.

Respectfully submitted.

(Signed) JNO. M. TAYLOR,
Master.

APRIL 8TH, 1863.

And thereupon it is ordered that said report lie over one day.

Final decree.

And on the 9th day of April, A. D. 1863, the same being another of the special April term aforesaid, honorable Nathaniel W. Cocke, chancellor of said court, present and presiding, the following decree was rendered in this cause, to wit:

1078 MOBILE & OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

In this cause, the master, in pursuance of the former order of this court, having made his report at a former day of this term, and the same having been read in open court more than one day, and no exceptions being filed, it is ordered that said report be in all things confirmed. It is thereupon ordered, adjudged, and decreed that said Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, who consent thereto, be appointed trustees under the deed described in the bill of complaint, in room and in place of William R. Hallet and John J. Palmer, former trustees, deceased, and of Morris Ketchum, former trustee, who has been removed by decree of this court. It is further averred, adjudged, and decreed that said trustees hereby appointed be clothed with all the rights, powers, and privileges named in said deed of trust, and that they be charged with all the duties by said deed imposed upon the trustees in the same manner and to the same extent as if they were the original appointees, and that they proceed and execute the trusts declared in said deed according to the terms and provisions thereof, and as to all other matters of complaint and prayers in said bill contained, it is ordered that said bill be dismissed without prejudice to complainant's rights to relief therein, or to any matter of account.

It is ordered that the complainants pay the costs of this proceeding.

THE STATE OF ALABAMA,
Mobile County:

I, Joseph Hodgson, register of the court of chancery for the first district of the southern chancery division of the State of Alabama, do

hereby certify that the foregoing pages, together with the
1079 printed pamphlet attached, contain a full, true, and complete transcript of the record and proceedings had in a certain cause heretofore pending in said court, wherein the Mobile & Ohio Railroad Company, a corporation, is complainant, and one Morris Ketchum is defendant, as the same now appears of record in my office.

I further certify that the annexed pamphlet, marked Exhibit to Bill, is, from pages to inclusive, a duplicate and fac-simile copy of the pamphlet filed in said case, and now on file as one of the papers thereof.

Witness Joseph Hodgson, register of the court of chancery, at Mobile, this 6th day of April, A. D. 1876.

(Signed)

[CHANCERY COURT SEAL.] JOSEPH HODGSON,
Register.

D.

NEW YORK, 30 *March.*

DEAR SIR: I have to acknowledge the receipt of your esteemed favor of the 27th ult., which reached me when I was absent in Mobile. I only returned from there a few days since. I am giving my careful personal attention to the affairs of the Mobile and Ohio Railroad. The present situation is as follows:

As you are aware in my last, on the demand of some of the holders of the first-mortgage bonds and coupons, the latter being in default, the road was delivered into the custody of the trustees of the said mortgage, Duncan and Elliot, who subsequently applied to the circuit court of the United States, and were clothed by it with the powers
1080 of receivers, which consequently placed the road under the protection of the said court, thus freeing it from the interference of local courts, and affording a complete protection until the claims at issue shall be determined. This was of vital importance, for there is no estimating the confusion and damage that would have arisen had this property become subject to the jurisdiction of such local courts, and for this purpose it was also essential that the proceedings should be taken ab initio in the United States court, it being the highest authority.

I enclose you herein the original order (marked "A,") with the supplemental order in Tennessee and Kentucky, (marked "B.")

When the road came into my possession, as trustee, it had a large floating debt, partially unsecured; but of this we were instructed by the court to pay a portion, namely, that due for labor and supplies maturing within three months of the beginning of these proceedings; at that period of the year, however, the receipts of a southern railroad are at their minimum and the experience of the Mobile and Ohio
1081 Raiload is that the receipts of those months barely equal the current expenses, and this was especially the case in 1875.

With southern railroads the summer months is the period when, the days being long and the road comparatively free from traffic, extraordinary repairs, if required, should be made, and under all circumstances these roads should then be put in good condition for the pressing business of the autumn months, as such repairs and betterments can be then most economically done.

It became, therefore, necessary to apply to the court for authority to borrow money to make the payments ordered by the court, and such

authority was also intended to cover the making of extraordinary repairs, which latter should and would have been made had not I been notified by some of the parties in interest, that they were entirely opposed to such extraordinary repairs, however requisite, being paid out of other than the receipts of the road itself. I accordingly availed of the authority granted by the court to a limited extent, for I appre-
1082 ciated these objections to receiver's liens, and, as the betterments were not absolutely necessary, I preferred to conform to the views of the parties objecting. The order permitting the issuance of receiver's certificates is enclosed (marked "C").

The result has been that I did not issue these certificates under this authority to any great extent, at any one time, and they are now all repaid and will not be reissued.

I enclose (marked "D") the report to the court of the operations of the road to October 31st, 1875, and ere long I expect to issue a report of its operations for the entire year of 1875, both under the management of the company from January 1st to May 1st, 1875, and subsequently from May 1st to December 31st, under the management of the trustees.

The statement will show:

Gross receipts for 1875	$1,914,342
As against " 1874	2,391,016
Decrease	$476,674

This decrease is to be accounted for among other causes by the general depression existing throughout the whole country; by the fact that after the first of January, 1875, the shipments of cotton almost
1083 entirely ceased; the receipts of November and December, 1874, showing a relative increase, and showing also that the crop of that season had been hurried to market; by the fact also that in the autumn of 1875, the rivers competing with the Mobile and Ohio Railroad were in navigable order from the middle of September, while in 1874 they were naviagble for only a very limited period; and by the reductions in rates which have been made by the trustees, as it was hoped that such reductions would increase the volume of business and attract settlers on the line of the road; and lastly, though by no means least, by the loss in business resulting from the extension of the N. O., S't L. & C. R. R., from Jackson, Tennessee, to Cairo. The opening months of 1876 are encouraging, showing that even at these reductions the business is improving, and the gross receipts show a monthly increase over last year. The experience of other roads also show that the decrease of 1875 was not exceptional.

As furnished in the text of the enclosed report, I am now engaged in putting the road in good order and remedying many of the
1084 neglects of past years. The important expenditure to accomplish this is mainly in the cost of new rails. As you are aware, the Mobile and Ohio Railroad is an unballasted road, there being no gravel or stone ballast on its line, and to obtain such would entail considerable expense, an expense which would sooner or later be incurred, but which can for the present be deferred.

Under this state of things it is imperative, to the economical operation of the road, that it should be put into good serviceable condition. The road-bed, originally well constructed, had been allowed to somewhat deteriorate. The ties are in fair condition, but the iron is defective and badly worn. To remedy this it will be necessary to relay about one hundred and twenty miles, and I am engaged in laying from six to seven thousand tons of iron during the coming summer.

The same expenditure in 1877 would repair the entire road, and thereafter the replacing of ordinary wear and tear, say three thousand five hundred to four thousand tons per annum, would maintain the road in excellent condition; and such a result would ensure its economical
1085 working more effectually than by any other course, especially in repairs to rolling-stock and machinery, which, you will notice, are at present large.

To exemplify this, let us take ten miles of road, the first mile being perfect in every particular, the second mile being less so, and so on until the last mile shall be a common dirt road; now start a first class engine on the first mile, and say that it can haul a train of forty cars at a minimum cost; the second mile it would be obliged to drop five cars and the cost would increase, and so on until the last mile, at which point it would not be able to haul itself, no matter at what expenditure. So much for mere traction; but on smooth iron and good road-bed the engine would run with scarcely appreciable wear.

As the iron and road became worse and rough, the machinery and cars would pound themselves to pieces, while destroying the road itself still further; in fact it really needs no argument to prove the entire economy of such expenditure. Thus much are the trustees doing in the care of the property.

Next, as to what shall be done in reorganizing or taking the
1086 property out of the custody of the court. No one contends that it is the legitimate duty of a court to run and operate a railroad, and it can only be excused for so doing pending the determination as to who are the real owners of the property when that is questioned, and pending the legal proceedings necessary to a judicial foreclosure and sale, or until the success of negotiations for a re-organization without a foreclosure.

The trustees of the first mortgage, claiming their rights, have commenced proceedings for foreclosure and sale of the property and the distribution of the proceeds to the parties entitled to the same. The first step was to file a bill for that purpose, making all the parties interested parties to the bill. This has been done.

In the answer of some of the parties defendant, it is set up that there are questions as to who are entitled to the proceeds of the property; accordingly the court has appointed a master to take the evidence submitted, and to report to the court the nature of such evidence. I enclose a copy of the order, which explains itself (marked "E").

Previous to this, however, some of the holders of the floating
1087 debt, amounting in the aggregate to about five hundred and fifty thousand dollars, secured by a pledge of the securities of the company, including some of the first and second mortgage bonds, the property of the company, applied to the trustees to have their claims recognized as preferred claims, claiming, amongst other things, that the money had been so borrowed for the purpose of enabling the company to pay the interest on its bonds, and to purchase material and supplies necessary to the life and existence of the road. The trustees having no discretion to deal with these claims, appealed to the court, and the court appointed a master to report (marked F) thereon, and he has so reported, his report being now on file subject to exceptions of any of the parties interested.

There is some force in the argument used, more especially where it would result in turning over to the trustees valuable securities affecting their trust, which would otherwise be sacrificed to the detriment of the trust itself; and another important consideration is, that this debt is held by parties residing on the line of, and who are daily dealing
1088 with, the road, and if it can be disposed of by compromise for a small percentage it would undoubtedly be most desirable. This, however, is a matter for the court to determine, and the trustees and receivers must and will abide by its decision.

You will observe that the master is required to report in October next. The regular sessions of the United States court are in June and December; and the time fixed is the earliest possible within which the report can be acted upon. Arguments may be made before the master or upon exceptions taken to his report.

You will also observe that the master is asked to report any plan of reorganization which shall have the endorsement of three fourths of the parties interested. This property must some day or other be reorganized, and it will either be by the purchaser who shall purchase under foreclosure sale in his own right, or by the purchaser who shall purchase under foreclosure sale for a scheme of reorganization which shall have been agreed upon, or by a scheme of reorganization which, with the consent of all parties, shall obtain from the court the surrender
1089 of the property before and without a foreclosure sale.

This latter is, of course, the most to be desired, as the simplest and speediest. There may be difficulties in the way of its accomplishment; but, with the assistance of the court under these proceedings, these difficulties may be overcome.

My first effort has been to secure the good management of the property, so that when it has resorted to the sanction of the court, by purchase or amicable arrangement, it will be in condition to avail itself of the new life which a new organization will bring to it.

As an officer of the court, I regard myself as stakeholder, as it were, for all the parties in interest; but, as trustee of the first-mortgage bonds, I do not hesitate to urge, in the interest of those whom I represent, the recognition and payment of their just dues, and with the view of reaching this these proceedings in foreclosure have been commenced.

Under the most favorable circumstances such a foreclosure suit, involving so many adverse interests, is subject to many and tedious delays, but the proceedings are being pressed with all the speed possible.

1090 As I have before stated, it seems to me that the best result can be reached by means other than hostile foreclosure; but while I am of this opinion, my duty as trustee compels me to proceed with such foreclosure with all diligence, while at the same time expressing a hope that its final consummation will be unnecessary, or, if it be necessary, that the purchase under it be made for the purpose of a reorganization which shall have been agreed upon by and between all or a majority of the parties at present interested. And it is with this hope that the board, in their circular of March 8th, which I enclose, have suggested that the several classes of securities be represented by committees whose duty it shall be to provide a scheme and recommend it for adoption. Such recommendation would, without doubt, be accepted by all.

The chartered rights and franchises of the Mobile and Ohio Railroad Co. granted within the States of Alabama, Mississippi, Tennessee, and Kentucky, are extremely valuable, and I do not myself doubt but that they would pass to a purchaser under foreclosure. The fact, however, that in some quarters there is an inclination to test this question is one of the many considerations which induced me to urge so strenuously an amicable readjustment, if such be possible. The circular of March 8th gives the general principles which should govern such reorganization, and I am in hopes it will result in the adoption of some practical scheme. 1091

I remain yours, truly,

W. BUTLER DUNCAN,
Trustee & Receiver, M. & O. R. R.

1092 MARCH 31, 1876.

To W. BUTLER DUNCAN,
Trustee and Receiver of the Mobile and Ohio R. R. Co.

We have read your reply, under date of 30th instant, to the inquiry as to the present and future prospects of the Mobile and Ohio Railroad, and approve of its contents, and would recommend its publication for the information of parties interested.

MORAN BROTHERS.
JAMES TINKER.
PLOCK & CO.
G. T. BONNER & CO.
H. C. HARDY.
And others.

1093 U. S. circuit court, southern district of Alabama.

WILLIAM B. DUNCAN AND ANDREW F. ELLIOT, trustees, &c.,
vs.
THE MOBILE & OHIO RAILROAD COMPANY et al.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD COMPANY et al.

The undersigned holders of the first mortgage bonds of the Mobile & Ohio Railroad Company having learned of the matters in controversy in these two causes and of the application of Morris Ketchum to remove Mess'rs W'm Butler Duncan and Andrew Foster Elliot as trustees and receivers under said first mortgage, approve the appointment of said Duncan and Elliot as such receivers, and protest against their removal and the substitution of any appointee of the said Morris Ketchum as subreceiver, believing that such a change would be 1094 injurious to the interests of all classes of creditors of the Mobile & Ohio Railroad Company.

New York, 1st April, 1876.

MORAN BROTHERS.

(Holders of $225,000 1st m'tg' bonds; 29,500 1st m'tg' int. bonds.)

In the presence of—
JAMES H. FAY.

PLOCK & CO.

(Representing $185,000 1st m'tg' bonds; 5,400 of fund. int. bonds.)

Witness—
JAMES H. FAY.

ADRIAN ISELIN.

(Att'y, $87,000 1st m'tg' bonds; 3,000 int. bonds.)

Witness—
JAMES H. FAY.

E. PARENSTEDT & CO.

(Representing about $180,000 1st mortgage.)

Witness—
JAMES H. FAY.

JAMES TINKER.

(Representing $5,000 1st m'tg' bonds, and over 100,000 int. bonds.)

Witness—
JAMES H. FAY.

G. I. BONNER & CO.

(Representing over $100,000 1st m'tg' bonds; 30,000 1st m'tg' int. bonds.)

Witness—
JAMES H. FAY.

W. H. HAYS.

(Holder of $100,000 1st m'tg' int. bonds.)

Witness—
JAMES H. FAY.

J. D. TAPPEN,
Pr. Gallatin Nat. Bank.

($31,000 1st m'tg' bonds; 40,000 int. bonds.)

Witness—
JAMES H. FAY.

H. O. HARDY.

(Representing over 250,000 bonds, principally 1st mortgage.)

Witness—
JAMES H. FAY.

SAM'L F. PHELPS.

(About 20,000.)

STATE OF NEW YORK,
City and County of New York, ss:

On this first day of April, 1876, before me personally came James H. Fay, to me known, and known to me to be the subscribing witness to the execution of the foregoing instrument, who, being by me duly sworn, did depose and says that he resides in the city of New York; that he knows Charles Moran, of the firm of Moran Brothers; Otto Plock, of the firm of Plock & Co.; Adrian Iselin, junior; G. Mosle, of the firm of E. Pavenstedt & Co.; James Tinker, George T. Bonner, of the firm of Bonner & Co.; W. H. Hays, F. D. Tappen, president of the Gallatin National Bank; H. O. Hardy, who executed the foregoing instrument;

that he was present and saw them sign and execute the same, and that deponent thereupon became a subscribing witness thereto.

[SEAL.] (Signed) JOSEPH GUTMAN, J'R,
United States Commissioner, S. D. N. Y.

1095 50 WALL ST.,
April 1st, 1876.

W'M B. DUNCAN, Esq., present:

DEAR SIR: I have signed the petition to the court approving your being retained as receiver of the Mobile & Ohio R R., and disapproving the substitution of any appointee of Morris Ketchum as sub-receiver for the bonds held by Sir Curtis Simpson and my firm.

I am not specifically authorized to act for Messrs. Crawshay, Forman, and other large London bondholders, but if it become necessary to obtain their signatures to this paper, I shall recommend them to sign it, and I have no doubt they would do so.

Yours truly,
(Signed) JAMES TINKER.

Filed April 7th, 1876.
N. W. TRIMBLE, *Clerk.*

1096 *Plea in bar of the M. & O. R. R'd.*

In the circuit court of the United States, fifth judicial circuit, southern district of Alabama, at Mobile.

MORRIS KETCHUM
vs.
WILLIAM B. DUNCAN, ANDREW F. ELLIOT, the Mobile & Ohio Railroad Co., et al. } In equity.

Plea in bar of the Mobile & Ohio Railroad Company, defendant.

The Mobile & Ohio Railroad Company, defendant in said cause, by protestation, not confessing or admitting any of the statements, allegations or charges in the bill of the said complainant to be true in manner and form as therein set forth, and as to the discovery and relief in said bill prayed for, doth plead and say in bar of the same that he, the said Morris Ketchum, complainant at the time of the filing of said bill, and from thence hitherto was not a trustee under the deed of trust and mortgage bearing date on the first day of November, in the year eighteen hundred and fifty three, executed by the Mobile & Ohio Railroad Company to the said Morris Ketchum, John J. Palmer, and William R. Hallett, as is in said bill set forth and averred, nor is he now, nor was he then entitled to have or to possess any property, things, or interest therein described, or to accrue thereby, nor is he now, because this defendant, the Mobile & Ohio Railroad Company being directly interested in the property and estate in said deed described, and in the fulfillment of and execution of the trusts and duties prescribed 1097 thereby, did file its bill in the court of chancery of the State of Alabama, for the first district of the southern chancery division of Alabama in the city of Mobile, in which this company was made complainant, and the said Morris Ketchum was made defendant, in which bill it was charged that the said Morris Ketchum had failed to perform his duties as trustee, as provided by said deed; that he had been unfaithful in the performance of his duty as such trustee, and that he was not trustworthy as such trustee, and was an unfit and improper person to hold said office; that he had fraudulently withheld the property of said company in his hands from their custody, and that he resided beyond the limits of the State, and in a territory at the time hostile to the State in which the property was, and that he could not execute and carry out the duties of said trust, nor perform the duties required thereby. That the said court had then and there full authority and jurisdiction to hear and determine the said matter of complaint, and to decree the removal of said Ketchum as such trustee by the laws of the State. And further, this defendant says that said court did then and there take and assume, and did exercise its jurisdiction in respect to said matter of complaint, and did, by its order made in said cause, cause publication to be made according to the laws and practice of the said State, requiring the said Morris Ketchum, as defendant to said bill, to appear in said court, and to defend against the same, which publication having been duly made, the said court did proceed to hear, consider, and determine the said matter of complaint according to law, and thereupon such proceedings were had that, at the April term, 1863, it was considered, ordered, and decreed, by the chancellor in said court of chancery at Mobile, that said Morris Ketchum, defendant in said cause (and now complainant), should be, and he thereby was, removed from said office as trustee; and by said decree a successor to said Morris Ketchum was appointed, and who from that time did hold 1098 and execute the duties of the said office of trustee, as the successor, and in lieu and stead of said Ketchum, until the time when the co-defendants of this company, William Butler Duncan and Andrew Foster Elliot, were appointed such trustees. And this defendant avers and says that said chancery court had full authority, power, and jurisdiction to make and render said decree, and of the subject-matter thereof; and further says that the said decree is still of record in said court, as by exemplification thereof and of said proceedings will appear, and that the same is still of full force and effect, not in any manner impaired, reviewed, reversed, nor set aside in any particular; nor has any new trial or rehearing thereof been applied for nor had, as provided by the law of said court, nor any appeal, but the same has been fully executed by the removal of said Ketchum from said office and his discharge therefrom and his place supplied; and that he, the said Ketchum, well knowing that he had been so discharged and removed, has, from the rendition thereof to the date of the filing of his said bill in this court, acquiesced in the said decree, and has not during said time done or performed any of the acts or duties, or done anything whatsoever in the execution of said trust duties.

And thereupon this defendant now pleads the said record and proceedings in the said cause, and the judgment and decree thereon of said court, and the execution of said decree, and the submission and acquiescence of said Morris Ketchum, then defendant and now complainant in the same, as a bar to the discovery and relief prayed for in said bill, and prays judgment of the said bill; and whether this defendant should be required to make any other or further defence or answer thereto; and that the same may be dismissed at the cost of said complainant.

GEORGE N. STEWART,
Sol. for Mobile & Ohio Railroad Co., Def't.

1099 I, George N. Stewart, solicitor for defendant, the Mobile & Ohio Railroad Company, do hereby certify that in my opinion the foregoing plea is well founded in point of law.

GEORGE N. STEWART,
Sol. for Def't.

The Mobile and Ohio Railroad Company, defendant, adopts the foregoing plea in the above-entitled cause, and certifies that the same is true in matter of fact, and that it is not interposed for delay.

Witness the seal of said corporation this 6th day of April, 1876.

[SEAL.] THE MOBILE AND OHIO R. R. CO.
By T. HASKINS DU PUY,
Vice-President.

Attest:
A. L. WILLOUGHBY,
Sec'y M. & O. R. R. Co.

Filed April 7th, 1876.

N. W. TRIMBLE, *Clerk.*

1100 *Demurrer of W'm Butler Duncan.*

Circuit court of the United States, fifth judicial circuit, southern district of Alabama.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD COMPANY,
W'm Butler Duncan, et als.
} In equity.

The demurrer of William Butler Duncan, defendant, to the bill of complaint as amended, filed in this hon. court by said Morris Ketchum against this demurrant and others.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

1st. That said complainant, by his said bill, states that he claims under and by virtue of a certain deed of trust bearing date the 1st day of November, 1853, and made and executed at Mobile, in the State 1101 of Alabama, by the Mobile & Ohio Railroad Company, which is shown to be a corporation created by the laws of the State, and existing by virtue thereof, and a citizen of said State, and having its principal office in the city of Mobile, in said State, of property in the said State situated, whereof he is one of the trustees in said deed named, and the survivor thereof; that his co-trustees in said deed named had departed this life on or before the 5th day of January, 1861, and their places had not been filled till on or about the 7 April, 1864; that upon a bill in chancery filed by said corporation in the year 1861, after the death of his said co-trustees, in the court of chancery for the State of Alabama, against said complainant, praying for the removal of him, the said complainant, from said trusteeship, and the filling of said vacancies therein by the appointment of suitable persons therefor; such proceedings were had that on the 7 April, 1864, which was a day of a regular

term of said court, a decree was made on said bill by said court
1102 of chancery at Mobile, whereby said complainant was removed
from said trusteeship, and other persons were by said court ap-
pointed trustees of the property in the said of trust described, in
the room and place of said complainant and his said deceased co-trustees;
of all which said complainant had knowledge in the year 1865, and yet
took no steps to set up his alleged right within the time and in the
manner provided by law, or to apply for a rehearing, examination, or
service of said proceedings and decree of said court of chancery, either
by said court of chancery itself or by any court having appellate juris-
diction over said court; and said complainant does not show that said
proceedings and decree of said court of chancery mentioned in said bill
of complaint have been in any mode or manner annulled or vacated, or
in any manner impaired, and that the same are not now in full force
and effect; wherefore it appears that said complainant has no
1103 standing in this court to demand the relief he, in and by his said
bill of complaint, seeks to obtain.

2nd. That said complainant in and by his said bill of complaint shows
that before the filing of his said bill of complaint that he was removed
from the position of trustee of the property in his said bill of com-
plaint named and described, and conveyed as in his bill of complaint
alleged by the said Mobile and Ohio Railroad Company, by the order
and decree of the court of chancery in Alabama, which had plenary ju-
risdiction of the subject and which took and excersised jurisdiction over
the same, and made and pronounced its said decree of removal against
this complainant upon bill filed and service of process thereon made,
and in the mode and manner directed by the laws of said State, more
than ten years before the filing by the complainant of his bill in this
cause, to wit, on the 7 April, 1864; and during all that time he made no
application to said court to open said decree and proceedings
1104 and defend against the prayer of the bill which, by his said bill of
complaint he shows the said Mobile & Ohio Railroad Company
filed against him, said complainant, and whereby said corporation prayed
for his removal from the said trust, and on which the decree of removal
aforesaid was rendered against said complainant by the said court of
chancery of the State of Alabama; but said decree of removal remains
in full force and effect against him, the said complainant, not in any
wise annulled or in any manner impaired. Wherefore said complainant
shows to the court that he has no title to the relief he, in and by his said
bill of complaint, seeks to obtain.

3rd. That said complainant in his said bill of complaint shows to the
court that he was removed from his said position of trustee of the property
in his bill of complaint described, and which was conveyed for
1105 the other purposes and trusts in said deed of trust declared, but
in which said complainant declares he has no interest, which was
executed by said Mobile & Ohio Railroad Company, at Mobile, on 1 No-
vember, 1853, by the court of chancery of the State of Alabama, on 7
April, 1864, in a bill filed against said complainant, praying that he
might be so removed, and the vacancies mentioned in said bill might be
filled by said court of chancery; and that he had knowledge of the same
upon the cessation of the hostilities mentioned in his said bill of com-
plaint in the year 1865, but does not show that there has been any ob-
struction or hindrance to prevent him from asserting the right and title
he now sets up to the property conveyed by said deed, and to have the
decree rendered for his said removal from said trusteeship reheard, re-
examined, and set aside, and his title thereto established. If the same

had been improperly created by said decree and does not show that he has at any time applied to said court of chancery for a rehearing 1106 or examination of said decree, and the opening thereof, within the time allowed and directed by the laws of the State of Alabama, whereby the said decree has become unimpeachable and is valid, but does show that he acquiesced in said decree, and thereafter, prior to the filing of this bill, made no claim to said trusteeship, and did no act, and attempted to do no act, about the performance of the duties of said trusteeship. Wherefore said complainant by his said bill of complaint shews no equity as to the relief in and by his said bill of complaint prayed for.

4th. That said complainant by his said bill of complaint shows he was removed from the said position of trustee, under the deed in his said bill described, in 1864, by decree of the court of chancery of the State of Alabama, at Mobile, on a bill in that court filed against said complainant, and praying his removal from said trust and the filling of 1107 vacancies then existing in said trusteeship, which said court of chancery had plenary jurisdiction of the subject-matter of said suit, under authority of the laws of the State of Alabama, wherein said deed was made and said property located, and which said court took jurisdiction of the cause, with service of process, on the said complainant in mode and manner as directed by the laws of said State, and which decree has been affirmed by the sovereign authority of the State of Alabama in convention assembled, and by the acts of the general assembly of said State, subject to be removed on application of the said complainant to said court on or before the 26 June, 1869, and still remain in full force and effect, in no way annulled or impaired; and said complainant does not show that he at any time since he confesses that he had knowledge of said proceedings and decree of said court of chancery in the year 1865, after the cessation of the hostilities in 1108 his said bill mentioned, and before the filing of this bill, make application to said court of chancery to have said decree opened or repealed, or that any modification or change of any kind has been made in said decree by said court of chancery or any other court having jurisdiction of said matter; and it appears that said decree of removal of said complainant from said trust in his said bill by him claimed remains in full force and effect, and complainant is without right or title in the premises.

5. That said State of Alabama has full, exclusive, and plenary power over the appointment and removal of trustees of property within its jurisdiction, and by law has confided the same full, exclusive, and plenary jurisdiction to its court of chancery, and by acts of sovereign authority has confirmed and ratified all the judgments and decrees of its said court of chancery made and rendered between the 11th day of 1109 January, 1861, and the 28th day of September, 1865, unless such judgment and decrees were opened or upon the application of the defendant thereto by the court as rendering such judgment or decrees made on or before 26 June, 1869.

It appears from the statements of complainant's bill that on 7th April, 1874, he was by decree of said court of chancery of the State of Alabama, at Mobile, on a bill filed against him by said Mobile and Ohio Railroad Company, removed from the trusteeship, he now by his said bill claims, and he does not show that he at any time applied to said court of chancery before *before* the filing of this bill to have said decree opened, set aside or in any manner modified, and he does not show that said decree has been at any time since its rendition in any manner or at all annulled,

vacated, or modified by said court of chancery which rendered the same or by any appellate tribunal, although it does appear from his said
1110 bill that he had knowledge of said decree of said court of chancery at Mobile for his said removal, to wit, in the year 1865, wherefore it appears that said complainant has no equity, or rights and title as against this defendant have or maintain his said bill of complaint in this honorable court; wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be herein dismissed with his reasonable costs in this behalf expended.

P. & T. HAMILTON,
For Demurrer.

The undersigned, of counsel for defendant in the above-entitled cause' hereby certify that in their opinion the foregoing demurrer to the bill of complaint is well founded in point of law.

P. & T. HAMILTON,
For Defendants.

MOBILE, *June* 5, 1876.

Filed June 5, 1876.

N. W. TRIMBLE, *Clerk.*

1111 Circuit court of the United States, southern district of Alabama.

Comes W'm Butler Duncan, defendant to the bill of complaint filed in this hon. court by Morris Ketchum against this defendant and others, who being duly sworn, saith that the demurrer to said bill herewith filed is not filed for delay, but is filed on the advice of counsel that it is well taken in point of law.

W. BUCH DUNCAN.

Sworn to before me this 24th day of May, 1876.
[SEAL.]
HENRY P. BUTLER.
U. S. Commissioner for Southern District of New York.

Filed June 5th, 1876.

N. W. TRIMBLE, *Clerk.*

1112 *Prayer for judgment.*

In the fifth judicial circuit of the United States, southern district of Alabama, circuit court at Mobile. In equity.

MORRIS KETCHUM
vs.
WILLIAM B. DUNCAN, ANDREW F. ELLIOT, The Mobile & Ohio Railroad Co., & others. } In equity. Case No. 97.

In this cause the defendant the Mobile and Ohio Railroad Company having filed its plea to the bill of complaint of the complainant in the above-entitled cause on the , 1876, in bar of the said bill and relief prayed therein, and no replication or other answer to said plea having been filed, and the same being wholly unanswered in law or fact, the said defendant prays judgment in said cause that said complainant's bill be dismissed and that this defendant be allowed its costs in this behalf expended and hence dismissed.

GEORGE N. STEWART,
Sol'r for Mobile & Ohio R. R. Co., Defendant.

Filed June 5, 1876.

N. W. TRIMBLE, *Clerk.*

1113 United States circuit court, fifth judicial circuit, southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE,
vs.
MOBILE & OHIO RAILROAD COMPANY ET AL.

The defendants will take notice that said cause will be heard on bill and plea at the next equity term.

EDWARD L. ANDREWS,
Solicitor for Complainant.

JUNE 5, 1876.

Filed June 10th, 1876.

N. W. TRIMBLE, *Clerk.*

MORRIS KETCHUM
vs.
MOBILE & OHIO RAILROAD COMPANY ET ALS.
In equity.

JUNE 10, 1876.

In this cause it is ordered on motion of the complainant's counsel that the cause be set down argument on the plea of the Mobile & Ohio Railroad Company and demurrer of W'm B. Duncan on the first
1114 day of the next term of this court.
June 10, 1876.

Circuit court of the United States for the southern district of Alabama.

MORRIS KETCHUM, COMPLAINANT,
vs.
THE MOBILE & OHIO RAILROAD COMPANY & others, defendants.

The seperate plea, answer, & demurrer, of William D. Dunn and William Dickson, to the bill of complaint of Morris Ketchum against the Mobile and Ohio Railroad Company and these defendants and other defendants.

These defendants by protestation, not confessing all or any of the matters and things in the complainant's said bill contained and set forth in manner and form therein alleged to be true, for plea to so much and such parts of said bill as allege that the complainant was, at the time of filing of said bill, a trustee by and under the deed of trust
1115 made by the Mobile & Ohio Railroad Company to the complainant, and the late John J. Palmer and the late William R. Hallett, dated November 1st, 1853, mentioned and referred to in said bill and exhibited therewith, doth say and plead that the complainant, Morris

Ketchum, at the time of the filing of said bill, was not and is not now
a trustee under the said deed of trust, and had not then and has not
now any right, title, or interest in or to the property described in and
conveyed by the said deed of trust, because these defendants say and
aver that long before the filing of said bill, to wit, on the sixth day of
January, 1862, the said Mobile and Ohio Railroad Company did exhibit
and file its bill of complaint in equity, against the said Morris Ketchum,
in the court of chancery of the State of Alabama, in and for the first
district of the southern chancery division of the said State, holden in
and for the county of Mobile, charging and alleging in its said bill,
1116 that the said Morris Ketchum had failed to perform his duties as
trustee under said deed of trust, and had been unfaithful in the
performance of his duties as trustee, and that he was an unfit and improper
person to hold the office of such trustee, and that he had fra'dulently
withheld from such railroad company property of said company
to the pos'ession of which it was entitled, and that he resided out of
the State of Alabama, to wit, in the State of New York, at the time in
hostility to the State of Alabama, and he could not execute the duties
required of him as trustee under said deed of trust, and in said suit
such proceedings were afterwards had in said chancery court that
notice of the filing of said bill was duly given to said Ketchum by publication,
according to the laws of the State of Alabama, and the rules
and practice of said chancery court, and the said Ketchum having failed
to appear, plead, answer, or demur to said bill, a decree was made
in said suit, by said chancery court, taking said bill as confessed
1117 as against said Ketchum, and afterward, to wit, at the April
term, 1863, of said chancery court, a final decree was rendered
in said cause by said chancery court, whereby said Ketchum was removed
from his office as trustee under said deed of trust, and other
persons were appointed trustees to execute the said deed of trust, in
lieu of the said Ketchum, and of the said J. J. Palmer and William R.
Hallett, who had died before the filing of said bill, all which will appear
by the record of said decree and of the proceedings in said case remaining
of record in said chancery court, to an exemplification of which
these defendants beg leave to refer and to produce as may be requisite;
and these defendants further say that the said chancery court had jurisdiction
of the subject-matter of said suit, and of the practices thereto,
and that the said decree therein remains in full force and effect, in no
wise revised, opened, set aside, or annulled.

1118 And so these defendants pray judgment of this court whether
they are bound further to answer the bill of complaint of said
Ketchum in this case, and that the same may be dismissed.

And for a further plea to said parts of said bill of complaint in this
case, these defendants say that soon after the rendition of said final
decree hereinbefore mentioned, to wit, in the year 1863, the persons
thereby appointed trustees to execute the provisions of said deed of
trust in lieu of said Ketchum, Palmer, and Hallett did enter upon the
discharge of their duties and the excersise of their powers as such
trustees, and they and their successors have ever since that time continued
to act as such trustees, and that the said Ketchum, some time in
the year 1865, had actual notice and knowledge of the rendition of said
final decree, and that the persons thereby appointed as trustees had
entered upon the discharge of their powers and duties as such trustees,
and the said Ketchum took no step, as he might have done under
1119 the laws of the State of Alabama and the practice of said chancery
court, to have the said decree opened and the said cause re-

heard, but on the contrary thereof said Ketchum *requienced* in said decree, and with notice and knowledge of said decree and of said action thereon, the said Ketchum, for more than ten years thereafter, took no steps whatever to assert and maintain any right to act as trustee under said deed of trust.

And these defendants further say and aver that some time in the month of May, A. D. 1875, William Butler Duncan, of the State of New York, and A. Foster Elliott, of the State of Louisiana, acting as and claiming to be trustees under said deed of trust, demanded of and obtained from the said Mobile and Ohio Railroad Company all the property conveyed by said deed of trust, and afterwards, to wit, on the 11th day of May, A. D. 1875, the said Duncan and Elliott, as such trustees, filed their bill of complaint in equity in this honorable court
1120 against the said Mobile and Ohio Railroad Company and these
defendants, and others, defendants, alleging and showing that they, as trustees as aforesaid, had taken pos'ession and were then in pos'ession of all the property mentioned in and conveyed by said deed of trust, and stating divers other deeds of trust, mortgages, and liens existing or claimed to exist on said property, and praying this court to take jurisdiction of said trust and of said property, and to direct the management and control and dispose of the same, and in said case, which is still pending in this court, this court did take jurisdiction thereof, and made orders for the management of said property before the filing of the said bill of said complainant Morris Ketchum, all which will more fully appear by the proceedings in said case remaining of record in this court, to which these defendants beg leave to refer as may be necessary.

Wherefore these defendants pray judgment whether they should
1121 be further required to answer the said bill of complaint.

And these defendants, not waiving their said pleas, by protestation, not confessing all or any of the matters in said bill contained to be true, do demur to so much and such parts of said bill as alleges that the complainant is entitled to the property in said deed mentioned, and prays for discovery respecting the same, and they say the same is not sufficient in equity to entitle the complainant to such discovery, and for grounds and causes of demurrer they assign the following:

1st. That it is not shown by said bill that the complainant as trustee is entitled to the said property in said bill mentioned.

2nd. That it is shown by said bill that said complainant had previously to the filing of said bill been removed from the office of trustee.

And these defendants, not waiving their foregoing pleas and demurrers, for answer to so much and such parts of said bill are *are* not so pleaded or demurred to, or to so much thereof as they are
1122 advised it is material for them to answer, say that they are in-
formed and believe and so admit the making of the several mortgages or deeds of trust in said bill mentioned. They admit that they have been appointed trustees in lieu of Robert A. Baker, deceased, and Samuel Williams, deceased, under the deed of trust known as the second mortgage of said railroad company mentioned in the complainants' bill, and they and their ex-defendant, George H. Young, are now trustees under said last-mentioned deed of trust.

These defendants, as trustees as aforesaid, have not now, and have never had, any possession or control of the property in said deed mentioned; they have not such knowledge or information as to the said property or its management, or as to the state and accounts of said railroad company, as would enable them to answer respecting the same;

as to the other matters alleged in said bill, these defendants have
1123 not such knowledge or information as would enable them to answer the same, and they insist on due proof thereof.

And these defendants, having answered, pray to be hence dismissed with their costs, &c.

W'M D. DUNN.

W. G. JONES,
Sol. for Def't.

Before me, Henry S. Skaats, a U. S. commissioner, this day appeared the said defendant William D. Dunn, who, being by me duly sworn, saith that the statement in the foregoing pleas, demurrer, and answer, so far as made *are* of his own knowledge are true, and so far as made on information he believes them to be true, and that said pleas and demurrer are not interposed for delay.

W'M D. DUNN.

Subscribed and sworn to before me this 12th day of June, 1876.

HENRY S. SKAATS,
U. S. Commissioner.

I certify that in my opinion the foregoing plea and demurrer are sufficient and well founded in law.

W. G. JONES,
Att'y for Def't.

June 12, 1876.

Filed June 12, 1876.

N. W. TRIMBLE, *Clerk.*

1124 United States circuit court, fifth judicial circuit, southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &c.
vs.
MOBILE & OHIO RAILROAD COMPANY, SAMUEL L. M. Barlow, Adrien Iselin, Richard T. Wilson, and Andrew F. Elliott, et al.
} In equity.

On reading and filing the verified petition of Morris Ketchum, the complainant herein, and on motion of Edward L. Andrews, solicitor for complainant, it is hereby ordered that the defendants, Samuel L. M. Barlow Adrian Iselin, Richard T. Wilson, Andrew F. Elliott and George H. Young, and each of them, appear, plead, answer or demur to the complainant's bill on or before the 1st Monday of December, 1876, upon the service of a copy of this order upon them, and each of them, on or before the 15th day of November, 1876.

And it is further ordered that a copy of this order shall be
1125 served on the said Samuel L. M. Barlow, Adrian Iselin, Richard T. Wilson, George H. Young, and Andrew F. Elliott, and each of them, personally, if practicable wherever they, or any of them, can be found, and if such personal service be not practicable, it is further ordered that said order shall be published once a week for three consecutive weeks, beginning not later than the 15th day of November, A. D. 1876, in the New York Times and the New Orleans Republican.

And it is hereby ordered, that said defendants, and each of them, "if this order is so served by publication," appear, plead, answer or demur to the bill of complaint herein on or before the first Monday of February, 1876.

Oct. 30, 1876.

W. B. WOODS,
U. S. Judge.

1126 In the circuit court of the United States, in and for the fifth judicial circuit, and southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE OF the first mortgage of the Mobile and Ohio Railroad Company,

vs.

MOBILE AND OHIO RAILROAD CO., W'M B. DUNcan, Sam'l L. M. Barlow, Richard T. Wilson, Adrien Iselin, Andrew F. Elliott, Robert C. Crawford, John Reid, j'r, W'm Dickson, George H. Young, W'm D. Dunn.

To the honorable judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama:

Your petitioner respectfully shows to this honorable court—

That he has heretofore filed a bill in this court as surviving trustee of the first mortgage of the Mobile & Ohio Railroad Company, and 1127 he refers to said bill and the amendments thereto as a part of this his petition.

That the said bill is filed in equity for the enforcement of an equitable lien against real property within the district where the suit is brought, to wit, in the southern district of Alabama.

That Sam'l L. M. Barlow, Adrian Iselin, Richard T. Wilson, and Andrew F. Elliott, and George H. Young are defendants in said suit, and each of them is a defendant in the said suit.

That said Barlow, Wilson, Iselin and Elliott and Young and none of them is an inhabitant nor can be found within the said district and a subpœna cannot be served upon any of them within said district, and none of them has voluntarily appeared in or to said suit, nor do they or any of them voluntarily appear thereto.

That the defendants Barlow, Iselin, and Wilson are residents and inhabitants of the city and State of New York, and the defendant Elliott is a resident and inhabitant of the State of Louisiana, and the city 1128 of New Orleans, and the defendant Young is a resident and citizen of the State of Mississippi.

Wherefore your petitioner prays this honorable court to make an order directing such absent defendants and each of them to appear, plead, answer or demur to the complainant's bill of complaint at a certain day therein to be designated, and to direct that the said order shall be served on each absent defendant, and each of them if practicable, wherever found, or when such personal service is not practicable, to direct that said order shall be published in the New York Times, a newspaper published in the city of New York, and the New Orleans Republican, published in the city of New Orleans, once a week for three consecutive weeks.

And your petitioner prays for such other and further relief as may be just.

MORRIS KETCHUM.

1129 **UNITED STATES OF AMERICA,**
Southern District of New York:

Morris Ketchum being duly sworn, deposes and says, that he is the complainant in the above-entitled action and the petition herein, that he has read the foregoing petition and knows the contents thereof, that the said petition is true of his own knowledge, except as in the matters therein stated on information and belief, and as to the same he believes to be true.

MORRIS KETCHUM.

Sworn to before me this 22d day of June, 1876.

[SEAL.] **ALFRED MYERS,**
Notary Public, State of New York, N. Y. Co.,
Acting U. S. Commissioner.

Filed November 11, 1876.

N. W. TRIMBLE,
Clerk.

1130 United States circuit court, southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &C.,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET ALS.

Upon the petition of Morris Ketchum heretofore filed in this cause, and it appearing from the certificate of the clerk of this court that service under the order of publication heretofore granted herein has not been made on George H. Young:

Now, therefore, it is hereby ordered, that service of the subpœna or process herein may be effected by depositing a copy of this order, certified, in the United States post-office at the city of Mobile, in an envelope addressed to the said George H. Young, at his last known place of residence or to the post-office nearest to his place of residence.

And in case the place of residence of the said George H. Young
1131 cannot be ascertained on or before the 15th day of January, 1877,
and the above service be not made on or before that date, it is hereby further ordered that service of process may be made by publication of a copy of this order for three consecutive weeks, once in each week, in the New York Times and the Memphis Appeal.

And in case of service of this order by mail as aforesaid or by personal service out of this district, the said George H. Young shall appear, answer, plead or demur herein within not more than thirty days from such service, or in case of publication within not more than thirty days from the expiration of such publication.

W. B. WOODS, *Judge.*

Filed December 4, 1876.

N. W. TRIMBLE, *Clerk.*

Circuit court of the United States, southern district of Alabama, 5th judicial circuit.*

MORRIS KETCHUM
vs.
MOBILE AND OHIO RAILROAD COMPANY, A. Foster Elliott, W'm B. Duncan, et al.
} In chancery.

The separate demurrer and the plea and answer of Andrew Foster Elliott to the bill of complaint, filed against the said respondent, in the circuit court aforesaid of the title aforesaid.

The said defendant, not confessing the statements of the bill or any portion thereof, except that he is in posession of the line of railroad of the Mobile and Ohio Railroad Company, with his co-trustee W'm Butler Duncan, under the orders of this honorable court and con-
1133 formably to the deed of trust and claiming to be a trustee, duly
appointed thereunder, which deed of trust was made by the Mobile and Ohio Railroad Company at Mobile 1st November, 1853.

And for plea to so much and such parts of the said bill as charges that the said plaintiff at the time of filing the said bill is a trustee under the deed of trust aforesaid, or had any right, title, or estate in the property described therein, or that he is entitled to execute the trusts thereof, or to any ownership or control of said property, this defendant declares and pleads in bar, that in the month of January, A. D. 1862, the Mobile and Ohio Railroad Company, having its domicil in Mobile of that State, and being the place where the principal office of the corporation is kept, and business transacted, and where the said deed
1134 of trust was executed, filed a bill in the court of chancery of the
State of Alabama held at Mobile for the first district of the southern chancery division of that State against the said Morris Ketchum as defendant, wherein he was charged with having violated his trust as trustee; and had neglected his duty; and resided beyond the jurisdiction and limits of the State; and was an unsuitable person to be continued as a trustee, and prayed that he might be removed therefrom. The bill also stated that W'm R. Hallett and J. J. Palmer, two of the trustees, were dead, and that their offices were vacant.

The said defendant was made a party according to the articles of the code of Alabama of 1852, and the rules of practice of the said court as long established therein. And such proceedings were had in the
1335 said court of chancery that the said court at its rules in March,
1863, pronounced a decree pro confesso upon the failure of the defendant to appear and to answer the bill according to the order of the court; at its April term, 1863, the court decreed that the said Morris Ketchum was incompetent to act as trustee, and that the offices of trustees under the said deed of trust were all vacant, and made the appointment of three persons to fill the vacancies occasioned by the removal and death aforesaid at the term of the court aforesaid.

And this defendant avers that the court of chancery aforesaid had full and plenary jurisdiction of the subject-matter of the cause under the constitution and laws of the State of Alabama; and that the said defendant was made a party according to the law and practice of the court, in cases of non-resident defendants; and that the causes
1136 for the removal were such as the statutes of the State approved
as sufficient, and that the decree is in full force and effect; that

no appeal has been taken therefrom by any party thereto; that no application of any kind whatsoever has been made in the said court to open the said decree, or to have a new trial thereon, or to review the same, or in any manner to impugn its validity.

And the said defendant avers that the said decree was fully executed, and from the date thereof until the date of the filing of this plea, the trustees appointed in the same, and their successors, have been continuously in possession of the said office, and have performed every function and duty imposed by the deed of trust, and the conditions of
1137 the company, without opposition, let or hindrance of the said plaintiff, or from any bondholder, but with the acquiescence and submission of the said plaintiff and the approbation of the bondholders protected by the said deed.

And the said defendant avers that said Ketchum had full notice of his removal aforesaid, and of the decree aforesaid, in the year 1865, and might have availed himself of the remedial laws of the State of Alabama, to have obtained a new hearing, or a review of the decree, at any time from the 28th September, 1865, until the 26th June, 1869, had he been disposed to contest the allegations of the bill or the validity of the application of the plaintiff for his amotion from an office which he was not a suitable or proper a person to fill.

And the said defendant further avers that in May, A. D. 1875, under the order and decree of this honorable court, in a suit com-
1138 menced by this defendant and his associate trustee, W'm Butler Duncan, against the said corporation as the trustees, who were placed in possession of the property of said corporation with the consent of the corporation and the mortgagees of the said corporation who held liens on the property, and with the approval of the holders of the bonds, and from thence and at the filing of this plea, have possession of the same, all of which this defendant is ready to maintain by proofs to be submitted to the court as the court may direct, and plead the same to so much of the bill of the plaintiff as is not herein particularly excepted, and respectfully submit to the court whether he is required to make any further answer to so much of the said bill as he has not pleaded to.

And this defendant, not waiving his said plea, but relying
1139 thereon for answer to the residue of the bill, as far as it may be necessary to sustain his defence by plea as aforesaid, answering, says:

The Mobile and Ohio Railroad Company was incorporated by the State of Alabama, to have its domicil at Mobile, and received authority from the States of Mississippi, Tennessee, and Kentucky to construct its railroad through those States to Columbus, in Kentucky, and a grant of lands from the United States to aid the corporation to complete the same; that the deed of trust was made to facilitate their work, and a board of trustees was important and necessary for the negotiation of the bonds and sale of the lands in 1862. In the month of January, 1862, John J. Palmer and W'm R. Hallett had died, and
1140 Morris Ketchum was and had long been a non-resident of the State of Alabama, and of the States through which the railroad passed. In the years he had remained in office he was not only an absentee from the States aforesaid, and beyond the jurisdiction of the States, but negligent, overreaching, and untrustworthy in the performance of his duties. He had violated his obligations as a trustee, and his principal study seemed to be to create conditions by which the trust funds should

pass through his hands and pay extravagant and unnecessary charges to him, and unprofitable to the company, but largely and unnecessarily profitable to the trustee, and that he had actually converted to his own use, without license, the trust funds which had come to his possession.

The bill filed by the corporation in January, 1862, contains a
1141 clear, distinct, and truthful account of his misdeeds, and represents faithfully how entirely unsuitable he was for the office.

The act of his removal was an administrative act of the chancellor of the district aforesaid, upon grounds defined by the code of Alabama then in force, and upon grounds clearly specified in the statutes. The bill was taken as confessed for a failure to appear and to answer, and a decree pro confesso was, by the code of the State, the equivalent of an admission of the charges and allegations of the bill.

The defendant, for further answer, says that the plaintiff, Ketchum, was made a party by publication, according to law and the practice of the court, and the decree confirms to the allegations and prayer of the bill.

1142 But the defendant says that the civil code had provided that when a party was a non-resident, and the decree made without personal service, that the defendant might, within 18 months, apply for a rehearing, and obtain the same upon an exhibition to the court that there was a defence; and the decree rendered under such conditions was not considered as final or absolute till the expiration of that term under the law of the court and the code. The defendant further answers and says that in 1865 the convention of the State, and afterwards, in 1866, 1867, and 1868, the legislature of the State, recognizing the fact that civil commotions had existed in the State from January 11th, 1861, until the close of hostilities in the spring of 1865, and that orderly administration had been much interrupted, and that there were cases
1143 which might, for the ends of justice, require another examation, by a series of acts and ordinances prolonged the period until the 26th June, 1869, in which any party might apply to the court to re-open the orders, judgments, and decrees during that period, and made it the duty of the courts to grant rehearings and new trials precisely as they might have been obtained in a time of peace, and while the court had full possession of the cause and the parties.

In respect to the decrees in chancery, it was a prolongation of the period for an application for a rehearing which had been allowed to non-residents in time of peace who were not personally served with process. And the defendant avers that the said Ketchum had notice of the terms of the decree of the court of chancery, in October, 1865, and of
1144 his removal from office by the said decree, and that successors had been appointed to supply the vacancy created by the death of his associates and his own removal by the decree, and the question came plainly before him and to him what was to be done, and he deliberately concluded and persisted in the determination from that date to the date of the filing of this bill to allow the decree to stand in full force. The motive for this determination is rather to be found in the fact that had the decree been opened he would have been required to answer for the violation of trusts and to account for the bonds he had embezzled. But so it is that he made no attempt to obtain a revision of the decree in the State or federal courts by any sort of proceedings. Nor did he make any application to the court of chancery to rehear or to
1145 modify or set aside its decree. Nor did he make any claims upon the corporation for a restoration of his rights, supposed or actual. Nor did he make any claim on his successors till this bill was filed, but

for the whole period continuous and adverse possession of the estate and rights derived under the deed have been held by his successors, and the corporation and the defendant claims the benefit of the statutes of limitation, as well in respect to the bringing of suits for property as well as the statutes in respect to appeals, rehearings, and other acts for modifying or contesting decrees of courts of chancery, in answer to the pretensions of the said plaintiff.

And the defendant denies that the said plaintiff was moved to 1146 commence this suit by any considerable number of the holders of bonds, or the holders of any considerable amount of the debt of the company. On the contrary, it has been shown by his own affidavit and that of E. L. Andrews, his solicitor in this suit, that he was incited to bring this suit at or about the first of March, 1876, by the barratrous instigations and interference of the said attorney, E. L. Andrews. That he had no expectation of coming into the State of Alabama to fulfil a single duty it imposed, and that he simply lent his said attorney his name to bring a suit in the courts.

The personalities in the bill, the special mention of a supposed creditor (Alexander Duncan), without any sort of propriety, or of decorum, in the bill, the late period at which the suit was brought, and the 1147 conditions under which, between Ketchum and Andrews, it was instituted, demonstrate a conspiracy to levy some sort of contribution from some of the parties as hush-money, and that the said suit was commenced and is prosecuted adversely to the interest of the corporation, the bondholders, and the trustees, for the hope of gain, between the client and his attorney. While the holders of bonds to more than $1,500,000 in amount have afforded their support and expressed their confidence in the defendant and his associates, no one holder of bonds, either produced or proved, has given any expression of support or confidence to the said Ketchum so far as is shown by any proof shown to the court. The defendant denies all manner of fraud, collusion, contrivance, with which he is charged, and refers to the orders and 1148 decrees of this honorable court for the proof of the regularity and propriety of his entry into possession of the property described in the deed of trust.

And to the residue of the said bill to which the plea and answer does not apply and which claim a discovery and relief from the trustees and the possession of the property to be surrendered to the said Morris Ketchum, and refers to the administration of the trustees, the defendant demurs, and for cause of demurrer assigns that the plaintiff has not stated in his said bill a case to entitle him to the relief or discovery prayed for against this defendant.

He therefore demands judgment from this honorable court whether he ought to make any other plea or answer than he has already made; and he prays of the court that because the said plaintiff is with- 1149 out a just claim to any relief or discovery that his bill be dismissed and that he be condemned to pay all costs.

(Signed) J. A. CAMPBELL.

Before me personally came Andrew Foster Elliott, the respondent named in the foregoing demurrer, plea, and answer, who maketh oath and saith that the matters of fact stated in the same are true in substance according to his knowledge, remembrance, information, and belief, and that the plea and demurrer are not interposed for delay.

(Signed) AND. FOSTER ELLIOTT.

Subscribed and sworn before me May 27th, 1876.
(S'g'd) **F. A. WOOLFLEY,**
Commissioner U. S. Circuit Court, District of Louisiana.

1150 The undersigned, of counsel, certifies that in his opinion the foregoing demurrer is well founded in point of law.
(Signed) P. HAMILTON,
Of Counsel, D'ft.

Filed December 30th, 1876.
(Signed) N. W. TRIMBLE,
Clerk.

1151 *Plea, answer, and demurrer of S. L. M. Barlow.*

Circuit court of the United States for southern district of Alabama.

MORRIS KETCHUM
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL. } In equity.

The separate plea, answer, and demurrer of Samuel L. M. Barlow, to the bill of complaint filed in this hon. court by Morris Ketchum, against the Mobile and Ohio Railroad Company, the said Barlow and others, defendants.

This defendant by protestation, not confessing any of the matters and things in said bill of complaint set forth, in manner and form therein alleged to be true, for plea to so much and such parts of said bill as allege that the complainant was at the time of filing said bill a trustee by and under the deed of trust made by the Mobile and Ohio
1152 Railroad Company to the complainant, and to John J. Palmer, and William R. Hallett (both now deceased), dated November 1, 1853, mentioned and described in said bill, says Ketchum was not, and is not now, a trustee under said deed, and had not then, and has not now, any right, title, or interest, in or to the property, rights, or privileges described in and conveyed by said deed of trust, because this defendant doth aver and say, that long before the filing of said bill, to wit, on the 6th January, 1862, the said railroad company did exhibit its bill of complaint in chancery against the said Morris Ketchum, in the court of chancery, at Mobile, for the first district of the southern chancery division of the State of Alabama, in and for the county of Mobile, charging therein that the said Ketchum had failed to perform the duties of trustee imposed on him by the said deed of trust, and had
1153 been unfaithful in the performance of his duties as such trustee, and was an unfit person to hold said office of trustee, and that he had fraudulently withheld from said corporation, the grantor in said trust-deed, property thereof, to the possession of which it was entitled, and that he resided out of the State of Alabama, to wit, in the State of New York, at that time in hostility to the State of Alabama, and could not execute the duties of trustee aforesaid, and in said suit such proceedings were afterwards had in said court of chancery, that notice of said bill was given to said Ketchum, according to the laws of the said State of Alabama, and the rules and practice of said court of chancery; and the said Ketchum failed to appear, plead, answer, or demur to said bill of complaint, and thereupon a decree was made by said
1154 court, in said suit, which declared the charge in said bill confessed by said Ketchum.

That afterwards, to wit, at the April term, 1863, of said court of chancery, a final decree was rendered in said cause by said court of chancery, and thereby said Ketchum was removed from the said office of trustee under said deed, and other persons were appointed trustees, to execute the provisions of said deed in the room and stead of the said Palmer and Hallett, who had previously departed this life, and of the said Ketchum who had been removed by the decree of said court of chancery, all which will appear by the record of said bill, proceedings, and decree of said court of chancery in said cause remaining of record therein, to an exemplification whereof to be produced by him as may be required, this defendant begs leave to refer as often as may be
1155 required.

And this defendant avers, that said court of chancery had jurisdiction of the subject-matter of said suit and of the parties thereto, and said decree therein remains in full force and effect, in nowise reversed, opened, set aside, annulled, or in any manner qualified, and this defendant prays the judgment of the court, whether he is bound further to make answer unto the bill of said complainant, and that the same may be dismissed.

And for a further plea in this behalf, this defendant saith that soon after the rendition of said final decree hereinbefore mentioned, to wit, in the year 1863, the persons thereby appointed trustees as aforesaid, in the room and place of the said Ketchum, Palmer, and Hallett, entered upon the discharge of their duties as trustees under said appointment
1156 and decree, and upon the exercise of their powers as such trustees,
and that they and their successors have ever since that time to the day of the filing of said bill and since continued to act and perform the duties of such trustees, and that said Ketchum some time in the year 1865 had actual notice and knowledge of the rendition of the said decree of removal of himself and appointment of other trustees as aforesaid, and that said appointed trustees had entered upon the discharge of their said duties, and the execution of their said powers, yet said Ketchum took no proceedings, as by the laws of Alabama and the rules and practice of the said court of chancery he might have done, to open said decree and have said cause reheard, but on the contrary acquiesced in said decree, and for more than ten (10) years thereafter has taken no steps in the premises to assert or maintain his said alleged right to said
1157 office of trustees, under the said deed of trust.

This defendant further avers that some time in the month of May, 1875, William Butler Duncan, of the State of New York, and Andrew Foster Elliot, of the State of Louisiana, acting as trustees under said deed and publicly claiming to be such trustees, under authority of said deed of trust, obtained from said railroad company possession of all the property conveyed by said deed, for the purposes and uses of said deed; and afterwards, to wit, on the 11th May, 1875, as such trustees filed their bill of complaint on the equity side of this honorable court, against the said Mobile and Ohio Railroad Company and others defendants, alleging and showing that as such trustees, they had taken and were then in possession of all the trust property conveyed by said
1158 deed, and therein also bringing to the knowledge of this court
other trusts, mortgages, and liens which were alleged against said property, and thereby prayed this hon. court to take jurisdiction of said trust and of said property, and to direct the management, control and disposal of the same as equity and justice might declare.

That thereupon this honorable court did take jurisdiction of said bill and of said cause, which is still pending undisposed of in this honora-

ble court, and has made orders for the management of said property
and the administration of said trust, and recognized and still recognizes
the said Duncan and Elliott as trustees and receivers of said property,
under its orders and directions and charged with the duty of accounting
to this court, for the use, management, and income of said property, for
the purposes which may be established by its decree, and all this
1159 before the filing of his said bill of complaint by the said Ketchum,
as fully appears by the record of the proceedings in said cause
remaining in this court, and to which this defendant beg' leave to refer as
may be necessary.

Wherefore this defendant prays judgment, whether he should be required to make further answer to said bill.

And this defendant not waiving his said pleas above pleaded, by protestation, not confessing any of the matters and things in said bill alleged,
to be true, demurs to so much and such parts of said bill as alleges that
said complainant is entitled to the property in said deed of trust described and prays discovery respecting the same, and says the same is
not sufficient in equity to entitle the complainant to the discovery and
relief he prays because it is not sufficiently shown in and by said bill
that complainant as trustee is entitled to said property in his bill
1160 mentioned, and because it is shown by said bill that said complainant before the filing of his said bill, had been by competent
authority removed from the said position of trustee.

And this defendant not waiving but insisting upon his said pleas and his said demurrer for answer to so much of said bill as he is advised it is material for him to answer, answering says, from information, he believes the said deed of trust or mortgages mentioned in the bill were made by said railroad company.

He does not admit that said complainant is a trustee under any of said deeds, or that he has claimed to be, or acted as such trustee under any of said deeds, for more than ten years.

He admits from information that said railroad company is in default
in payment of interest upon its obligation, and from like informa-
1161 tion states that such default began in May, 1874, and has contin-
ued from that date.

Respondent admits that he was appointed a trustee of the deed dated the 1st January, 1874, executed by said railroad company, but he shows that he has never had and has not now possession of any of the property therein described, or in complainant's bill mentioned; that he has no knowledge of the management of the said property, or of the accounts in relation thereto by said railroad company or any agent or trustee therefor, to enable him to make any answer in relation thereto.

And as to the other matters in said bill alleged this defendant has not
such knowledge or information as will enable him to answer the same,
but this defendant insist' on full proof of all said allegations.
1162 And having fully answered, this defendant prays to be hence
dismissed with his costs.

(S'g'd) SAMUEL L. M. BARLOW.

(S'g'd) P. & T. A. HAMILTON,
Sol'r Def't.

We certify that in our opinion the foregoing pleas and demurrer are sufficient and well founded in law.

(S'g'd) P. & T. A. HAMILTON,
Sol'rs.

UNITED STATES OF AMERICA,
Southern Dist. of N. Y., ss:

Comes this twenty-seventh day of December, A. D. 1876, before the undersigned, a commissioner of bail and affidavits, resident in the city and State of New York, appointed by the circuit court of the United States for the southern district of New York, the above-named 1163 Samuel L. M. Barlow, who is personally known to me, and being duly sworn, on his oath saith, the statements in the foregoing answer contained, so far as made on his own knowledge are true, so far as made on information and belief, he believes them to be true.

(S'g'd) SAMUEL L. M. BARLOW.

(S'g'd) SEAL OF HENRY P. BUTLER, U. S. COMMISSIONER SOUTHERN DIST. OF N. Y.

HENRY P. BUTLER,
U. S. Commissioner for the Southern Dist. of N. Y.

Filed January 1st, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1164 *Opinion of John Bruce, J.*

In the circuit court of the United States of the southern district of Alabama, in the fifth circuit.

MORRIS KETCHUM, AS SURVIVING TRUSTEE OF the first mortgage of the Mobile and Ohio Railroad Company, *v.* THE MOBILE AND OHIO RAILROAD COMPANY, William Butler Duncan and A. Foster Elliott,	In equity.

This case was heard upon the plea in bar of the Mobile and Ohio Railroad Company, defendant, and upon the demurrer of William Butler Duncan, defendant, to the complainant's bill.

The facts as they appear from the allegations of the bill and plea in bar may be briefly stated as follows:

That complainant, Morris Ketchum, is a citizen of the State of Connecticut. That on the first day of November, 1853, the Mobile and Ohio Railroad Company, a body corporate, organized under the laws of Alabama, and authorized by law to purchase, hold, and dispose of, real and personal estate, to borrow money, and to give evidences of debt and securities for the payment of the same by pledge, mortgage, or otherwise, as it shall deem necessary and proper, executed its deed of trust conveying to Morris Ketchum and John J. Palmer, then of New 1165 York, and William R. Hallett, then of Mobile, and to the survivors and successors of them in fee-simple, all its railroad property and franchises, in trust to secure six thousand bonds, each for the sum of two hundred and twenty-five pounds sterling, and payable in thirty years from date thereof, with coupons attached for interest payable semi-annually. There was included in said conveyance one million one hundred and fifty-six thousand six hundred and fifty-eight and $\frac{92}{100}$ acres of land, and as provided in the deed of conveyance, complainant and said Palmer and Hallett are "to have and to hold the said granted and demised premises, property, and franchises, in trust nevertheless for the benefit, security, and advantage of the person or persons or corporations, or any other party who might become holders of the bonds hereinbefore described, or any of them issued, or to be issued by said company, and for the payment of the interest coupons thereon as the same shall respectively fall due."

That said Ketchum, Palmer and Hallett accepted the trust and became the mortgagees of the said property in trust for the holders of the bonds above described. That the railroad company did afterwards sell and negotiate the bonds to bona fide holders thereof, the same being made negotiable by delivery. That most of them are now outstanding and are valid claims against said company, and valid liens against and upon the property and income and assets of said company. That John J. Palmer and William R. Hallett, co-trustees with complainant, both died about January 1st, 1861, leaving complainant, Morris Ketchum, the sole surviving trustee of the first mortgage of the Mobile and Ohio Railroad.

Complainant alleges that he is informed that about the 5th day of December, 1861, and nearly nine months after the State of Alabama had adopted an ordinance of secession from the United States, and after the commencement of armed hostilities, the directors of the Mobile and Ohio Railroad Company applied to a court of chancery then sitting in the Confederate States, so-called, and within the territory of the State of Alabama, for an order declaring his removal from the trusteeship of the said mortgage.

1166 That he is informed that "on the 7th day of April, 1862, an order or decree was granted by said court to remove him from said trust on the sole ground that he was a citizen of New York and an alien enemy of the Confederate States."

He alleges that he never heard of or had any knowledge of the pretended proceedings to remove him until after the termination of armed hostilities between the Confederate States and State of Alabama and the United States in the year 1865; that he has from the time of his appointment as original trustee under said mortgage, down to the present time, continued to act as such trustee, and perform the duties of said office, and has acted with and concerted with his cestuis que trust during all of said time for the protection of the rights of the bondholders.

He alleges that he has no personal interest in the said bonds; that his sole object, purpose, and desire is to perform his duty as trustee towards the bondholders and to protect their interest and defend the trust; that he has been requested by a number of the holders of said bonds owning bonds to a large aggregate amount, to institute these proceedings upon the default in the payment of interest, which default he alleges has been made.

He alleges that the Mobile and Ohio Railroad Company is largely indebted, embarrassed in its business affairs, utterly insolvent and unable to pay its debts.

He says that he is totally remediless to enforce the said claims and liens at law without the intervention and process of a court of equity.

The prayer of his bill is, that the property conveyed in the deed of trust may be sold for the benefit of the bondholders; that a receiver be appointed to take charge of and administer the property until a sale can be made, and for general relief.

To this bill is interposed a plea in bar by the Mobile and Ohio Railroad Company setting up the proceedings and decree of the court of chancery of the State of Alabama for the first district of the southern chancery division of Alabama, in the city of Mobile, in which the company was complainant and Morris Ketchum was made defendant, in

which bill it was charged "that said Ketchum had failed to
1167 perform his duties as trustee, as provided by said deed; that he
had been unfaithful in the performance of his duty as such trustee; that he was not trustworthy as such trustee, and was an unfit and improper person to hold said office; that he had fraudulently withheld the property of said company in his hands from their custody; that he resided beyond the limits of this State and in a territory at the time hostile to the State in which the property was, and that he could not execute and carry out the duties of said trust nor perform the duties required thereby.

"That said court did assume and exercise its jurisdiction, and did, by order, cause publication to be made according to the laws and practice of said State, requiring the said Morris Ketchum, as defendant to said bill, to appear in said court and to defend against the same; which publication was made, and the court did proceed to hear and determine the matter of the complaint; and, at the April term, 1863, it was ordered and decreed by the chancellor, in said court of chancery at Mobile, that said Morris Ketchum, defendant in said cause, should be, and he thereby was, removed from his said office as trustee, and by said decree a successor to Morris Ketchum was appointed, and who from that time did hold, and execute the duties of, said office of trustee, as the successor and in lieu of said Morris Ketchum, until the time when the co-defendants of said company, William Butler Duncan and Andrew Foster Elliott, were appointed such trustees.

"That said decree is still of record in said court, of full force and effect; that it has not in any manner been impaired, reviewed, reversed, or set aside; nor has any new trial or rehearing been applied for or had, as provided by the law of said court, nor any appeal; but the same has been fully executed by the removal of said Ketchum from said office and his discharge therefrom, and his place supplied.

"And that he, the said Ketchum, well knowing that he has been discharged and removed, has, from the rendition thereof to the date of his filing said bill in this court, acquiesced in said decree, and has not during said time done or performed any of the acts or duties, or done anything whatever in the execution of said trust duties."

1168 The ground of the demurrer to the bill of complaint by William Butler Duncan is: That the bill shows that Ketchum had knowledge of his removal and the appointment of new trustees, and shows no compliance with the laws which gave the court jurisdiction to review, nor any attempt to have the decree reopened within the time named by the several statutes on the subject.

Substantially the same questions are raised by the plea and demurrer, and they will be considered together.

George Hoadley, D. C. Labatt, and Edward L. Andrews, for complainant.

John A. Campbell, George N. Stewart, and Peter Hamilton, for defendants.

BRUCE, J.:

This statement of the issue made in the pleadings presents directly the question as to whether the decree of the court—which, for the sake of brevity, may be called the State chancery court at Mobile—is a bar to the relief sought in complainant's bill. In other words, did the proceedings and decree of the State chancery court at Mobile, in law, remove Morris Ketchum from his position as trustee in the deed of trust? This depends upon the question of the jurisdiction of that court to hear and determine the cause brought by the Mobile and Ohio Railroad Company, in 1863, against Morris Ketchum to remove him from his trusteeship in the deed of trust set out in the complainant's bill.

No question is made as to the general jurisdiction of the chancery courts of Alabama prior to the war of the late rebellion.

It may also be assumed that this jurisdiction continued during the existence of the State of Alabama as one of the so-called Confederate States of America; that is, so far as such jurisdiction, and the decrees of such courts, can be now recognized and held as valid by the courts of the United States, State and Federal.

1169 The Mobile and Ohio Railroad Company is a corporation, organized under the laws of Alabama, with its chief place of business in the city of Mobile, Alabama, and the portion of its property within the State of Alabama was within the territorial jurisdiction of the State chancery court at Mobile.

But, did the said chancery court have jurisdiction of the defendant, Morris Ketchum? For the legal principle is that there must not only be jurisdiction of the subject-matter, but of the parties as well. Notice, and an opportunity to be heard, are essential to the jurisdiction of a court to hear and determine a cause. A party defendant must have his day in court. It is a fundamental legal maxim that no one shall be condemned in his person or estate without an opportunity to be heard in his own defence. (Windsor v. McVeigh, Opinion of U. S. Supreme Court; Albany Law Journal, January 6, 1877.)

It is not claimed that Morris Ketchum had actual notice of the proceedings in the chancery court at Mobile. But it is claimed that he had constructive notice; that he was at the time a non-resident of the State of Alabama, and that under section 3335 of the revised code of Alabama—which was the law of Alabama at the time of the suit— a publication was made in a newspaper printed in the city of Mobile.

It is not questioned that this publication of notice was made in accordance with the statute law of Alabama in force at the time, and that a proper return of such publication was made to the court.

The fact is, however, that Ketchum did not appear in said court to plead or answer to the bill filed against him, either in person or by attorney. He made default, and a decree pro confesso was taken against him; and, in due course, a final decree for his removal as trustee.

He says, in his bill of complaint, that he never heard, or in any way had any knowledge, of the said pretended proceeding to divest him of his property as trustee as aforesaid until after the termination of armed hostilities between the so-called Confederate States and the State of Alabama and the United States, in the year 1865.

1170 Courts are bound judicially to know the public history of the country.

On the 11th day of January, 1861, the State of Alabama, in convention assembled, passed what is known as the ordinance of secession, purporting to dissolve her connection with the Federal Union as one of the States thereof.

Immediately thereafter a State government was organized in hostility to the Government of the United States, and declared itself to be a State of the so-called Government of the Confederate States of America, which was organized in all its departments, executive, legislative, and judicial, with its seat of government in the city of Montgomery and State of Alabama.

On the 15th day of April, A. D. 1861, the President of the United States, by executive proclamation, recognized the existence of armed

insurrection against the United States by Alabama and her confederate States.

At and before the time of these proceedings in the chancery court in the city of Mobile war was flagrant between the two sections of the country. Ketchum was at that time a resident citizen of the State of New York. In actual fact military lines were established and organized armies lay between him and the place where the court was held in which he was cited to appear. Moreover, he was at the time a citizen of the United States, and his duty of allegiance to his government made it unlawful for him to cross the military lines—even if that were possible—and to appear in a court organized by the government of the enemy and in a country at the time held by the enemy.

In July, 1861, Congress passed what is known as the non-intercourse acts, by which all intercourse and correspondence with persons within the enemy's lines was interdicted and made unlawful.

Under these circumstances, whatever jurisdiction might be accorded to a court of one of the Confederate States of America during the war of the rebellion—such as was this chancery court of Alabama sitting in Mobile—as between citizens of Alabama, or as between citizens 1171 of the Confederate States, the proposition seems clear that such a court could acquire no jurisdiction of citizens of the United States residing and being at the time in the States adhering to the Government of the United States.

In Hanger vs. Abbott (6 Wall., 535) it is held by the Supreme Court, opinion by Justice Clifford, that "war, when duly declared or recognized as such by the war-making power, imparts a prohibition to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemies' country." Also, Cuyler vs. Ferrill, 1 Abbott, 180.

These views are sustained in later cases in the Supreme Court of the United States. (Dean vs. Nelson, 10 Wall., 172; Lasere vs. Rochereau, 17 Wall., 437.)

The precise point seems to have been passed upon by Chief Justice Chase while on the circuit, in the case of Livingston vs. Jordan (10 Amer. Law Rep.), in which he says:

"As between parties residing in the State of South Carolina and parties residing in the States which adhered to the National Government, between whom war made intercourse impossible, there could be no jurisdiction in the courts of South Carolina while the war continued, by which the rights of non-residents could be injuriously affected."

These authorities are irreconcilable with the idea that there was in the chancery court of Mobile at the time these proceedings were had any jurisdiction as to Morris Ketchum which could authorize it to render a decree which can now be recognized as valid in the courts of the United States.

But it is said that the Mobile and Ohio Railroad is a corporation organized under the laws of Alabama, with its principal place of business in the city of Mobile, and that Morris Ketchum knew when he accepted the trust, or will be held to have known, what the laws of Alabama at the time were in reference to service upon non-residents by publication, and that by section 3455 of the Code of Alabama it is 1172 provided that "upon the petition or bill of any person interested in the execution of a trust, the court of chancery may remove any trustee who may have violated or threatened to violate his trust, or who from any other cause is an unsuitable person to execute the trust."

No law of Alabama is shown making it illegal to settle a trust upon a non-resident of the State. From the mortgage-deed it appears that Ketchum was, at the time the trust was created, a citizen of New York. He did not become a non-resident of Alabama, for from aught that appears he never at any time was a citizen or resident of Alabama. The deed was made to three persons, two of whom are described in it as residents of New York; and from this fact, taken in connection with the nature and purpose of the trust, it is fair to presume that their residence at the acknowledged money-centre of the country was a part of the scheme intended by its authors as inducement to parties to become purchasers of the bonds.

But it was urged in argument that when a condition of affairs in the country arose, which, as is said, rendered the duties of the trust impossible of performance by him, by reason of his separation from the property, he should have resigned his position. The fact is, however, he did not resign, and it is his legal rights we are now dealing with.

It is claimed that the suit in the chancery court of Mobile was a suit in rem and not in personam.

It is not clear that it was in any strict legal sense a proceeding in rem, but I do not deem it necessary to discuss this question, for if it was so, still the defendant was entitled to notice and an opportunity to be heard, which was, as we have seen, an impossibility, in the then condition of the country, Ketchum then residing in the State of New York, one of the adhering States of the Federal Union, while Alabama had joined her fortunes to the Confederate States, and war was flagrant between the two sections of the country. (Earle vs. McVeigh, 1 Otto, p. 503.)

If this view is correct it is decisive of the case, for without jurisdiction of this sole defendant the court, though it may have been legally constituted, could render no decree competent to divest Ketchum
1173 of the title to the property (real estate) which he acquired under the deed of trust.

The next enquiry is as to the competency of this court, constituted as it was, to make a decree which can now be held conclusive as to the rights of complainant.

Before entering upon this question, it is proper to inquire what this trust really was. A trust is defined to be an "estate held for the use of another." The deed shows the conveyance of the title in fee simple to the trustees, and it also contains specified duties to be performed by the trustees. It is then more than a mere office. It is an estate. It is more than a simple trust. It is a special trust, with active duties to be performed, and with powers in the nature of a trust.

It appears that Ketchum does not own any of the bonds, but it cannot be questioned that he, by the acceptance of the trust, became invested with an estate and held a position of responsibility to the bondholders, from which he could not release himself by a resignation or any voluntary act on his part; for after the purchase of the bonds they, the bondholders, became parties in interest in the transaction. With this view of the nature of the trust, and the relation of Ketchum to it as trustee, the question of the competency of the State chancery court of Alabama, sitting in Mobile during the war, to pass a decree to be taken and held as valid and conclusive as to the rights of the complainant herein, can be more clearly considered.

The question, then, is, what validity is now to be accorded to the acts, legislative and judicial, of the Confederate States during the period of their existence as States of the so-called Government of the Confed-

erate States of America, and while the Confederate States were at war with the United States.

Before passing to the decisions of the Supreme Court of the United States upon this subject, I call attention to the law as it has been held and declared in this circuit.

In the case of Van Epps vs. Walsh et al., reported in 1st Woods, 609, the court, Woods circuit judge, says:

"The decree of the chancery court of Mobile County, directing
1174 Dorgan and Walsh to enter satisfaction of the mortgage made
to them by Van Epps, the guardian, was also made coram non judice.

"The main party in interest was the minor Van Epps, who was in the State of New York, and prohibited by the laws of the United States from making any defence.

"It is not pretended that any actual notice was served, or could be legally served, upon him, and, even if served, he could make no defence, and the purpose of the decree against him was to deprive him of the security which the guardian had given him to protect his estate.

"It was a decree depriving him of his just rights, and in rendering it the court was no court, and the decree is ineffectual." (Citing Cuyler v. Ferrill, and other authorities.)

In the case of Lockhart v. Horn, in this circuit, reported in 1 Woods, 628, afterwards affirmed in the Supreme Court of the United States, and reported in 17 Wallace, p. 570, Justice Bradley, speaking, as it seems to me, with much care, uses this language:

"As a general rule, in my judgment, all transactions, judgments, and decrees, which took place in conformity with existing laws of the Confederate States, between citizens thereof, during the late war, except such as were directly in aid of the rebellion, ought to stand good."

From these authorities it appears that the law, as held in the fifth circuit up to this time, is, that judgments and decrees of the State courts of the Confederate States, rendered during the war, are to stand good as between citizens thereof; but as to citizens residing in the adhering States they are not valid, and the court, as to them, is no court.

I now pass to a review of the decisions of the Supreme Court of the United States, to see if these views and authorities heretofore cited are borne out by the decisions of that court, which is the ultimate judicial authority by which we are bound.

The question of the validity of the acts, legislative and judicial, of what may be called the Confederate States during the war, is not a new question in that tribunal. There are many cases, and I have to extract
from them the true rule of decision, and apply it to the case at
1175 bar. An early and a leading case, to which reference is often
made, is the case of Texas v. White (reported in 7 Wallace, 733). In that case the court, by Chief Justice Chase delivering the opinion, says:

"It is not necessary to attempt any exact definitions within which the acts of such a State government must be treated as valid or invalid. It may be said, perhaps, with sufficient accuracy, that acts necessary to peace and good order among citizens, such, for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful, government, and that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must in general be regarded as void."

In some of the later cases decided by the Supreme Court, the rule is stated with more brevity and exactness, but they are all on a line with the case of Texas v. White.

The leading authorities are: Texas v. White, 7 Wallace; Lockhart v. Horn, 17 Wallace, 57; University v. Finch, 18 Wallace, 107; Sprott v. United States, 20 Wallace, 459; United States v. Insurance Companies, 22 Wall., 99.

The latest case brought to my notice upon this subject is the case of Taylor v. Thomas (reported in 22 Wallace, 491). After a review of some of the former decisions on the subject, the court, speaking by Justice Clifford, quotes from the case of Horn v. Lockhart, in which case Justice Field, delivering the opinion of the court, said:

"Order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and descent of property regulated precisely as in times of peace. No one that we are aware of," say the court,
1176 "seriously questions the validity of judicial or legislative acts in the insurrectionary States, touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution."

In the case of the United States v. Insurance Companies, cited by defendants' counsel, the same doctrine, substantially, is laid down.

The case was that of two insurance companies, corporations created by the legislature of Georgia in 1861 and 1863, while the State was in armed rebellion against the United States, and the errors assigned were:

1st. In holding that claimants had a legal existence.

2nd. In holding that the rebel legislature of Georgia could create a corporation capable of suing the United States after the suppression of the rebellion.

In the opinion of the court, delivered by Justice Strong, after quoting from the former decisions of the court on the subject, he states the rule thus:

"All the enactments of the de facto legislatures in the insurrectionary States, during the war, which were not hostile to the Union or to the authority of the general government, and which were not in conflict with the Constitution of the United States, or of the States, have the same validity as if they had been enactments of legitimate legislatures." He proceeds: "Any other doctrine would work great and unnecessary hardship upon the people of those States without any corresponding benefit to the citizens of other States, and without any advantage to the national government."

This case illustrates the rule clearly, and shows the principle upon which it rests.

The incorporation of insurance companies had no element of hostile legislation. They could not, in carrying out the legitimate purposes of their organization, give aid to the rebellion, or affect the rights of citizens of the United States. Their incorporation pertained purely to the domestic affairs of the State, and was just such legislation as would have been called for in times of peace.

1177 The Confederate State governments were, during the war, charged with the duty of protecting civil society within their respective States. This was to be done, not by the suspension of the functions of the legislative and judicial departments of these governments, but by their continued exercise. Law was to be administered, social order preserved, and this could only be done by the activity of the agencies provided for that purpose.

The proposition then is that the acts, legislative and judicial, of these de facto State governments during the war, within certain limits, are to have the same validity as if proceeding from State governments de jure. And this rule rests upon public policy and is to have its full scope and effect, but the limitations are to be steadily kept in view.

Though these limitations may not be capable of expression in precise language applicable to every case, they may be thus stated:

First. That the acts were not in aid of the rebellion, or hostile in their purpose or mode of enforcement to the national authority.

Second. That they did not injuriously affect or impair the legal rights of citizens of the United States residing at the time in the adhering States of the Union.

Tested by this rule, with these limitations in view, what shall we say of the decree of the State chancery court at Mobile, rendered in 1863, removing Ketchum from his trusteeship in this deed of trust?

There may be some difficulty in applying the first of the rules above laid down because the purpose or motive for action may not be apparent, and the rule is perhaps to be limited to cases where hostility is apparent.

A railroad is a very important agency in carrying on military operations, and it is a matter of history that this particular road was of great service to both parties during the late war, but it does not clearly appear that the removal of Ketchum was intended as a war measure in aid of the rebellion, or that in its effect it made the southern portion of the road any more valuable to the Confederacy, or the north-
1178 ern portion of it any less valuable to the Government of the United States in the actual prosecution of the war then going on.

The chancery court, however, seems to have based its decree on the ground that Ketchum was an alien enemy of the Confederate States, which implies a purpose to place this trust in the control of some one at least not an enemy to the Confederate States, and when Ketchum's residence in one of the adhering States of the Union is considered, the presumption arises that some benefit to the Confederate States, present or prospective, was sought by the change, though that presumption, perhaps, may not be conclusive.

It is suggested that it was sought to divest Ketchum of the lands in order that sales might be effected for Confederate money, but that also rests upon inference and is not conclusive.

But the question recurs, was this decree of the State chancery court at Mobile, in its effect if accorded validity, an impairment of the rights held by Ketchum, "a citizen of the United States, under the Constitution?" to use the language employed by the Supreme Court in case of Taylor vs. Thomas, (22 Wallace.)

I do not understand the phrase "rights of citizens under the Constitution" to mean exclusively Federal rights as such, but legal rights—just rights—rights for the infraction of which the law furnishes remedies. And it is such rights of citizens of the United States which it was not competent for this court to impair or injuriously affect.

The argument seems to be that the judgments and decrees of the State courts of the Confederate States during the war are to be held and regarded as of the same validity as the judgments and decrees of the courts of the States adhering to the Federal Union, and when regularly rendered cannot be attacked collaterally, but only in a direct proceeding.

The cases cited do not, in my judgment, sustain that doctrine, and some of the opinions of the Supreme Court of the United States
1179 express dissent from such a view; the predicate for such a doctrine was destroyed when the Confederate power and Government was overthrown.

But it is claimed that this decree has been ratified and validated by the action of the State conventions of the State of Alabama, held after the war, to restore the State to its proper relations to the Union, and that this deed of trust was made with reference to the laws of Alabama and is to be governed by those laws alone.

If I am right in my conclusion that this decree was void as to the rights of Ketchum, as trustee in this trust, it follows that it could not acquire validity from such acts, as it was incapable of legal life. But this scheme for raising money upon bonds secured by deed of trust upon the property of the railroad company located (in part) in Alabama, with its principal place of business in the city of Mobile, looked for its execution and accomplishment beyond the limits of the State of Alabama.

It was not expected to raise six millions of money in this State, and the form of the bonds and coupons, as negotiable securities, payable to bearer, for so many pounds sterling at the banking-house of George Peabody & Co., London, shows the purpose to have been to reach the money centres of the world. When the bonds were sold the purchasers acquired an interest in this security, and the transaction became a contract between the parties. The bondholders have never been parties to any judicial proceedings for, or given consent to, the removal of Ketchum as trustee. To remove the trustee and substitute another in his place in any other way than by a proper judicial proceeding was to change and impair the obligation of the contract. This the State of Alabama, neither by its constitutional conventions nor by its legislature had any power to do. Hence, it could not ratify and make valid that which was beyond its power to do in the first instance. (Knapp v. Railroad Company, 20 Wallace.)

It is further claimed that, after the war, when the proceedings of the chancery court at Mobile were brought to the knowledge of
1180 Ketchum, he should have availed himself of the time that was given by the constitutional conventions of Alabama to apply for a rehearing of this decree, or have taken an appeal from it, time having been given for these purposes.

If I am correct in my conclusion that this decree was void as to him, then he was under no obligation to pay any regard to it. The effect of an application on his part after the war, to open the decree or to take an appeal, time for which was amply extended by the law-making power of the State, it is not important to discuss; for the fact is, he did not make any such application. The doctrine of estoppel is also invoked as to the complainant. He admits that he acquired knowledge of the proceedings and decree in the State chancery court, at Mobile, in the year 1865, after the close of the war. It is claimed that from that time to the time of the filing of this bill (1876), he has taken no steps to assert his rights as trustee, and has thereby acquiesced in what has been done, and is estopped from asserting any right as trustee in the deed of trust.

It is to be observed that, by the terms of the deed of trust, after specifying the duties of the trustees as to the lands covered by the deed, it goes on to say: "As to other items of assets of real estate, tolls, or in-

come of said company, they are to remain in the possession or under the control of the said company, except the said company become in default for the payment of said bonds or interest, or any portion thereof. In such case the said party of the second part is hereby vested with full authority to take possession and control of all and singular the entire estate," &c., &c. And again, "Said party of the second part shall not claim to take possession and control, unless said company remains in default of payment of said bonds or interest for the space of three months after being due and payable."

This default in the payment of interest occurred in May, 1875, so that, up to that time, by the terms of the deed, the railroad company was entitled to the possession and control of the property, except the lands, and as to them, until the default, no sales could be made "without the advice and consent of the company."

1181 The trustees were at once, however, to have possession and control of the lands donated by Congress, with authority to devise and determine rules of management of sale; of investing the nett proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds, &c., &c. This suit was brought in May, 1876, so that as to the property other than the lands. Ketchum's duties arose in fact only a few months prior to the bringing of this suit.

But with regard to the land grant the matter is quite different; for, by the terms of the deed, the trustees had duties to perform as to the sale of the lands, with a view to the creation of a sinking fund with the proceeds thereof.

This indicates a neglect of duty on the part of Ketchum, and might afford good cause, in a court of competent jurisdiction, in a proper proceeding, and upon proof, to depose him from his trust, but that is all. A mere neglect of duty as trustee will not and cannot, ex proprio vigore, divest his title to the trust-estate.

This is not a plea of the statute of limitations. It is acquiescence since the year 1865. Acquiescence implies something to be acquiesced in, and the plea is that "he acquiesced in the decree," meaning the decree of the State chancery court at Mobile.

The rule of law upon this subject is thus stated by the supreme court of the State of Alabama, in the case of Ware et al. vs. Cowles (reported in 24 Ala., p. 446), Goldthwaite J., delivering the opinion, says:

"The first question presented upon the record is, whether upon the case made by the bill Cowles was estopped from asserting his title against Seales and Jones.

"It is clear, both upon principle and authority, that the conduct or admission which concludes a party, must be plainly inconsistent with the right which he afterwards sets up." Again:

If the act or admission be susceptible of two constructions, one of which is consistent with the right, the party would not be concluded by its assertion, because to do so might operate to defeat a man's right by argument or inference, which is not allowable.

1182 Again the court says, "So, too, the admission, however unequivocal it may be, will not operate as an estoppel unless the other party has acted upon it," citing authorities.

Now apply this rule:

Did Charles Walsh, when he became trustee under the appointment of the court, act upon any conduct or admission of Morris Ketchum? Was not the decree of the court the acknowledged foundation and source of whatever rights he acquired?

The plea says that "by said decree," meaning the decree of the chancery court of Mobile, "a successor to Ketchum was appointed, and who from that time did hold and execute the duties of said office as successor in lieu of and stead of said Ketchum until the time when the co-defendants of this company, William Butler Duncan and Andrew Foster Elliott, were appointed such trustees." Manifestly, then, the decree was the basis and source of the alleged rights of the present trustees, not any acts or admission of Ketchum, for he was then living in the State of New York, and without the opportunity or right of intercourse with the parties.

The most that could be said is, that the silence of Ketchum may have increased the confidence of the trustees in their position, but that mere silence under such circumstances could operate to divest the title to a trust estate, is, to my mind, untenable. The result of these views is, that the plea in bar and the demurrer are overruled.

1183 *Order overruling demurrer & plea.*

United States circuit court in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE OF the first mortgage of the Mobile and Ohio Railroad Company,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, W'm Butler Duncan et als.
} In equity.

At a regular term of the circuit court of the United States in and for the southern district of Alabama, commencing on the fourth Monday of December, A. D. 1876, and holden on the 3rd day of February, 1877.

This cause came on to be heard at the stated term of this court on the bill and exhibits of the complainant Morris Ketchum, and on the plea in bar of the Mobile and Ohio Railroad Company, and on the demurrer of William Butler Duncan, defendants.

1184 The cause was argued on behalf of Morris Ketchum by George Hoadley, D. C. Labatt, E. L. Andrews, esquires, and on behalf of the defendants above named, by John A. Campbell, Peter Hamilton, and George N. Stewart, esquires.

The court being duly advised in the premises, and having fully deliberated thereon, it is hereby adjudged and decreed that the demurrer of the defendant William Butler Duncan, to the entire bill, and the plea in bar of the Mobile and Ohio Railroad Company to the entire bill, be, and the same are, and each of them is hereby overruled, to abide the result of the suit.

JOHN BRUCE,
Judge.

Filed February 3rd, 1877.

N. W. TRIMBLE, *Clerk.*

1185 Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM
agst.
MOBILE & OHIO RAILROAD COMPANY AND OTHERS.

The separate answer of William Butler Duncan to the bill of complaint in this honorable court, by Morris Ketchum against the Mobile & Ohio Railroad Company, this respondent, and others.

This respondent, not in any manner or at all waiving the demurrer by him heretofore filed to said bill of complaint, but insisting thereon, and upon the benefits and advantages thereof, and reserving to himself all benefits and advantages of exception to the many errors and uncertainties in complainant's said bill of complaint contained, for an-
1186 swer thereunto, or unto so much and such parts thereof as this defendant is advised it is necessary or material for him to make answer unto, answering, saith:

This respondent does not admit that said complainant is a citizen of the State of Connecticut. Said complainant, in his original bill, which purports to be sworn to by him, asserts himself to be a citizen of the State of New York; in amendments which have been filed to said bill by said complainant, which also are sworn to by him, he declares himself to be a citizen of the State of Connecticut. Said complainant is engaged in business in the State of New York; but upon the conflicting allegations of the record, this respondent insists that said complainant shall prove his citizenship to be in the State of Connecticut, otherwise that his said bill be dismissed for want of jurisdiction in this court.

Respondent admits the allegations of the bill that the Mobile & Ohio Railroad Company is a body politic and corporate, constituted under the laws of Alabama, and recognized in the laws of Mississippi, Tennessee, and Kentucky, and has its domicile and principal office and place of business in the city of Mobile and State of Alabama, and holds property in all of said States. Respondent refers to the several acts of the several legislatures of said States for the authority and powers of said corporation, and the duties imposed upon it.

This respondent admits that on 1st November, 1853, said corporation at Mobile, in said State of Alabama, did execute its mortgage or deed of trust upon the property and rights therein described, to secure the payment of bonds therein described to the amount of not exceeding six millions of dollars, with interest thereon, payable semi annually, as provided by interest-coupons attached to said bonds, and that for the due and proper administration of the trusts for the benefit of the
1187 parties beneficially interested therein in said deed described, Morris Ketchum, John J. Palmer, and William R. Hallett were nominated therein trustees under said mortgage. For a full and accurate description and understanding of the said deed and the rights of persons and parties thereunder, this respondent refers to the said deed, and prays the same may be produced before this honorable court.

Respondent admits that after the execution of said deed, said corporation did issue a large number of bonds thereunder, and intended to be secured by it; and from information states there is still outstanding of the principal of said bonds about the sum of five million six hundred and nine thousand dollars, with a large amount of unpaid interest thereon, which now exists in the form of bonds heretofore issued for the funding of interest before that time matured and unpaid, and in the shape of the original interest-coupons which have matured on and since 1st May, 1874.

Respondent admits that the said Palmer and Hallett are dead; he is informed, and therefore so states, that said Palmer died prior to 1st March, 1859, but the exact time is not known to this deponent; that Hallett died on or about 20th June, 1860, and thereupon the said Ketchum became surviving trustee under said deed of mortgage and trust, and it became and was his duty to unite with said corporation in filling the vacancies which had been created by such deaths.

Respondent is informed and believes, and therefore states that said Ketchum would not unite with said corporation in filling such vacancies, except on condition that said corporation would assent to his demand for compensation which it deemed unjust and excessive; upon like information respondent states that two gentlemen every way fit for the position, to wit, Charles Walsh and G. M. Parker, were in the year 1860 proposed by said railroad company to said Ketchum to be appointed to said vacancies. Said Ketchum intimated that he
1188 would accept one of said nominees, and proposed himself to communicate to the directors of the corporation his selection, and with him to nominate the then president of the company, Milton Brown, for appointment to said vacancies, but insisted upon naming the terms on which he would so co-operate with said company, which were that his demand for compensation should first be assented to. M'r Brown declined to be a party to any such scheme, and thereupon said Ketchum declined to accept the said nominees or either of them so proposed on behalf of said railroad company, and thereafter refused to make to said corporation any nomination to fill said vacancies, and asserted his right to act as sole trustee under the said deed; and said corporation did then consider and determine that the purposes of said Ketchum were overreaching and extortionate, and proceeded from motives of personal gain and advantage not for the benefit of the trust, and that he was untrustworthy.

Respondent, upon information which he believes, further states, that upon the preparation of the bonds intended to be secured by said mortgage, the said trustees had retained eighteen of the said bonds for their own compensation; said corporation did not assent to such application of said bonds, and insisted they should be returned; that the sum so withheld was much greater than should equitably be demanded for the services rendered, which consisted solely in certifying said bonds; this objection of the corporation was not regarded, but said bonds were never returned to the company, but with the coupons thereon were retained against the will of said corporation for their said compensation as trustees to the 1st November, 1857, and they continued to demand thereafter an annual salary as such trustees. The recognition of this demand of said Ketchum was made by him the condition on which alone he would perform his duty of uniting with said corporation in the appointment of new trustees to fill the vacancies caused by the deaths aforesaid.

1189 This respondent, upon information and belief as aforesaid, denies the allegation of the complainant, that he, said complainant, offered to the directors of the Mobile and Ohio Railroad Company to comply with the terms of the mortgage in reference to the appointment of new trustees, and made every effort in his own behalf and with said directors to prevail upon them to conform to the requirements of the mortgage, and to fill the vacancies in the board of trustees thereof.

Said allegation is not true, but on the contrary said Ketchum, in utter disregard of his said duties as trustee aforesaid, sought to use the power which had arisen from the death of the said co-trustees to compel the company to grant terms of payment which were oppressive and which it disapproved and were to the undue personal advantage of him the said survivor.

This respondent, upon information which he believes to be true, further states that while by the terms of the trust-deed the general management of the lands of the corporation was entrusted to the trustees, no sale thereof before default in payment of interest could be made except with the assent of said corporation. The sale of said lands was a matter much desired and greatly to the interest of said company; and with its approval during the life of complainants' co-trustees, but with much opposition from him, an economical mode of sale had been devised and acted upon whereby a considerable quantity of land had been sold. When said Ketchum acquired the position of sole trustee, he refused to carry out the arrangements previously made; refused to permit deeds to be made to purchasers except by himself, and threatened to appoint agents and managers in his own interest, and to inaugurate a scheme under his own control, and at great and unnecessary expense, to the great injury of said corporation and of the cestuis que trust, who were
secured by said deed of trust. By his conduct he retarded or pre-
1190 vented sales of land and stopped the making of titles to pur-
chasers who had in good faith paid their money for said lands, and caused great distrust among parties disposed to make purchases. He paid no attention to the remonstrances of said corporation, and refused to fill vacancies and advance sales of said lands as desired by the corporation and as intended by said deed of trust, but placed himself in an unfriendly and hostile attitude to the interest and wishes of the creator of said trust and parties interested therein, and all this to advance his own power, and to secure advantage to himself at the expense of the trust and of said corporation.

By his said conduct in the trust, and his management of said trust property, said Ketchum, after the death of his co-trustees, showed that he was an unfit person to continue in said trust. He had not made any report of his acts and doings during the three years preceding the death of M'r Hallett; had not acknowledged reports which were made to him of sales of lands by the agents before that time appointed by the trustees, and failed to perform the duties required of him as such trustee. The said company had made every reasonable offer to induce him to perform his duties and advance the interest of the trust, and unite in the appointment of suitable persons as trustees, but he refused to perform said duties and accede to said reasonable requests as it was his duty to do.

Respondent, upon the facts aforesaid, of which he is informed and verily believes them to be true, denies the allegation of the bill that said corporation or its directors sought to obtain by request or otherwise, of complainant, to be permitted to exercise power and control in the premises, in contravention of the terms of the mortgage. Answering upon information and belief, respondent says that all the charges of the bill of proposed action by said directors for the disposition of the lands or the appointment of trustees to the injury of the cestuis que trust
or for the violation of the trusts of the settlement are untrue. It
1191 was complainant who sought to violate said trusts and use his
power under said deed, for his personal advantage, in disregard of his duties as trustee for the protection of said railroad company,

and the advancement of its interests as well as of the holders of its bonds.

This settled purpose on the part of said Ketchum, was fully developed by his acts and assumptions of right and power after the death of M'r Hallett, which occurred in June, 1860. By the death of M'r Hallett, who was a resident citizen of Alabama, the advantage and convenience of a trustee resident in Mobile, or near the location of said railroad and lands, easy to be consulted, and who could give personal attention to the property and duties of the trust, which advantage and convenience had been secured by said deed, was lost to the said corporation; and if the demands of said Ketchum had been recognized the property and control of the trust would have been wholly in the hands of a non-resident, against the policy of the settlement and of the law of the State where the settlement was made and where was the home of the corporation.

Said Ketchum was at the time plainly notified that he had lost the confidence of the said railroad company, and had proved himself an unfit and untrustworthy trustee, and that the protection of the courts would be invoked against him and against his improper and oppressive demands, and to secure the appointment of suitable persons as trustees in the management of this property.

Respondent, upon information which he believes to be true, states that from the death of said Hallett in 1860, to this time, said Ketchum has not performed, and has not offered to perform any act as trustee under said deed of trust, nor has he at any time claimed to be such trustee until he permitted to be filed the bill in this case; that before the death of said Hallett he had neglected the duties required of him by said deed; that during all that time he has been non-resi-
1192 dent of this State, or of any of the States in which the railroad and property of the trust is situated and located, and as respondent verily believes, has not at any time since the execution of said deed been within the limits of any of said States nor upon the line of said railroad.

The respondent admits, that upon these facts thus imperfectly detailed, the said Mobile & Ohio Railroad Company did take legal steps for the removal of said Ketchum from said trusteeship, and for the appointment in the place of said Ketchum, who had acted so improperly and was non-resident of any of the States wherein said property was located, and in lieu of the former trustees who were then deceased, of other persons who would faithfully execute the trust as it had plainly notified him it would be constrained to do; and as it was its duty and right to do for the protection of its creditors by said bonds, for whose payment the property and rights described in said deed of trust had been pledged.

And for defence to so much and such parts of complainant's said bill as charge that said plaintiff at the time of filing his said bill, was and is a trustee under said deed of trust, or had or has any title or estate in the property described therein, or that he is entitled to execute the trusts thereof, or to any ownership or control of said property, this defendant answers and shows to the court that in the month of January, 1862, the said Mobile & Ohio Railroad Company, incorporated by the laws of the State of Alabama, and having its home and chief place of business at Mobile, in the State of Alabama, in which said State the said deed of trust had been and was executed, did file its bill in the court of chancery of the State held at Mobile, being the court of chancery for the first district of the southern chancery division of the State of Ala-

bama, against the said Morris Ketchum as defendant, and
1193 therein did charge that said Ketchum had violated his duties as trustee, and was an unfit person to continue in the position of trustee; had proved himself an improper person to manage said property as trustee; that he had been unfaithful to his trust, and resided beyond the limits of the State where the services of residents were required, and was an unsuitable person to be continued as trustee; said bill also showed that his co-trustees J. J. Palmer and W'm R. Hallett had died and their said office was vacant.

The said Ketchum was made a party defendant to said bill by publication in the mode and manner directed by the laws of the State of Alabama, and the rules of practice of said court, which had been in force from before the date of the said deed of trust; and such proceedings were had upon said bill in said cause, that at its rules in March, 1863, a decree "pro confesso" was pronounced by said court, upon the failure of said defendant to appear and answer said bill according to the order of the court made at regular rules on the 6th January, 1862. At the regular term of said court of chancery in April, 1863, the said court decreed that said Ketchum was incompetent to act as trustee aforesaid, and that the offices of trustee under said deed were all vacant, and made the appointment of three persons, to wit, Charles Walsh, George H. Young and Alexander Jackson, to fill the vacancies caused by the removal of said Ketchum, and the death of said Palmer and Hallett; a certified transcript of which record of proceedings will be produced as this honorable court may direct. This defendant shows that the said court of chancery had full and plenary jurisdiction of the subject matter of said cause, under the constitution and laws of the State of Alabama, and that said Ketchum was made a party to said cause according to the laws of the State and the practice of the court in the case of non-resident defendants; that the causes of the removal of said Ketchum from said trusteeship were such as the statutes of the State declared to be sufficient for his removal; that the court took and ex-
1194 ercised jurisdiction of the case; that the decree is in full force and effect; that no appeal has been taken therefrom, and the decree has been fully executed. No application of any kind has at any time been made in or to said court, to open said decree as authorized by the laws of Alabama, or to have a new trial or rehearing thereof, or to review or modify the same, or in any manner to impugn its validity.

This respondent refers to the various public statutes of the State of Alabama which afford remedies to non-residents who have been made defendants in judicial proceedings in the said State under the laws thereof, for the examination, review, rehearing and opening of decrees rendered against them in such proceedings, and pleads the same as part of this answer in defence of this bill of complaint, and avers that said Ketchum has had full opportunity given to him to make defence to said decree of removal, if he had any defence to make, but has utterly failed and refused to make any objection, or dissent thereto.

This respondent shows that said decree was fully executed, and from the date thereof until the date of the filing of this bill, the trustees appointed by said decree, and their successors, have been continuously in possession of said office, and have performed every function and duty imposed by said deed of trust and the condition of the company without opposition, let, or hindrance of said plaintiff, or from any bondholder, but with the acquiescence and submission of said plaintiff and the approval of the bondholders protected by said deed.

This respondent shows that said Ketchum had full notice of his re-

moval as aforesaid, and of said decree in the year 1865, and might have availed himself of the provisions of the laws of Alabama to have obtained a rehearing or a review and opening of said decree at any time from the 28th September, 1865, to the 26th June, 1869, had he been disposed to contest the allegation of the bill filed in that cause, or
1195 the propriety and validity of the application of the plaintiff, for
his amotion from an office which he had abused, and which he was not a suitable or proper person to fill; and the said defendant avers that during the whole period, from the month of May, 1861, to the month of May, 1870, the said railroad company was more or less in default in the payment of interest on the said bonds mentioned in the said deed of trust, and that at the termination of the war in 1865, and from then until 1869, there were negotiations for the funding anew of said overdue coupons or warrants for interest on said bonds, and that there was direct intercourse between the holders of the said bonds and the said corporation and the trustees appointed by said court of chancery, and that these negotiations resulted in the capitalization of coupons for interest to the sum of $2,302,120; and that during all that time said Ketchum did not assert any claim or connection with said deed, nor did said corporation recognize any right in him, but, on the contrary, all such claim and connection was repudiated and disavowed by both parties.

Further, this respondent shows to the court that, in May, 1875, he and his associate trustee, A. F. Elliot, filed their bill in this honorable court against the said Mobile & Ohio Railroad Company and others, claiming and asserting themselves to be the trustees of the said deed described in plaintiff's bill, and successors therein of the appointees of said court of chancery as aforesaid, and prayed the foreclosure and sale of said property described in said deed of trust; they are now in possession of said property, of which, as such trustees, they took possession in May, 1875, with the consent of said railroad company, and of the mortgagees of said corporation, who have liens upon said property, and under the order and decree of this honorable court, made upon their filling of their said bill. Said suit so begun by this respondent and his associate in May, 1875, is still pending and undecided in
1196 this court. The defendants thereto have filed their answers to said
bill, and the same has been referred by order of this court on 6th March, 1876 (a date prior to the filing of the bill of complaint in this cause) to a special master appointed by the court to report upon the debts due under said deed of trust and other liens created by said corporation, the holders thereof, the property subject to said liens, the priority of the parties, and a proper mode of sale or other disposition of the said property; all which is of record in this court, and will be produced as the court may direct.

This respondent with his said associate still so remains in the possession and control of said property, as trustees aforesaid, with the relation to this court, and the duty and accountability of receivers appointed by the court. So that this honorable court is now in possession by its own officers and appointees of all the property named in said deed of trust, and of the litigation connected therewith, for the purpose of executing the provisions of the deed, of settling the rights of parties thereunder, and applying the proceeds of said property to the persons and parties who are rightfully entitled thereto as holders of the obligations secured by said deed.

This respondent, further answering, shows to the court that the existence of a board of trustees under said deed has been a matter of necessity since the execution of the said deed of trust, and of such a character

as could be accessible to the company, and be active in protecting the property, and performing the duties named in the deed, and this was not less so in the year 1862 than at any other time. At that time two of said trustees were dead, and said Ketchum was, and always has been, non-resident of the States wherein the trust property was situated, and had shown himself more intent upon advancing his own interests than those of the trust, and of creating for himself contrivances to con-
1197 trol the property of the trust, and benefit himself at its expense, and to the injury of the railroad company and the holders of its bonds. The death of his co-trustees only added to the power of said Ketchum over said property and over the said railroad company, and he used his said position to compel the yielding to demands which were unjust and oppressive to the corporation and injurious to the trust. The controversy caused by his misconduct was such that harmonious action between him and the corporation had become impossible before the filing by it of its said bill for his removal, and which was a matter of plain necessity by it, in its duty to its creditors. The said bill for his removal is a truthful statement of the facts of the case, and justified the action of that complainant.

The removal of said Ketchum thereon by the court of chancery was an act in conformity to the laws of Alabama, in such case made and provided, and in the proper administration of power conferred upon that court by the laws of the State for the protection of interests represented by a trustee or agent, over whom that court has special control. The complaint against him was for failure to appear thereto, taken, as required by the laws of Alabama, to be a confession of its allegations; he was made a party thereto by publication as required by the laws of the State, and the decree and proceedings conformed in all respects to the prayer of the bill and the legal practice of the court.

This respondent further shows to the court that the law in relation to non-residents made the said decree of the chancellor provisional as to said Ketchum only, and to be opened upon his application at any time within eighteen months of it rendition; and the legislation of the State, by the ordinances of sovereign conventions, and acts of the general assembly, continued that character to said decree till 26th June, 1869, after which it became absolute, for failure to make application to the court for a rehearing thereof. This respondent shows to the
1198 court that said Ketchum had knowledge of said decree, and of his removal thereby from his said trusteeship, and the appointment of other trustees in place of himself and his deceased associates at least as early as October, 1865; with this knowledge the matter was plainly brought to his attention as to the course he would take in relation this trusteeship. It was a notorious fact that said corporation had not paid the interest upon the bonds secured by the deed of trust during the years 1861–'5. It did not pay its interest which matured in November, 1865, nor at any time during the years 1866–'7–'8 and '9, during which years negotiations were pending for the funding the overdue coupons for interest which had matured since 1860, and were still unpaid or unprovided for, which negotiations were not completed until some time in the year 1868 or 1869, and no payment of interest was made by the company until the year 1870. This condition of things was known to said Ketchum, and that the contingency had occurred which authorized the taking possession of the road and property by the trustees, and which certainly required of him, if he believed himself to be the only surviving trustee, to put himself in such condition with regard to the property that he might perform his duty to the beneficiaries of the

trust, the holders of the said first mortgage bonds, if they required him to execute the trust, as they had the right to demand of the trustees. Yet the said Ketchum took no steps in the execution of the trust, or to claim the right to execute the same, but concluded and determined to allow the said decree of removal against him to stand in full force, not in any way by him challenged or questioned, and he persisted in that determination to the time of the filing of his bill in this cause.

During this period of more than ten years after he had knowledge of said decree, and his said removal thereby from said trusteeship under said deed, he had acquiesced in the said decree, its propriety, and 1199 its validity, and by such acquiescence has permitted it to ripen into a perfect decree beyond the power of impeachment or question.

He has made no attempt to obtain a revision of said decree, or any vacation, alteration, or modification thereof by any court, State or Federal, by any kind of proceedings. He made no application to the court of chancery which rendered said decree to rehear or modify the same, or set it aside.

He has made no application to the said corporation for restoration of his rights, real or pretended; all the application he is known at any time since 1865 to have made to any officer of said corporation, was to know what the company was disposed to do about his compensation (on pretence of which he had appropriated some of its bonds), accompanied by the declaration that he was "damned tired of the Mobile & Ohio Railroad Company!" He has made no claim upon his successors in the trust, and has made no demand on them in relation to said property, and has at no time, in any manner, intimated to them that he disputed their right, till the filing of his bill in this cause on the 14th of March, 1876. During all this time continuous and adverse possessions of the estate, and right derived under said deed, have been held by his sucessors and the corporation. And this defendant insists that said Ketchum has, by his said acts and conduct, acquiesced and submitted to said decree, and the state of things which has grown up under it, and that he is bound thereby, and it does not lie with him now to assert any right to the trusteeship he claims, and the power to execute the trusts declared by said deed of trust of 1st of November, 1853.

This respondent further shows that said Ketchum has in fact deliberately abandoned said trusteeship, and renounced all right and authority to execute the duties and powers thereof, and the same are now lawfully and properly vested in this respondent and his associate.

1200 This respondent and his said associate have been appointed to fill said position, and to perform said duties, by the joint action of said corporation and the then only acting member of the former board of trustees, with the full approval of said company, with its assent and the assent of the majority of the bondholders secured by said trust-deed; they are performing the duties of said position, have taken and are in possession of said property; as hereinbefore stated, they have filed their bill in this honorable court for the administration of said trust, and which is still pending; have been recognized as such trustees by this court, and are now in possession, and under its orders and decrees are administering the same, and are proceeding to obtain, as early as consideration of the interests involved will permit, the decree of this court for the final execution of the trust and the application of the proceeds thereof as they were intended by said deed to be appropriated.

Respondent, on inquiry and information, which he verily believes to be true, further answers, that from the time of the death of said Hallett, in June, 1860, said Ketchum has done nothing about the duties of said trust; that he has made no reports to the corporation, even of the acts of said trustees, which had been done before the death of said Hallett, nor of his own acts afterwards, as required of him by said deed of trust; he has called for no information of any kind from said corporation in relation to any property covered by said deed of trust, nor of sales of land, though sales of portions of said land have been made; he has made no deeds for any lands so sold; has not in any manner concerned himself about the protection or disposition of said trust property; that in and during the years 1865, '66, '67, '68, and '69, while said corporation remained in default in payment of its interest, which had matured on and after 1st May, 1861, and before arrangements were completed with its creditors for the funding thereof, he made no communication of any kind to said corporation in
1201 regard to said trust, or the condition of its affairs, and held no intercourse of any kind with it; that he took no part in such arrangement, and was not connected therewith; that he took no interest in and made no objection to the claim of right, made by said Walsh, Young, and Jackson, the trustees appointed by said court of chancery, and who, during all that time, he knew claimed to be such trustees, and were acting as such, and were, by themselves and agents, making sales of land, as authorized by agreement between them and said corporation, under the terms of said deed of trust, making deeds therefor and cooperating with said corporation and said bondholders to effect a safe and satisfactory settlement and funding of said interest in arrear.

From all these things, and from all other matters concerning said trust and said trust property and the administration thereof, he held himself entirely aloof, exactly as if he had no right or interest therein, or had resigned and been discharged therefrom by proper authority; and continued this entire abstinence by word and act, after this respondent and his associate, as such trustee, had taken actual possession of said railroad and other trust property, publicly and notoriously claiming to be trustees, and, as such, displacing said corporation, its officers and agents, from the possession and management thereof, for the uses and purposes declared in said deed. To no act or claim of this respondent and his associate, or their predecessors, after their appointment by said court of chancery, did the said Ketchum make any objection; he gave no notice or warning to any of said parties that he objected to their acts or claims, or that he pretended any interest therein, or that he had anything to say upon the subject, or that it was a matter of any concern to him, till service of subpœna in this cause, more than ten years after he knew of his removal as trustee, and that other persons had been appointed in the place of himself and of his deceased associates, and that
1202 they claimed to fill his place as such trustees, and were doing those things about the trust property which, if he were trustee, it was his duty to offer to do and to do, and more than six years after a default had been made by said railroad company, which distinctly notified him of the active duties he might be required, as such trustee, at any moment to perform, and which plainly called upon him, if he deemed himself to be such trustee, to inform the railroad company and his acting successors that he was such trustee, and to claim his right and his readiness to perform the duties of that office, so that no question of right or title could thereafter arise to embarrass the execution of the trusts of the deed, or breed litigation upon the right of parties to

execute them at the hazard of costs, delay, and confusion to the parties for whose protection his said office was created. To the contrary of his duty in the premises, if he still claimed to be such trustee, this respondent shows that said Ketchum, though well knowing the facts, and that from his own acts he was by the said railroad company and his said successors in the trust, and the beneficiaries therein, regarded as having abandoned the trust, and resigned the same, and as entirely discharged therefrom, he stood by and held his peace, and without dissent or objection from him permitted adverse claimants of said office to exercise and perform the duties thereof, and on the contingency declared by said deed to obtain possession of the trust property under said deed; and, finally, as the proper sequence of his conduct during the preceding ten years, by his silence encouraged them to file their bill of complaint in this court against the mortgagor and all parties holding liens for the foreclosure and sale of said mortgaged property; and for its protection and the instruction of the court to said plaintiffs in the administration of the property obtain answers from said defendants, admitting the right of said parties as such trustees to maintain their said suit, and execute the trusts of said deed, and so far proceed as to obtain
1203 orders for the protection of the property, for the instruction of the
trustees, and finally an order of reference to a master of the court to report upon all the matters presented by the pleadings, in order to a final hearing and decree; all without one word of precaution or warning or objection from this plaintiff Ketchum, whereby they might be advised that he considered himself to have an interest or a duty in the premises.

This respondent is advised, and therefore respectfully shows to the court, that this complainant, by his conduct, has estopped himself from the assertion of right which he now seeks to make; that the great object of said deed of trust was the protection of the holders of the bonds secured thereby in the payment of their said debts, and not to create a personal right in any trustee to commission or emoluments, which are only allowed incidentally as compensation when services are actually performed by him, for the advantage of the beneficiaries; that the said trusteeship was in no proper sense, in the eyes of a court of equity, an estate, but a mere agency or instrumentality for the benefit of the parties who hold the bonds, and who are the real owners of the trust property; that no rule of equity or justice requires that the interests of the latter should be subordinated to the claims of the former; and that in this case said Ketchum has so conducted himself that he has forfeited all right to administer the trust and to claim the emoluments thereof; and though he may be personally liable to said bondholders for any damage to them from neglect of duty and malfeasance in the office to which he was appointed, he has in fact and in law abandoned and resigned the said trusteeship, and has now no standing in this court to maintain this bill of complaint as a trustee under said deed.

This respondent pleads in further defence of the said bill of the said Ketchum, that said complainant is barred by the statute of limitation of ten years, as declared by the code of Alabama, which requires
1204 all actions founded upon any contract or writing under seal, and
all actions for the recovery of lands, tenements or hereditaments, or the possession thereof, to be brought for the assertion of the right or title so claimed within ten years from the time when the right of action therefor accrued, and avers that the possession of the lands and rights conveyed by said deed of trust, and of office of trustee thereby created, has been held for more than ten years continuously by this respondent

and his associate and the trustees whom they have succeeded, and by said corporation, the said railroad company, adversely to the claim now asserted by said Ketchum; and this defendant, in further defence of this suit, pleads the statutes of Alabama in respect to opening and rehearing of decrees in courts of chancery, and in respect to appeals therefrom, and bills for the review of such decrees, and shows to the court that more than the period prescribed by the said statutes in bar of such rehearing, opening, appeal from and review of the said decree of removal by the court of chancery of the State of Alabama of said Ketchum from said trusteeship had elapsed before the filing of his bill of complaint in this case, and the said decree has thereby become absolute, final, and complete, and is a perfect bar against any and all right and title of said Ketchum, as trustee under the said deed of mortgage and trust, executed as aforesaid by said railroad company, and bearing date the first day of November, 1853.

It is not true that said complainant disregarded and ignored the proceedings and decree of said court of chancery at Mobile; he did know of them and did acquiesce in them and submit himself thereto. It is not true that said plaintiff, as he alleges, has continuously and from the time of his appointment as an original trustee, down to the filing of his bill in this case, continued to act as such trustee, and perform the duties of his said office; it is not true that during all said time he has 1205 acted with and concerted with the cestuis qui trust under said deed for the protection of the rights of the bondholders; on the contrary he has, and did abandon the position to which he had been originally appointed, after he had done all he could to obtain personal benefits to himself, not warranted by his duties, and in fraud of the rights of parties whom he should have protected. It is not true that respondent and his associate trustee have intruded themselves into the trusteeship under said deed, under color of void and fraudulent proceedings, as falsely stated in complainant's bill of complaint, and the pretence by plaintiff alleged, of consulting counsel and the proper preparation of proceedings by him in excuse for his conduct in the premises, and for the palpable abandonment by him for years of his position as trustee, now claimed by him, has no foundation in fact.

This respondent denies the allegation of complainant that his action is based upon the request of a number of the holders of bonds, holding bonds to a large aggregate amount. The facts of the case, as they are already of record in this court, show that said Ketchum, till just before the filing of this bill, remained in the position he had assumed for the ten years preceding, of acquiescence to the decree of removal rendered against him as aforesaid; that he had given no sign of dissent thereto, and had intimated no objection to the rights of the respondent and his associate, and to the course they had undertaken for the protection of the parties interested in said trust, and was not at all disturbed with any scruples of conscience as to the duty required of him in the premises.

Respondent, upon the statements of said Ketchum, shows that about the 1st March, 1876, the attention of said Ketchum was called to the condition of said railroad company by an attorney, who was then engaged in a proceeding hostile to this respondent and his associate Elliot, in the petition of one Georgie Warnes, and which had been filed in the suit theretofore begun by this respondent and his said associate as 1206 hereinbefore stated, and who was seeking means to support the same; said Ketchum had not before that time known said attorney, his experience or professional standing, but then upon his instigation allowed said attorney to use the name of him, Ketchum, to facilitate the object of the said proceeding. Even then said Ketchum did not contemplate proceedings to execute the trusts now set up by him, but supposed that the proceedings then by him permitted, would be merged in that of the said Georgie Warnes, and the assertion of right now made by said complainant, was not made by him in the exercise of his own judgment for the performance of his duty as trustee, used to secure the proper administration and application of the trust property, his said bill and proceedings in this cause did not originate in an intelligent consideration and purpose on the part of said Ketchum, for the performance of his duty as trustee, and did not arise from purpose on his part to invoke judicial aid in the performance of that duty; as to the performance of that duty, he continued to the last moment entirely inactive and quiescent, as he had been for the ten years and more next preceding, and did not pretend to assume the responsibility of a trustee, which he had in fact long before abandoned.

The statement of the bill, that the interval between the alleged default of said corporation in payment of interest in 1875 and the filing of this bill, was occupied in consulting counsel, and cestuis que trust, in preparation for this suit, is not true. It was a proceeding hastily devised, not in the intentional and considerate discharge of duty for the benefit of the parties entitled under the deed, but upon the instigation of a stranger and of parties for purposes of speculation and advantage to themselves; and said Ketchum, weakly, and without any honest purpose to perform his duty, lent his name for that object and purpose, with knowledge of the suit of this respondent and his associate trustee, then nearly a year pending in this honorable
1207 court, and against which he made no protest or objection to the
respondent or his associate, or to said corporation, or any officer thereof, and though he had long acquiesced in his removal from said trusteeship, and had abandoned and resigned the same.

This respondent shows that said complainant is nearly eighty years of age; has declared he will not come to Alabama for the purpose of this suit, if he can avoid it; and his dealings with the attorney who instigated this proceeding, his long delay, if he was acting with an honest purpose, his singling out for particular attack, and himself undertaking to decide against and exclude from the benefit of the trust, the claims of a specified holder of securities, without knowledge of the facts and without making him a party to the suit, show that said Ketchum is an unfit and improper person to be trustee under this deed, and justify the decree of removal that was made against him by said court of chancery. These facts show that his suit in this case is dictated not by an honest desire to perform his duty in the premises, but by a weak, if not corrupt, acquiescence in and co-operation with persons who are seeking private advantage and speculative profit to themselves at the expense of the trust and the parties entitled therein; that his said suit is for private gain and not in the interest of the bondholders.

Holders of claims, first-mortgage sterling and interest-arrearage bonds, secured by said first mortgage of 1853, to the amount of $5,200,000 of principal-money and upwards, are supporting the proceedings of this respondent and his associates, while it does not appear that said Ketchum, at the time of filing his bill, or now, has the support of any but a small dissentient minority, who think they see in his proceedings hopes of gain to themselves at the expense of the trust.

This respondent denies that said suit of said Ketchum is brought in good faith, and to secure the cestuis qui trust, but asserts it to be a pro-

ceeding for purposes of speculation and gain, to which said complainant
has weakly or corruptly lent himself, and without merit in him-
1208 self or his associates; that it is in plain and direct contradiction
of the position assumed by the said Ketchum, and maintained by
him for ten years proceding its commencement, with knowledge of the
facts, and by which he had invited the said corporation and this re-
spondent and his associate trustee to believe that he had abandoned all
claim of right to administer said trust, and induced them to act upon
that belief.

This defendant denies all manner of fraud, collusion, combination, and contrivance as to his entry into the possession of the property described in the deed of trust, with which he is charged, and refers to the orders and decrees of this honorable court and the proofs in the cause in support of the regularity and propriety of his proceedings in the premises.

Further answering, this respondent admits that said Mobile & Ohio
Railroad Company did fail to pay the interest upon any of said first-
mortgage bonds, which fell due on the first of May, 1875, and has con-
tinued so in default since that date upon all its interest since then
maturing; that it is embarrassed and greatly indebted for bonds secured
by a second mortgage upon the property described in the said first mort-
gage, and for bonds secured by lien upon what is known as the Gaines-
ville branch of its said road, and for bonds secured upon that portion
of the road which lies within the limits of the State of Tennessee, and
by bonds secured by a third mortgage, and by a large unsecured float-
ing debt, and that all of these liabilities, except that secured by lien
upon the road and property in Tennessee and upon said Gainesville
Branch Railroad, are subordinate to the lien of the said first mort-
gage; as to the bonds known as the Tennessee substitution bonds,
and secured by lien on the property in Tennessee, this respondent
does not admit they are inferior and subordinate to the said first mort-
gage debt, except as to the property and road without the limits
of the State of Tennessee. As to the road and property
1209 within said State, this respondent is advised, and so answers:
Said bonds are secured by liens superior to the lien of the first
mortgage to the extent of the reservation named in said first mortgage,
and lawful interest thereon; and he is advised that said property and
its proceeds should be so applied. As to the allegations of the bill
that the coupons which matured in May and November, 1874, were paid
by said railroad company, and were by this respondent and the direct-
ors of said railroad company, after said payment, and when the said
coupons should have been canceled, delivered to Alexander Duncan
and others, as pretended security for certain claims against said corpo-
ration, this respondent states that the same are false. No portions of
said coupons that fell due in the year 1874 were paid by said railroad
company, or by any money in any manner furnished by it, or advanced
to it, by any person or persons whatever, or by any person for said cor-
poration. A portion of the coupons which fell due in 1873 were paid
by money advanced to said corporation by this respondent and his then
firm, Duncan, Sherman & Co.; as to these, no claim has been made that
they are outstanding; that payment was made by money loaned the
railroad company. But the coupons of 1874 were not so paid, and have
not been extinguished; they were, with the assent of the corporation,
purchased from the then holders thereof, with the distinct agreement
that they were not canceled or impaired by such purchase, but still re-
mained in the hands of the purchasers valid coupons of the first mort-

gage bonds, with all the rights and remedies by which they were originally protected, to be enforced at the discretion of the holder. This purchase was an act friendly to said railroad company; it was made at a time of general and wide-spread distrust in the money-market of the country, and of extraordinary depression in all commercial business. the object being to have these evidences of debt in hands of
1210 friends, having also other interests in the property, and, by the gratuitous allowance of reasonable time, enable the corporation to see whether its affairs would not so improve that it could, in 1875, resume the regular payment of its interest from its own resources. This hope, which was entertained by the directors of said railroad company, was not verified in the experience of the corporation, and the holders of said coupons so acquired, with others, demand, as respondent is advised they had good right to do, of this respondent and his said associate, that they should execute the powers of the mortgage for the protection of themselves and the other creditors of said corporation secured by said first mortgage.

The statement of the bill as to the facts attending these coupons due in 1874 are not true. The attempt to exclude the holders of these coupons from the protection of said mortgage by not making them parties to said bill, that they might defend their rights, is a malicious attempt of said complainant and his advisers and instigators to injure beneficiaries whom, if a trustee, as said Ketchum now claims to be, it was his duty to protect and permit to be heard in vindication of their rights. It is a part of the scheme concocted by others, and to which said plaintiff has weakly, if not corruptly, lent his name to advance the speculative objects of those by whom he is led, and is not in the bona fide performance of the duty of a trustee. By virtue of the orders of this court, made in said cause now pending therein, in which this defendant and his associate Elliot are complainants as above stated, a contest has been raised by one Belloni, a first-mortgage bondholder, acting by the same solicitor and counsel by whom said Ketchum appears in this cause, as to the right of the owners and holders of said coupons of 1874, or the claimants thereof, to enforce or collect the same, which contestation, involving all the questions of fact and of law raised in that regard by the complainant's bill, is still pending, undetermined, in this court.

1211 This respondent submits that it plainly appears the object and purpose of this litigation, which was suddenly inaugurated by permission of this complainant, upon a pretended allegation of right, upon which he had willfully, and with knowledge of the facts, slept for more than ten years, at the instigation of an attorney whom he had not before known, and who approached him and obtained employment by sufferance, in connection with proceedings which recognized the validity of this respondent's title as trustee, is not in the interest of the bondholders under the deed. It is not a proceeding in the honest discharge of a fiduciary duty, but at their expense, to advance the interest of parties who have taken advantage of the depression of the bonds produced by their own litigation to increase their holdings and obtain for themselves and their coadjutors large gains from said trust property, its manipulation and management.

This respondent further shows to the court that the value of the property and franchises which are covered by said deed of trust and mortgage is great; that to realize the value of said property by sale for cash is difficult by reason of its magnitude; that to realize its value by providing for payment of the purchase money in part in bonds and obligations of the corporation can only be done by concert of action among a sufficient number of the parties, holders of said securities—this is plainly the best mode by which a substantial appropriation of said mortgaged property to the payment of the debts secured thereby can be effected.

To secure such appropriation of this trust property, in discharge of its debts, and at the same time effect such reorganization of the affairs of said corporation as will render these investments safe and remunerative, respondent shows to the court that the holders of the greater part of each of the liens created by said corporation, and declared in the several deeds of mortgage and trust executed by said corporation,
1212 both of principal and accrued interest, have with the consent of the said Mobile and Ohio Railroad Company entered into an agreement whereby it may be effected; a copy of said agreement is herewith presented to the court, as a part of this answer.

By its terms William H. Hayes, William S. Pierson, and T. Haskins Du Puy have been appointed assignees of said bondholders to carry the same into effect. Said parties are now, by assignment to them of the bonds and securities of said corporation, the assignees of the larger part of the original sterling bonds described in said mortgage trust deed of which said Ketchum claims to be the trustee, and of the coupons belonging thereto; and of the several classes of bonds known as interest bonds into which the unpaid interest maturing prior to 1870 has been funded, i. e. of first mortgage sterling bonds, £774,225 sterling, or at the rate of $1,000 for each bond of £225, $3,441,000; and of first mortgage funded interest arrearage bonds, £152,500 sterling, or at the rate of $1,000 for each bond of £200, $762,500; and of first mortgage funded interest arrearage bonds, $1,094,300, with all the outstanding and unpaid coupons attached to, or detached from said bonds; also all the detached coupons which matured in 1874, and remain outstanding and unpaid, detached from the bonds of the like issues as the abovementioned sterling and interest arrearage bonds, which bonds are in the hands of holders not represented by committee, which detached coupons amount in the aggregate to exceeding the sum of $250,000; also
1213 of bonds known as the Tennessee substitution bonds, with all the outstanding and unpaid coupons attached thereto or detached therefrom, $1,473,000; also of bonds secured by second mortgage, with all the outstanding and unpaid coupons attached thereto or detached therefrom, $897,861; also of bonds secured by the third mortgage, known as the convertible bonds, with all the unpaid interest due thereupon, $398,025.

This respondent is advised and therefore shows to the court that the said Hays, Pierson, and Du Puy are the chief beneficiaries of the said first mortgage or trust deed, and also interested in the equity of redemption of the property and franchises in said deed described, to an amount greater than the combined interest of all the other holders of the securities of said Mobile & Ohio Railroad Company, and are proper and necessary parties to the bill of this complainant. They have made themselves parties to the bill filed in this honorable court by this respondent and his associate trustee, by making proof of claims before the master on the reference therein ordered. They deny the right alleged by this complainant to be entitled as trustee, and have, as far as was in their power so to do, removed the complainant from his office of trustee, and suspended him from the exercise of any function pertaining to such office, and have ratified the aforesaid proceedings in said chancery court of Alabama, and they, with numerous other bondholders not represented by them, have ratified and approved the acts

and doings of this respondent and his associate; and the bill filed by this respondent and his associate trustee, and the proceedings thereunder, are with their approval and concurrence. And this de-
1114 fendant denies all and all manner of fraud, collusion, and unlawful practices and contrivances, and unlawful combination and confederacy, wherewith he is, by the said bill, charged; without this, that any other matter, cause, or thing in said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

UNITED STATES OF AMERICA,
Southern District of Alabama, ss:

William Butler Duncan, of the city of New York, being duly sworn, deposes and says, that he is the defendant in the foregoing answer named; that he has read the said answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

W. BUTLER DUNCAN.

Sworn to before me this 2nd day of April, 1877.

HENRY S. SKAATS,
U. S. Commissioner.

JNO. A. CAMPBELL,
P. & T. HAMILTON,
Of Counsel Resp'd't.
MCKINSTRY & SON,
Of Counsel Resp'd't.

Filed April 2nd, A. D. 1877.

N. W. TRIMBLE, *Clerk.*

1215 *Answer of M. & O. R. R. Co.*

In the circuit court of the United States for the fifth judicial circuit southern district of Alabama, at Mobile.

MORRIS KETCHUM
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL. } In chancery.

To the honorable the judges in said court presiding:

The answer of the Mobile and Ohio Railroad Company to the bill of complaint of Morris Ketchum in this honorable court, filed against said corporation, and against William Butler Duncan, Andrew Foster Elliott, receivers and others.

1216 The Mobile and Ohio Railroad Company, for answer to said bill, and to so much thereof as it is advised it is material to answer unto, reserving all legal matter of exception answering, says:

1. That this defendant does not know of what State the said Morris Ketchum is a resident or citizen. That he was formerly known to this defendant as a resident citizen of the State of New York, but now this defendant cannot answer, as in his bill filed, in this cause, he represented himself as a citizen and resident of the State of New York, and made oath on the 1st of March, 1876, that his said allegation was true; but that on the 5th of April, 1876, by amendment to his bill, when apparently on second thought it appeared to him to suit his interest and purposes better (although no change in his residence and citizenship had intervened), he therein declared that he was a resident and
1217 citizen of the State of Connecticut, and made oath to this averment, in direct contradiction to his former oath. This defendant cannot consequently answer as to what State he is or was a resident citizen, and if material to shew that he was a citizen of Connecticut, this defendant prays that he be required to make legal proof of said fact, as his citizenship of Connecticut is not admitted by this defendant.

2. This defendant admits it to be true that said company was authorized by its charters to construct a railroad from the city of Mobile to a point in the State of Kentucky near the mouth of the Ohio River, that it did construct said road and put it in operation. That in order to do so it became necessary to obtain from capitalists large sums
1218 of money which were used in the construction and equipment of the same, and that it did obtain a grant of land from the Congress of the United States in aid of said undertaking, as set forth in the complainant's bill.

3. That among other loans obtained was the one referred to in the complainant's bill. That a deed of trust and mortgage was made by said company at Mobile, Alabama, on the first day of November, in the year eighteen hundred and fifty-three to said Morris Ketchum, John J. Palmer and William R. Hallett as trustees, by which the property in said deed described and intended so to be was conveyed to them, and which deed is the one of which a copy is set forth in the complainant's bill and for the terms and conditions of said trust and of the
1219 property conveyed and bonds to be secured thereby, this respondent prays reference to the original deed aforesaid and to a correct copy of the same for the full information of the court.

4. Your respondent admits that at the time of the execution of said deed, the company did suppose that the said Morris Ketchum was a fit and proper person in whom they could place confidence for the correct performance of the duties of such trustee, but they soon found that they had made a great mistake in this respect; that instead of promoting the interest of the company and of the beneficiaries in said deed intended to be protected, the said Ketchum appeared disposed to move in the matter always with the view to his own interests more promi-
1220 nently than any other; disagreements very soon put an end to all his usefulness to the company, as unreasonable exactions on his part, for unwarrantable demands for compensation were constantly made conditions by him before he would act in relation to the performance of his duties.

5. And this defendant says said Ketchum performed very little service for the company other than the signing of the bonds which the company had prepared to be issued, that is to say, six thousand bonds, dated on the date of said deed, with coupons, each bond for the payment of two hundred and twenty-five pounds sterling. There was but little service performed afterwards other than the signing of a few papers.

1221 6. The said Ketchum first managed to get the whole control of
the trust into his own hands by inducing the other two trustees to refer all matters to him, they taking no active part in it themselves; which arrangement was very unsatisfactory to this company, and enabled him to act oppressively, and tended to the accomplishment of his selfish purposes.

7. That without the consent of the company, and against its protest and remonstrance repeatedly made, and made without lawful right, said Ketchum retained from the said bonds eighteen of them, with coupons, as he said, for compensation to the trustees for signing the bonds; the said bonds and coupons amounting to between twenty-two and three thousand dollars, and the company never have been able to regain the possession thereof from him.

1222 8. That the said Ketchum, by his course of conduct, thwarted
the company, to its great injury, in obstructing the sale of lands granted by the United States to the company. He claimed full power in himself alone to dispose of the lands, refused to allow the sale of them at Mobile, the headquarters and place of business of the company, or in Mississippi, where the greater part were located; and insisted that the land-office for the sale of the lands should be kept in the city of New York, by agents appointed by him and under his control; and he named as such a principal agent there, who was not accepted by this company; and which course was not deemed by the company advantageous for the sale of the lands. That he was applied to for
1223 consent to receive first-mortgage bonds for the price of lands to
be sold for bonds, which would have been of much advantage, but he refused his consent to this proposal. It is true said complainant did consent to the sale of a small part of the lands, say one hundred thousand acres to be made at Mobile, but when the lands were sold as agreed on and he was applied to for signature of deeds, when terms of sale and all things agreed on were complied with, he refused to execute the deeds, and put the company to great embarrassment, so much so, that a bill was actually filed by a purchaser for failure to make title, and many others threatened to do the same. This perverseness and breach of duty on his part put such a damper on the sale of the lands,
1224 that sales were prevented and great loss to the company was occasioned thereby.

9. Your respondent further shews that said Hallett and Palmer died as stated, said Hallett in July, 1860, and said Palmer before that time. That after the death of said Hallett, your respondent insisted that suitable persons should be appointed to fill those vacancies, and here again, the same spirit of obstruction was manifested by said Ketchum to everything which did not conduce to the profit and interest of said trustee. Objections were interposed; proper and fit persons were proposed by the company, namely, Charles Walsh and Marsena Parker, the former for many years president of the Bank of Mobile, and the latter a gentleman who has filled the office of mayor, both persons of the
1225 best business character and capacity, but they never were able
to obtain the consent of the complainant to fill the vacancies unless on the condition, always interposed, that the company should consent to pay him an annual salary, at a high rate, during all the time of and until the expiration of the trust.

10. In the endeavor to procure judicious co-operation of said complainant with the company in a proper manner, the president of the company, Milton Brown, went to New York in 1860, as said complainant never would or did come to Mobile, but he was not able to arrive at

any just terms with complainant. By a letter addressed to said Ketchum by said Brown, he remonstrated with him as to his course of conduct, and made known to him the grounds of complaint of
1226 the company; a copy of which letter is herewith filed as Exhibit
No. 1, with this answer. But no change in the conduct of the complainant was obtained, and from thenceforth all intercourse between him and the company ceased.

11. Your respondent shews that the deed of trust expressly provides that the trustees should "render an exhibit and account of their doings on or before the first days of January of each year during the period of the trust made to the said parties of the first part." (The company.) But not a single report as required by said condition of the trust ever was made.

12. It was further expressly provided in the contract, that if either "the said Ketchum, Palmer, or Hallett should at any time or times thereafter die, or become from any cause incapable of acting in the premises, or resign his office, under these presents, then the said
1227 company and the said Ketchum, Palmer, or Hallett, or either of
them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver all and singular such other and further instruments or assurances as may be necessary to enable such person or persons so selected to act in the execution of these presents."

And your respondent shews that a civil war occurred between the United States and the Confederate States, in April, 1861, whereby the said Morris Ketchum, being a citizen of New York or Connecticut, as the case may be, and resident there, became incapable of acting in the premises; his office of trustee became vacant under the terms of his appointment, if not already vacated before, and was subject to be filled as a vacancy in respect to him.

1228 13. Your respondent further shews that the said Milton Brown, then president of the company, in July, 1860, being unable to come to any agreement with said complainant, made his report thereof in a letter directed to Oliver S. Beers, auditor of the company, to be communicated to its board of directors, shewing to them the breach of duty and unfitness of said complainant to perform the duties of trustee, and recommending that steps be taken for his removal, which information led to the passage of a resolution by the board of the company on the 5th of December, 1861, declaring their conviction of the unfitness of the complainant to act as trustee, directing a bill in chancery to be filed for his removal, a copy of which report to the auditor is herewith filed, marked "Exhibit No. 2," and also a copy of the resolution of the board of directors is herewith filed, marked "Exhibit No. 3."

1229 14. And your respondent shews that on said 5th of December, 1861, the said company under the authority of said deed, the death of the two trustees having occurred, and the survivor, by reason of the war, having become unable to perform the trusts required by it, did proceed by said resolution to designate who should be the persons to fill the vacancies and nominated Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, to be trustees under said mortgage deed, as they had full right to do, as they are advised; those persons being in all respects fully competent, qualified, and worthy of all confidence.

15. To confirm said appointment and to cause a proper record to be made of the determination of the office of trustee of said
1230 Ketchum, your respondent did cause to be filed their bill in the

chancery court of the southern chancery division of Alabama, and first district, at Mobile, against the said Morris Ketchum, on the third of January, in the year 1862, praying for his removal by a decree of the court, and the appointment of said Walsh, Young, and Jackson as trustees.

16. Your respondent shews that at the time when said bill was filed,
the war existed between the United States and the Confederate States;
that by reason of the said war and of the residence of said Ketchum,
no other party could act to fill the vacancies but the company itself; that
it was indispensably necessary for the protection of the interest of
the bondholders, that they should be represented; the interest of
1231 the public and of the company also required it; and if the con-
struction of the deed did not permit the company alone, under the
circumstances, to fill the vacancies, then there was no other mode of doing
so but by application to the court of chancery, and in order to run no
risk on that question, that course was adopted.

17. Your respondent shews that by the laws of Alabama the said court
of chancery had full power and authority to remove and to appoint
trustees; that it had full power and authority to act and to make de-
crees in respect to property, and to decree respecting the possession
thereof; that it had full power and authority to entertain jurisdiction
against absent persons and to make decrees respecting them in relation
to and connected with property, and to cause absent parties to
1232 be made by publication; and also to decree in respect to them
and the property, on failure of such party to appear when so re-
quired by the laws and rules of the court, as resulting from the fact that
property was within the jurisdiction of the court.

18. And your respondent shews that by said bill it was charged, that
this defendant had at sundry times before the year 1861, in pursuance
of the terms of said deed of trust, applied to said Ketchum to unite with
them in the appointment of trustees to fill the vacancies occasioned by
the decease of said Palmer and Hallett, and that he had refused to do
so. That his course of conduct in relation to the trust had been one pro-
ceeding from selfish and interested motives; that his conduct
1233 was a breach of the spirit and of the letter of the deed, which had
operated to the injury of the company. That no services had
been rendered by him beyond the simple acts of signing the mortgage
bonds, and a few other papers directing and authorizing the sale of a
small portion of the lands. That no annual reports had been made as
were called for by the deed. That the trustees had failed to direct the
sale of the lands, except to a small extent. That they had disregarded
plain duties to the great injury of the bondholders, retarding and im-
pairing the market value of the bonds, and refusing to allow them to be
received in payments of the lands. That Ketchum had the active manage-
ment of the trust, and used his powers oppressively and for selfish pur-
poses. That he had retained for himself, and, as he said, for his co-
1234 trustees, eighteen of the bonds, of the value of eighteen thousand
dollars, with interest coupons thereon, against the wishes and re-
peated protests of the company, and withheld them. That he demanded
in addition regular salaries at high rates, which were exorbitant de-
mands, and could not be yielded. That he persistently refused to unite
with the company to appoint trustees, although requested do so by ap-
plication made at the request of the bondholders. He made it a condi-
tion that he should retain what he had already obtained, and also have
a fixed salary at some high rate, to commence in 1855, and to continue
till the expiration of the trust in 1883; without which he would not

act. That he insisted on moving the management of the land department from Mobile to New York, and to organize it there by
1235 committing it to officers appointed by himself, and that he appointed a chief superintendent there. That he had one time consented that sales should be made of a small portion of the lands, and that when that had been done according to the agreement made, and when purchasers were entitled to deeds, and demanded them, he refused to execute the deeds, to the great injury of the sale of the lands, &c.

19. The defendant further shews, that in said bill it was charged that said Ketchum was an unfit person to continue in the position of trustee; that he had proved himself to be so, and had been unfaithful to the trust, and it was also averred that he was an alien enemy, the property being in the Confederate States. The prayer of the bill was
1236 that he should be removed from the trust, and that the vacancies in the trust should be filled, and for general relief.

20. And your respondent shews that on the filing of said bill, which was duly sworn to by the president of the company, an order of publication was made by the court to require the defendant to appear in said court to answer said bill on or before the first day of March, 1862. That the said publication was duly made, and a copy of the order of publication was posted at the court-house door. That the said Ketchum having failed to appear, the bill was taken pro confesso, and on the 7th day of April, 1863, a day of a regular term of said court, a decree was rendered by said court, removing the said Morris Ketchum from the
1237 office of trustee; and on the 9th day of April, 1863, another day of said term, a further decree of said court was made, appointing Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, trustees to execute the trusts of said deed; the said parties having, on reference to the master, been reported as proper persons to be appointed as such. All which proceedings were had in accordance regularly with the law, the rules and the practice of said court, and by virtue of its power, authority, and jurisdiction in all respects. And your respondent shews that said decree remains in said court in full force and effect, not impeached, reversed, set aside or impaired in any manner, and that the said complainant has not in
1238 any way availed himself in proper time of any of the various and successive statutes of the State passed since the termination of the war, by which authority was given to parties situated as the complainant was to open said decree, to have the matter thereof reheard and reviewed, and to allow all matters of objection or defence against the same considered; but the same was carried into full execution and effect, that the said then newly appointed trustees accepted the said offices of trustees, and immediately, publicly, and notoriously, entered upon the discharge of their duties under said deed and decree so soon as appointed, and continued in office until March and April in the year 1875, when on their resignation respectively, William Butler Duncan and Andrew Foster Elliott were regularly appointed
1239 their successors, and upon which appointment as successors, they also entered upon the discharge of the duties of said trust, whereby the said Morris Ketchum was superseded from the date of said decree as trustee.

21. And for further answer and defence against said bill, this defendant further shews, that inasmuch as all intercourse between said complainant and this company had ceased as above stated, from the time of the interview between him and the said Milton Brown, president of the company, in the year 1860. That in the year 1863 the new trustees

Walsh, Young, and Jackson, having been appointed and having entered
upon the duties of trustees adversely to the right claimed by said
Ketchum, of which he had full notice in 1865 (as he admits), if
1240 not before, and the duties of said trust having required active at-
tention from that time, but said Ketchum having since that period
made no claim whatever to the office of trustee, and pretended none,
and having taken no steps of any kind, either in pais or of record to
claim or give notice or cause it to be supposed that he claimed the same,
until the year 1876, when this bill was filed, and did not commence any
action for the recovery of said property or of his rights therein before
that time; wherefore, this defendant says that after such long delay
and acquies'ence in the possession and action of said trustees, acting
adversely to his claim, the complainant after such delay and abandon-
ment, does not shew to the court a case in which the court, by its
1241 rules can entertain such a bill, it being for a State demand, not
prosecuted with due diligence, wherefore said defendant prays
that said bill be dismissed for this cause.

This defendant denies the allegation of the complainant to be true, wherein he says that "he has always and continuously, from the time of his appointment as an original trustee under said mortgage down to the present time, continued to act as such trustee, and performed the duties of said office, and has acted with and connected with his cestuis que trust during all said time for the protection of the rights of the bondholders."

Your respondent shews the truth to be that from and including the
year 1861, and from thence to the year 1865, no interest was paid by
the company on its coupons; that in 1865, after the war, a large
1242 accumulation of interest had fallen due, and the holders of them
became pressing for payment, but the company could not pay
them; that thereupon much difficulty intervened, and various negotia-
tions were undertaken and carried on both in New York and in London
so as to obtain the consent of the bondholders that the company should
carry on its business without foreclosure of the mortgage; that the ne-
gotiations were difficult, and required the aid and active exertions of
the company and of the trustees; that they were protracted for a long
period of time, and by means of these active negotiations an arrange-
ment was finally perfected by which the bondholders agreed to fund the
interest coupons by the issue of new bonds of the company on a
1243 deposit of the coupons in the hands of trustees, to be held until
the new bonds were paid, and thus the matter was adjusted in
Mobile, New York, and London up to the years 1806, 1807, and 1808.
But subsequently new difficulties intervened by reason of the failure to
pay the interest on these new bonds, when new negotiations had to be
undertaken, by means of which the said interest was finally arranged
for. These several negotiations continued until the year 1869.

In all these duties of difficulty the said Ketchum took no part what-
ever, gave no aid in accomplishing. And your respondent says that
the coupons on the bonds which he had retained from the company and
held were funded and paid as the others were, and he, knowing of all
these difficulties, never offered any aid, or claimed any right to act in
any manner as trustee, nor claimed to be such during any part
1244 of the time of said disturbance from the end of the war, in 1865,
until the year 1870, when the company resumed payment of its
coupons, nor did he give any signs of life as trustee since, until after
the bill of Duncan and Elliott was filed.

And for further defence against said complainant's bill the defendant

answers and says that by the statute laws of Alabama it is enacted that civil causes of action shall be brought within certain specific times, and not afterwards; that by section 2900 of the revised code of the State it is declared that actions founded on any contract or writing under seal, and actions for the recovery of lands, tenements, or hereditaments, or the possession thereof, shall be brought within ten years after the cause of action has accrued, and not after; that by section 2901 it is enacted
that actions for trespass to real or personal property, or for the
1245 detention or conversion of personal property, or for the recovery
of money, or for the use and occupation of lands, shall be brought within six years; also, by section 2905, that civil actions for any injury to the person or rights of another, not arising from contract, and not specifically enumerated in said code, shall be brought within one year. And by section 3381 of said code it is enacted that all the statutory provisions aforesaid shall be applicable to suits commenced by bill in chancery as well as to suits at law. All which statutes are in full force and effect, and have been since the termination of the war, in 1865, and for many years before, and from thence hitherto. Wherefore, and
because of the continuous adverse possession of the trustees
1246 appointed in place of said original trustees for a term of time
longer than that limited by said statutes of limitations before the time of the filing of complainant's bill, the same is barred.

And this respondent further answers and says that on the first day of May, in the year 1874, owing to great losses and immense expenses incurred in rebuilding the road and supplying it with running stock after peace was restored, whereby heavy debts were necessarily incurred, the company was again compelled to suspend the payment of interest due on its coupons, being unable to do so and to meet expenses and other demands. In this emergency, and in the hope and expectation
that the depression of the times would pass over and that the
1247 business of the road would improve, and in order to prevent a
multiplicity of suits by holders of the coupons, it was deemed advisable to avoid disappointment to those bondholders; as the best which could be done in respect to the coupons due on that day and on the first of November of that year, the company made arrangements with capitalists that they should take up said coupons at maturity and hold them as subrogated parties or purchasers for a short time until they could be paid by the company, as is hereinafter stated.

This arrangement was made in the hope that the payment of them could soon be made, and they were taken up under said agreement and
held uncancelled by said parties who took them up. But owing
1248 to new embarrassments in the financial affairs of the country the
expectations of the holders for payment of said coupons could not be realized, and default of payment of coupons having continued until the eighth day of May, 1875, the said Wiliam Butler Duncan and Andrew F. Elliott, trustees, on that day, under the provisions of the said deed of trust of the 1st of November, 1853, demanded of the company the delivery to them of possession of the railroad, and of all the property and assetts in their custody and under their control, including the lands, by reason of the forfeiture of the condition of said deed of trust in the failure to pay said coupons on the first of May, 1874, and of those due after said day, none having been paid, and the said demand being law-
ful, the company, in compliance with its duty, did deliver the
1249 same into the possession of said trustees, since which time the
said company ceased to operate said railroad and branches, and to hold or possess any of the property.

**24. And your respondent shows that on said day the said trustees
took charge of said railroad and carried on its operations; and that on
the eleventh day of May, 1875, for the purpose of executing the trusts
in said deed provided, and to foreclose the said mortgage and distribute
the proceeds of the property when realized according to the priorities
and rights of creditors, the said trustees filed their bill in equity in this
honorable court against this defendant, and against William D. Dunn,
George H. Young, and Thomas Williams, as trustees of a second mort-
gage made by the company on the 15th of February, 1860, and
1250 against said *said* William D. Dunn, John Reid, jun'r, and Robert
C. Crawford, as trustees of another mortgage which this company
had made on the Gainesville branch of the road, by which bill they
shewed to the court that they were the proper trustees under the deed
by which said complainant now complains; that by reason of said de-
fault of payment of interest on the first mortgage bonds which occurred
on the first day of May, 1874, as aforesaid, and had continued ever
since, they had demanded the possession of the railroad and of its prop-
erty and effects, and that the same had been surrendered to them as
provided in said deed, and praying for the orders and decrees of this
court for the foreclosure of the said mortgage and sale of the road
1251 and property for the payment of the said first mortgage bonds to
satisfy the same, and interest thereon, according to the rights of
the parties as secured by said deed of trust and mortgage, and of all
other parties, and for all such relief in the premises as was proper; that
process was duly served on said defendants; that this defendant and
others have filed their answers to said bill, and that thereupon this
court took jurisdiction of said cause, and that on the 19th of May, 1875,
an interlocutory decretal order was made in said suit, as follows:**

**"The court orders that William Butler Duncan and Foster Elliott, the
plaintiffs in the bill and the trustees under the deed of mortgage or
trust of the date of the 1st November, 1853, and being filed as Ex-
hibit C to this bill, shall, until the further order of this court,
1252 possess, occupy, and employ the railroad and railways of the
Mobile and Ohio Railroad Company within the States of Ala-
bama, Mississippi, Tennessee, and Kentucky, including the rails, bridges,
fences, warehouses, fixtures, real estate, rights, privileges, faculties, and
other property embraced within the terms of said deed of trust of the
first of November, 1853, and to operate and manage the same by their
superintendents, managers, officers, agents, conductors, and employés,
and that they exercise the franchises and faculties granted to the com-
pany, conduct the business of the said company, and receive the tolls,
freights, incomes, profits, rents, and proceeds from said property, and
with the amount to pay the taxes, assessments, charges which
1253 affect the same in their hands, and such expenses and charges of
the laborers, hands, employés, and for supplies and materials, as
may be in arrear for three months prior to their entry, and which, in
the judgment of the said trustees, shall be essential and necessary to
the maintenance of the business of the said road; also, to make neces-
sary repairs, improvements, and alterations where the same will facili-
tate and secure business for the road, or preserve the property from
delapidation and waste, and the residue to hold subject to the order and
disposition of this court.**

**"The court further orders that the plaintiff aforesaid, until further or-
ders in the case, custody, control, and management of the property, be
regarded as holding to the court the relation of receivers, and
1254 that the responsibility of accounting required of them, and the**

same protection of the property in their custody, will be extended to them, and for this they will each give bonds to the judge of this court for their fidelity and accountability in their trusts in the penal sum of fifty thousand dollars, and also for obedience to the orders and decrees of this court."

And it was further ordered that said plaintiffs should have leave to apply to the court for instructions and orders from time to time, as they may be advised is proper, by motion or petition; and also, that prior to the 1st of next October an inventory should be returned by said plaintiffs of all property, &c., which should come to their hands under said
deed, and of the debts and liabilities of the said railroad com-
1255 pany having liens on the property, and also should file their ac-
counts of receipts and expenditures, and also do the same every
four months after said day in respect to their management of the road. That by a further order of the court, that the said receivers should have authority to raise money by loan to carry on the business, and that they should severally give an additional bond as receivers in the sum of one hundred thousand dollars, all which duties they have fully performed.

And your respondent further shows that various other orders have been made in said cause to bring the same to a hearing; that all inventories and reports were duly made as required of said receivers, and that
finally, on the 6th of March, 1876, the said cause was submitted
1256 to the court on the bill, answers, replications, exhibits, and orders,
with the reports; whereupon it was ordered by the court that
the same should be referred to James Gillette, who was appointed special master, and directed to examine the said mortgages and property and the rights arising therefrom; to report the said mortgage-deeds, agreements, judgments, and other instruments creating charges, liens, and incumbrances on the property, as to each, and on the property entitled to payment; also, to report what bonds were secured by said encumbrances, the amount and interest, and also the names of the holders and of the securities. He was also required to report the best mode of disposing of the property, and his opinion as to the value to be affixed for a
foreclosure without sale, and also to consider of a plan for reor-
1257 ganization of the company should three-fourths of the different
classes of the creditors and of the stockholders of the company
agree to such proposition. And your respondent says that the said Gillette has proceeded under said reference to investigate the subjects referred to him, and is now ready, as this defendant is informed, to report fully on the same to the court.

And this defendant shews that the records of said proceedings are found in this court; that the cause is nearly ready for a final decision and decree, and the same is for the same subject matter as the bill of the complain't in this cause; wherefore this defendant says that this court having first taken jurisdiction of said subject and of the disposal
to be made of the property now in the custody of the court in
1258 said cause, the present bill of complaint cannot be entertained in
this court.

This defendant admits that a second mortgage was executed by the company to secure an issue of bonds for debts due from it, and also a mortgage to secure bonds issued to parties who held a lien originally existing on that portion of the road lying in the State of Tennessee, and which by stipulation was to have a lien, claimed to be paramount to said first mortgage, in that State; and also another mortgage subsequently made to trustees to secure the payment of purchase-money for the Gainesville branch of the railroad, and likewise another mortgage

to secure bonds consolidated, and the company also owes debts which
are unsecured, and called floating debts. It shews that the mort-
1259 gage made on the 1st of November, 1853, has a prior lien on the
property of the company for satisfaction of the said first-mort-
gage bonds, except as to the lien therein specified in favor of the loan
made by the State of Tennessee, and except the lien of the mortgage
on the Gainesville branch, which is not excepted in the first mortgage,
but which was for purchase-money.

It admits that it is unable to pay all said debts, and says that the bill
for foreclosure is the proper proceeding for the bondholders to obtain
payment of their debts, and for the settlement of all questions of prior-
ity between them. This company does not undertake to decide those
questions, and leaves the parties respectively to set forth their respect-
ive rights, and the court will no doubt decide them correctly.
1260 This defendant cannot do so.

This defendant wholly denies all right in the said Morris Ketch-
um to interfere in any manner with the property of said railroad which is
now in the custody of the court in process of realization and distribu-
tion, and says that it is under proper administration by the proper rep-
resentatives of the parties interested, who are themselves attending to
their interests and to their rights of priority, the majority of said bond-
holders having become parties to the suit first instituted as aforesaid
by filing their claims for distribution, and introducing in that suit their
particular allegations for inquiry and report, to settle their rights and
priorities; and who have no use for the services of said complainant,
and do not recognize him as the representative of their interests. This
company denies that said Walsh, Young and Jackson, were
1261 irregularly appointed trustees as charged by the said complain-
ant, and denies that said Duncan and Elliott were not lawfully
and regularly appointed, and say on the contrary that they were ap-
pointed to fill vacancies by resignations in strict and exact conformity
with the terms of said deed of trust, and in precisely the mode and
manner by it provided.

28. This defendant in respect to the charges of fraud alleged against
said Duncan and Elliot, by said complainant, say that it is not apparent
to this defendant that any fraud whatever has been committed or suf-
fered by them. They have in all things acted under the orders of the
court, and conformed thereto. They say the affairs of the trust have
been managed with skill, strict integrity, and active diligence, so
1262 far as has come to its knowledge. That the charge that the cou-
pons due on the first of May and first of November, 1874, were
paid by the company, is entirely false. This defendant says that those
coupons were not paid by the company and are not paid yet. That at
the time when said coupons fell due, the company had not the means of
payment, that no funds of the company either before or since have ever
been applied to pay the same or any one of them, as the books of the
company will fully shew. That in order not to disappoint the coupon
holders, and to prevent a multiplicity of suits on the said coupons, and
in the belief that the stress of business affairs would pass over, and
enable the company soon to pay them, they made an arrangement with
the mercantile firm of Duncan, Sherman & Co., a house in New York
at that time of large means and credit, to step forward and take
1263 up said coupons as purchasers, with their own moneys, with the
expectation that they might soon be paid to them. This they
did, and no part of said coupons have been paid to them. The said
coupons are outstanding and still due from the company.

**This defendant shews that after said coupons were so taken up by
purchase they have been assigned and transferred by said Duncan,
Sherman & Co. to Alexander Duncan, a capitalist, and others; that
they have been duly and properly proved before said Gillette by the
holders as subsisting debts secured by said mortgage, and have been
since assigned to the commissioners appointed to reorganize the affairs
of this company as hereinafter mentioned, and are now held by them as
holders. This defendant says that many questions of difficulty have
1264 arisen in the adjustment of all the conflicting interests of parties
to this fund;** that the trustees have endeavored in all cases, as
this defendant believes, to act correctly, and with proper regard to the
rights of all; and as to any charge of fraud by them, it is utterly
denied by this defendant. By proper orders made by this court, means
have been provided in the prior cause now pending, for any party in
interest who might have any claim or right to assert, to do so, by application to the special commissioner, so that the same might be heard,
investigated, reported and properly decided by the court. That parties
have availed themselves of this privilege, and among others, as to the
said coupons of 1874, and pretended payment thereof, which subject
has been fully investigated on copious evidence of the facts; and
1265 also the question of the pretended payment of the Tennessee
bonds has been laid before the said special commissioner for investigation. The Tennessee bonds have not been paid as charged in
the bill; whether they have a paramount lien, and if so, for how much,
are questions which the court may be called on to decide between parties interested.

29. This defendant cannot admit the allegation of the complainant's bill to be true, that he, the said complainant, "has been requested by a number of the bondholders of said bonds, owning bonds to a large aggregate amount, to institute these proceedings upon the default in the payment of the interest as aforesaid."

They deny this allegation, and their denial is based on an investiga-
tion of that subject, when the said Morris Ketchum, and
1266 his counsel, Edward L. Andrews, were examined on their oaths,
to disclose how and under what circumstances this suit was
brought. On said examination taken in New York, in the months of
March and April, 1876, the said Ketchum made oath that "M'r Andrews
came to me (Ketchum) to inquire in relation to my trusteeship, and in
the course of it he stated that he had a suit begun or pending for the
removal of the present receivers; to which I stated that a number of
persons had been there to see me on the same subject, and I hoped he
would proceed with it." On being questioned, "Did you request him to
draw papers for you?" his answer was, "I don't think I did; I think
he inferred it from what I said." To the question made to him, "How
came he to draw the papers?" his answer was, "I think he drew
1267 them from the remarks I made at the time. I don't think I em-
ployed him specifically."

He further deposed: "He (meaning Andrews) did not solicit employment of me. I supposed that this suit in which he was using my name would be merged in the suit which he had already commenced."

When questioned in relation to the expenses of the suit, his answer was, "I expect the bondholders to pay the expenses of the suit, having no interest myself except as a trustee."

He further stated, "I am under no obligation or liability to M'r Andrews for his fees." When he was pressed to state the names of the bondholders who had applied to him to institute these proceedings, his answer was, "I don't know that I can name any of these bondholders except one person who said he represented several hundred bonds, 1268 M'r Belloni." But he said the bonds were not shewn to him.

On being questioned if he meant to incur any personal expense or liability in the business, his answer was, "Not if I can help it. I do not mean to go to Alabama to attend to the suit."

On cross-examination of the complainant by M'r Andrews, when asked if the present suit was brought at his instance, his answer was, "Well, yes; it was brought at my instance, though, as I said before, I at first thought it was then merged in the other suit; that it was to the same point."

On being asked on re-examination, "Had you made any inquiries respecting his (meaning Andrews') professional character and qualifications before you permitted him to use your name in that proceeding?" his answer was, "I had not."

The further question was asked, "What did you ascertain to 1269 be M'r Andrews' professional character and experience and pecuniary responsibility, age, and extent of practice when permitting him to bring suit for the execution of a $6,000,000 trust without promise of pay to him, or indemnity to you?" To which interrogatory his answer was, "I decline to answer, under the directions of counsel; at the same time I will answer that I had not known M'r Andrews until he brought this case to my knowledge, the case he was then prosecuting."

This last fact was corroborated by M'r Andrews, who deposed on his examination, in reply to a question as to how long he had known M'r Ketchum, answered, "About the time of the initiation of these proceedings." From which extracts from the examination of said Ketchum, this defendant submits that the court will be enabled to judge of the objects and motives which led to the filing of this bill, with the 1270 additional explanation that the said Belloni has become a party to the suit of Duncan and Elliott before mentioned, by shewing that he was the holder of six bonds of the company, and by prosecuting and maintaining in said cause by his counsel, the same E. L. Andrews, a contestation for determining how much he shall be entitled to by the decree of the court in respect to his shares, and as to which he has in said cause submitted evidence before the special master, Gillette, to be reported to the court.

And further, as to the previous suit referred to by said Ketchum and said Andrews, it was a petition filed by said Andrews on behalf of one Georgie Warnes, in which it was alleged that she was the owner of ten bonds of this company, setting forth her grievances to this honor- 1271 able court, and praying that she might be admitted to become a party complainant in the said suit of Duncan and Elliott, receivers, making many offensive charges against said receivers, and praying their removal, &c., which petition was duly answered and dismissed by the court on the 24th of February, 1876, with the costs taxed against said Attorney Andrews. The charges made by said Georgie Warnes were withdrawn by her, as is shewn by the correspondence, a copy of which is herewith filed, marked "Exhibit No. 4" to this answer.

Your respondent thus shews the nature of the bill filed by this complainant, and the manner in which it was gotten up. Your respondent does not know whether or not any other or what parties may be aiding or promoting the prosecution thereof. The complainant well 1272 knew, as well as his counsel, that the previous bill was pending, to which the complainant could have become a party if he had any question to litigate in respect to the property in contest, but disregarding all the law and rules of equity courts, he has thought proper to file another independent bill, which can create no other impression on this defendant than the belief that it is done for speculative purposes, with the object and effect to embarrass the proper proceedings to settle the affairs of the company, to delay the same, to prevent the laudable object of compromise and reorganization of the company, and to depreciate and put down the value of the bonds so that they may fall into the hands of railroad wreckers.

1273 This respondent further shews that the Mobile and Ohio Railroad Company, like all other similarly situated, owing to the disturbances of the war, and late revolution in financial affairs of the country, so fatal to all enterprises of that nature, fell into difficulties, but, being a road well located and of great usefulness to the country, the parties concerned in interest have not believed that its condition was such as to fall into the hands of wrecking speculators; that they have entertained and do have hopes that, with proper care, good nursing and management, it may be able, with time and the increase of population of the country, to reinstate itself in good credit and settle all difficulties; that, in this belief, the creditors have determined to make the necessary compromises and arrangements with the company
1274 for the reorganization thereof and settlement of its affairs, under the sanction of this court, to effect a final close of the said suit of Duncan and Elliott by an amicable decree.

A proposition has therefore been made for this purpose, the terms of which have been discussed, settled, and agreed, and put in the shape of articles of agreement and compromise in writing, bearing date on the first of October, 1876, a copy of which is herewith filed as exhibit number 5, by which three trustees have been selected, namely, William H. Hays, of the State of New York; William S. Pierson, of the State of Connecticut; and T. Haskins Du Puy, of the State of Pennsylvania, for the purpose of effecting such settlement, by which each class of creditors, by the terms of said agreement, are to make conces-
1275 sions in diminution of their full rights, until the receipts and profits of the road could furnish means of full payment. That, to effect this, it is stipulated that the holders of the several bonds of the company shall be assigned, transferred, and delivered to the said trustees, who by said stipulation are to become the lawful holders of said bonds, with full power and authority to control and dispose of the same as may be necessary to accomplish said final settlement, by which, when carried into effect, the said trusts created by said mortgage deeds and the duties of trustees and of receivers are to cease, and the affairs of the company are to be carried on as provided by said agreement, which agreement this defendant is ready to produce as the court may direct.

And this defendant says that the said agreement for settlement
1276 has been accepted, executed, and adopted already by a very large majority in value of the secured credtiors, who have actually assigned and delivered into the possession of said trustees their bonds, which said trustees now hold under their control, for the purpose of settlement as aforesaid, whereby the services of said complainant, as trustee, are not in any manner needed, as very clearly appears, they, the said new trustees being now the true representatives of the wishes of the majority of the bondholders.

Your respondent prays leave to refer to the schedule herewith filed as exhibit marked "No. 6," as part of this answer, by which the situation of the bonded debts will appear.

And this defendant, in conclusion, shews that this company has 1277 taken final action in relation to the complainant by its most recent act, when it considered of the subject set forth in his said bill by its resolutions, adopted by its board of derectors on the 19th of February, 1877, by which it denies all the rights claimed by said complainant of whatever kind, and protests against all and any interference by him, and declares that the matters prayed by him by his said bill, if allowed, would be most deleterious and injurious to the company and to its creditors; a copy of which resolutions is hereunto annexed, marked "Exhibit No. 7," as part of this answer.

By reason of all which matters and things in this answer set forth, which this defendant avers to be true, it prays that the said bill be dismissed and this defendant allowed its costs in this behalf.

1278 All which is respectfully submitted.

(Signed) GEORGE N. STEWART,
Solicitor for the Mobile and Ohio Railroad Company, Defendant.

It is hereby certified that the foregoing is the answer of the Mobile and Ohio Railroad Company to the bill against it and others, filed in the circuit court of the United States, at Mobile, by Morris Ketchum, in equity. It witness whereof the said company has caused the same to be signed by its vice-president in the absence of its president, and to be sealed with the seal of said company, and countersigned by its 1279 secretary, at Mobile, on this 30th day of March, 1877.

SEAL OF THE MOBILE AND OHIO RAILROAD CO. (Signed) THE MOBILE AND OHIO R. R. CO.,
By T. HASKINS DU PUY,
Vice President.

MOBILE, *30th March*, 1877.

Attest:
(S'g'd) A. L. WILLOUGHBY,
Secr'y M. & O. R. R. Co.

Filed April 2nd, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1280 EXHIBIT NO. 1.

Filled with the answer of the Mobile and Ohio Railroad Company to the bill of Morris Ketchum against Duncan and Elliot, the said company and others, in the circuit court of the United States at Mobile, referred to in said answer.

Copy of letter.

NEW YORK, *July 20th*, 1860.

MORRIS KETCHUM, Esqr.:

DEAR SIR: After fully considering the construction you seem to put on our deed of mortgage, and the exercise of power you claim as surviving trustee under it, it becomes my duty to reply and state the conclusions of my mind on the subject.

The mortgage gives no power to the trustees to sell lands or control the proceeds of sales, unless the company make default in payment of interest or principal of the mortgage bonds or be guilty of some fraud or misapplication of the funds. The mortgage provides that the trustees

shall have power to make sales and direct the application of the
1281 proceeds as a sinking fund, and appoints agents to superintend
the same. But this power is only conferred in case of forfeiture, for it is expressly provided that untill default in payment, no sales of land can be made except by the consent of the company.

When, therefore, sales take place before default, they must be made in accordance with the mutual consent and agreement of the company and trustees, acting together for the benefit of all parties interested in the fund. In giving this consent and making this agreement as to the manner and terms on which sales are to be made, and the mode of investing proceeds, are, of course, to be arranged. This is the way in which it was done in the sales heretofore authorized, and is the only way in which sales can be legally made.

But now, Mess'rs Palmer and Hallett being gone, and you being sole surviving trustee, you propose to change the entire system, and claim a power which, if granted, would put an entire land fund under your control; you claim the power to appoint agents, and conduct sales,
1282 and invest proceeds, without consulting the company or obtaining
their approval as to the mode of doing it. You have already informed me that you desired to put M'r Wilson (if I don't mistake the name) in possession of the land department. Whether his seat of power is to be at Mobile or at New York you did not inform me, but I suppose at New York, as that seems to be the point to which you intend in future to transfer the management of our land fund.

In the life-time of your co-trustee, Col. Hallett, you refused to allow him or any one else to make deeds in Mobile for lands sold, by which much trouble and unnecessary expense to the company might have been saved. Since I have been in this city you were pleased to express great respect for my business capacity and integrity, and taking advantage of this seeming confidence, I requested you to authorize me to execute deeds, and offered to give, if desired, bonds in any amount you
1283 would name, that everything should be correctly done. My ob-
ject was to save the company unnecessary expense. But you declined this also, saying the deed must and should be executed in New York.

Under instructions from the board of directors I proposed the names of M'r Charles Walsh, the successor of Col. Hallett in the presidency of the Bank of Mobile, and M'r Parker (another gentleman distinguished for his business capacity and integrity), as trustees to fill the vacancies occasioned by the deaths of Col. Hallett and M'r Palmer.

You made no objection to the fitness of either of them for the faithful execution of the trust, but inquired what compensation or salary would be paid to them and you in the event you consented to their appointment. I replied that no such question had been raised, but that whatever might be paid to either of them would of course be paid to you; that certainly no such question ought to be raised as a consideration on which you would give your consent to their appointment.
1284 You seemed not to be satisfied with this, and took time to con-
sider the matter until next day.

At our meeting next day you informed me that you had come to the conclusion to send a communication to the board of directors, ratifying the nomination of either M'r Walsh or M'r Parker, but leaving the other out, and nominating myself in his place. To this I interposed candid and earnest objections, but you overruled my objections, and said I need feel no delicacy about it, because the movement was your own, and would be most satifactory to the bondholders.

At last, at your apparent earnest solicitations, and in my extreme desire to put an end to further conflict, I consented that you might nominate me as one of the trustees.

In giving this consent I feel sure that Mess'rs Walsh and Parker, and all others who knew me, would appreciate my object and acquit me of all selfish motives.

1285 **As soon as I had distinctly given you my consent you said you would then address the board of directors, making the nominations, and proposing the "terms" on which they were to be confirmed. I promptly inquired what "terms" you alluded to. You replied that you thought it must be proper that you and the board should dispose of it in my absence and without my knowledge until after it was closed. I replied that this seemed proper enough, but that if any "terms" as a consideration of my appointment were to be interposed it was proper that I should know what these terms were.**

You then disclosed to me that the "terms" to which you referred were the compensation to be given to the trustees should be first settled. I replied that for myself I intended to accept no compensation, and could not allow my name presented to the board with any such terms or conditions annexed.

You then declined nominating me, and also declined to confirm
1286 **the nominations of Mess'rs Walsh and Parker unless your compensation was fixed in advance.**

I then appealed to you to consent that the company might sell lands for bonds, the bonds to be cancelled and immediately delivered up, as this measure was of great importance, as well to the bondholders as to the company; but you declined giving your consent, and our conference closed.

I deeply regret this condition of things, but I have done my whole duty and can do no more. To allow a trustee under a mortgage every time a measure is proposed necessary for the success of our enterprise to append, before he will give his consent, a condition for his personal benefit would put us on "the road to ruin" over which so many American enterprises, by similar means, have gone.

As to the question of compensation, the trustees have done nothing but sign the mortgage-bonds and two or three papers authorizing the sale of lands.

For years the company has appealed to you to give your as-
1287 **sent to measures of the greatest importance to our success, but no response has been given, and we have been left to struggle on with no "aid" or "comfort" from you.**

During the last three years, if not longer, there is not to be found, and you cannot exhibit, a single act of the trustees in connection with the affairs of the company or its land fund.

The mortgage requires annual reports by you to the company, and you never have made one. Regular reports of our sales have been made to you and you have never acknowledged the receipt of one. It was your duty to make deeds, but not one has been made. By this our sales have been retarded, because purchasers feared they could get no titles. Purchasers of lands previously sold refused to make payments until deeds were ready for delivery, and we were thereby deprived of the use of money in times of our greatest need. Fifty thousand dollars would not compensate our company for the damage by this neglect.

1288 **The trustees saw proper to retain in their hands eighteen thousand dollars of our bonds, with back coupons, to the amount of** several thousand dollars, making in all some twenty two or three thousand dollars. This is far, very far, beyond any reasonable compensation for the services performed and hereafter to be performed, to say nothing of the positive damage inflicted on us by a total neglect of duty, to which I have referred.

To buy peace and avoid an open rupture, I have proposed to give this up and let it be retained, provided no further claim for services is set up, now or hereafter. But this seems not to be satisfactory. You claim the right to decide on the value of your own services and to fix your own compensation.

You further declare you will appoint your own agents, and of course
fix their salaries, and have them responsible to you alone. You
1289 further declare the land fund must pass through your hands, and
through the hands of agents appointed by you and responsible to
no one but you.

These facts and this extraordinary claim of power brings us to a crisis.

To have an open rupture with our only surviving trustee is bad enough, for he has the power to do us harm, and force us to make an appeal to the courts of the country for protection and relief. But to submit to this astonishing claim of power would be worse. It would transfer our entire land fund from the control of our company and put it in hands having no interest in the enterprise beyond the fees and emoluments to be extracted from it. The trustee would fix his own compensation from time to time, and the company must pay it. He would appoint his own agents without limit as to number, and fix their compensation, and the company must foot the bills. The expenses of
our land system would be run up to ten times what it is now.
1290 The seat of power and responsibility would be transferred from
Mobile to New York, and the assets of the company would be
put beyond the jurisdiction of the courts of the States in which the trust was created and through which the road runs.

But I have extended this communication beyond my original design.

In conclusion, I desire you to reconsider the position you have taken. I think there is not a bondholder in Europe or America who will not, when rightly informed of the facts, say that all we have requested you to do is reasonable and to their interests.

Respectfully, yours,
(S'gn'd) MILTON BROWN,
Pres't M. & O. R. R. Co.

Filed with the answer of the Mobile and Ohio Railroad Company in the circuit court of the United States, at Mobile, in the case of Morris Ketchum vs. said company and others, as Exhibit No. 1 and part of said answer.

(S'gn'd) GEO. N. STEWART,
Sol'r for Def't.

Filed April 2nd, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1291 EXHIBIT NO. 2.

NEW YORK, *July 21st*, 1860.

M'r BEERS:

DEAR SIR: Your dispatch met me on my arrival here on the 18th, but the papers referred to have not yet arrived, but M'r Ketchum has read me his copy, and we have had two long interviews on the subject sides dining together at his house.

His first effort was an appeal to my fears as to the consequences, if I did not agree forthwith to fix his salary and pay up from the signing of the mortgage until now.

This failed. He then changed his attack by making it an appeal to my vanity. He praised my firmness, my ability, and my great success. He said that from the time of my election he knew the enterprise would succeed; that no man had built up such a reputation as I had, and concluded by inviting me to dine with him, saying he had no doubt we could arrange all our differences satisfactorily.

1292 I ate his dinner and drank his wine, and with a warm and confiding shake of the hand we parted to meet next day. We met accordingly, and he began to hope that by his appeals to my stomach, through his dinner and wine, and to my vanity by his speeches, he had me in a good condition, and if he could also get my avarice enlisted by the hope of a salary as trustee, that he and I, acting together, "could make a good thing of it," as the Yankees say when they are about to do a smart thing by cheating somebody.

The result of our interview, and the facts relating to the whole affair, are carefully stated in my written reply, a copy of which I herewith enclose. It presents a case of corrupt motive and dishonest purpose never before surpassed. His character is worse than I supposed. No one who knows him has the least confidence in his integrity.

1293 In a conversation with M'r Osborn, president of the Illinois Central, the death of Col. Hallett was referred to, and I remarked it left M'r Ketchum the sole trustee under our mortgage. He replied, "Then you are in a hell of a fix."

He went on to tell me that he was one of the trustees under their mortgage, and also a director in the road; that he managed first to get a fixed salary of fifteen hundred dollars a year. Then, not content with that, taking advantage of his position, he carried his frauds so far that the other two trustees had to take the trust into their own hands, and the board of directors refused to consult with him. In the face of all this, he had the impudence to appear at a meeting of the board.

On his entering the room, he (Osborn) rose and said to him, "How dare you show your face at a meeting of this board?"

He inquired if the board allowed the president to use such language towards him, and no reply was given. He then retired.

But he still holds on to his office as trustee. The other two trustees perform the duties and he collects his salary.

1294 Osborn thinks that he never will consent to fill the vacancies except upon conditions that will put the company in his power, or unless at least one of those to be appointed is under his influence, and will unite with him in his frauds. But I think he will soon find himself powerless, and if he can get no funds in his hands, as he certainly cannot beyond what he has, he will probably resign. Of course, we can agree to no appointments except such as are in Mobile or on the line of the road, and are beyond his fraudulent influences.

He is very uneasy about the danger of his paying costs in the bill filed against him and the company at Mobile and in other cases that may be commenced. Tell our counsel to see to the question of costs and make him pay them, and, if necessary, take proof as to his conduct.

Tell M'r Hamilton to examine the facts contained in the copy of my letter to Ketchum and other facts of the case and write me to

1295 **Jackson, Tennessee, 1st. As to the power of the Alabama courts to remove him; 2nd. How we shall reach him for damage already done; 3rd. How we can enforce the appointment of trustees to fill the vacancies, and such other suggestions as may occur to him.**

File the copy I send you for the inspection of our board and counsel, and any that may desire to see it.

Yours truly,
(S'gn'd) MILTON BROWN,
Pres't M. & O. R. R. Co.

Filed in the circuit court of the United States at Mobile, in the case of Morris Ketchum vs. The Mobile & Ohio Railroad Co. and others with the answer of said company as Exhibit No. 2 and part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol'r for Def't.

Filed April 2nd, 1877.
(S'gn'd)
N. W. TRIMBLE, *Clerk.*

1296 EXHIBIT No. 3.

(Copy.)

Whereas W'm R. Hallett and John J. Palmer, two of the trustees under our first mortgage, executed to secure our sterling bonds, have departed this life; and whereas Morris Ketchum, the surviving trustee, has attempted, and so far as in his power, practiced gross fraud on this company and the bondholders; and whereas said Ketchum is a citizen of the State of New York, and an alien enemy, and in all respects disqualified and unfit to act as trustee:

Therefore, Resolved, That our counsel be instructed to apply to the chancery court or such court as may be most suitable, to have three trustees appointed to act under said mortgage, with power to order sales of lands, directing, if they deem it best, the taking of sterling bonds in payment and to make deeds for lands already sold and to be here-
1297 after sold, and to do all and everything necessary and proper to be done in the due execution of said trust; and be it further resolved, that we recommend the appointment of Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, said trustees under said mortgage.

I certify the foregoing to be a true copy of a resolution passed by the board of M. & O. R. R. Co., at a meeting of said board on 5th December, 1861.

[SEAL OF CO.] (S'gn'd) J. P. RUTLAND, *Sec'y.*

JANUARY 6TH, 1862.

Filed in the circuit court of the United States at Mobile with the answer of the Mobile and Ohio Railroad Co., in the case of Morris Ketchum vs. said company and others as Exhibit No. 3 and part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol'r of D'f't.

Filed April 2d, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

E. L. Andrews, counsel of Miss Georgie Warnes, having taken proceedings against Duncan and Elliot was subsequently required to withdraw the same, as will appear by the following correspondence:

(Copy.)

3RD APRIL, 1876.

E. L. ANDREWS:

DEAR SIR: I am advised that I have made a mistake by signing a petition for the removal of M'r W. B. Duncan and M'r Elliot from the receivership of the Mobile and Ohio Railroad, and if they are removed and M'r Ketchum substituted, the interests of that road would suffer by the change.

I have lost much by investing in the bonds of that road and cannot afford to run the risk of losing more by such a change.

I therefore wish to withdraw that petition for the removal of Messrs Duncan and Elliot, and hereby request and authorize to do so.

(S'gn'd) GEORGIE WARNES.

1299 (Copy.)

NEW YORK, *3rd April*, 1876.

Mess'rs DUNCAN & ELLIOT:

GENTLEMEN: Your friends say that I have made a great mistake in signing a petition for your removal from the receivership of the Mobile and Ohio Railroad, and that if you are removed you will thereby be deeply wronged, and that I can avert that wrong by withdrawing my petition for your removal.

As my object in signing that petition was not to injure you, but simply to protect my rights as a bondholder, and as I am now advised that you can and will protect those rights, I have sent a note, of which the within is a duplicate, to M'r E. L. Andrews, requesting and authorizing him to withdraw that petition.

Trusting that you will prove worthy of the trust your friends repose in you,

Yours, very respectfully,

(S'gn'd) GEORGIE WARNER.

1300 Filed with the answer of the Mobile and Ohio Railroad Company in the circuit court of the United States at Mobile, in the case of Morris Ketchum vs. said company and others, as Exhibit No. 4 and part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol'r for D'f't.

Filed April 2nd, 1877.

(S'gn'd) N. W. TRIMBLE, *Clerk.*

Memorandum of agreement and transfer, made the first day of October, 1876, by and between the Mobile & Ohio Railroad Company, a corporation by that name existing under the laws of Alabama, and operating also under the laws of the States of Mississippi, Tennessee, and Kentucky respectively, party of the first part, and the various other parties whose names are subscribed hereto, being creditors of said company, some holding security as hereinafter specified and others unsecured, each subscriber for himself and neither for the other, parties of the second part, and William H. Hays, of the city of New York, William S. Pierson, of Windsor, in the State of Connecticut, and T. Haskins DuPuy, of Philadelphia, in the State of Pennsylvania, parties of the third part.

Whereas the said railroad company, originally incorporated by the State of Alabama, and operating under the laws of that State, has, by the legislation of the several States of Mississippi, Tennessee, and Kentucky respectively, obtained valuable corporate rights and privileges, as well as important exemptions, in those respective States:

And whereas owing to a succession of misfortunes, the said corporation has fallen into arrear in the payment of its bonded and other indebtedness, to such an extent that proceedings for the foreclosure of mortgages executed by it are now pending, which proceedings have gone to an advanced stage and are still being pushed, and, in addition, the day of payment named in some of its mortgages is near at hand;

And whereas differences and disputes have arisen between the different classes of holders of the securities and evidences of debt issued by said company, which differences and disputes, if persisted in, are likely to lead to protracted litigation and to the sacrifice or deterioration of the property of the said company, and to great delay in the resumption of regular and legitimate operations on its road; and it is therefore deemed expedient that a scheme should be devised, to be assented to by the various classes of claimants upon the said company, for the harmonizing and compromise of their respective claims, without ending the corporate existence or corporate powers of said company and without putting an end to or limit upon its corporate privileges;

And whereas the secured indebtedness of the said company now exists in the form of bonds and coupons secured by mortgage liens, as specified in the schedule hereto annexed, and as appears by the books of the company, exclusive of interest on said coupons;

And whereas, in addition to said mortgage indebtedness, judgments have been recovered against said company, which are claimed to constitute liens upon some of its property, subject to its mortgage indebtedness, but a large part of which judgment indebtedness is presumed by lapse of time and otherwise to have been in fact satisfied; and in addition thereto the said company owes a considerable amount of floating or unsecured indebtedness; and the undersigned, holders of claims of the various classes against said company, as well those specified in the said schedule hereto annexed, as judgment creditors and unsecured creditors, have agreed to compromise and compound with said company upon the said company's issuing new securities for all the said indebtedness in the manner hereinafter agreed upon, to the end that, if practicable, said foreclosure suits may be discontinued and the property affected thereby restored to the custody and control of the said company under the conditions of this agreement, and the stipulations accompanying the same;

But whereas it is understood by said creditors that if such scheme shall be found to be impracticable because not assented to by a sufficient number of creditors, or for other reasons, that then the said foreclosure proceedings shall be prosecuted to either a sale or a strict foreclosure, and a purchase or acquisition of the property of the said company consummated for the benefit of the subscribers hereto, who are such creditors as aforesaid, and that a new corporation or corporations shall be created, and new securities issued for the benefit of such creditors:

1302 Now this memorandum witnesseth that the said parties hereto have covenanted, agreed, and tranferred, and do hereby covenant, agree, and transfer to and with each other in manner and form following, that is to say:

First. The said William H. Hays, William S. Pierson, and T. Haskins DuPuy are hereby constituted assignees in trust, agents, managers, and attorneys of the said parties hereto, who are creditors of the Mobile & Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing, and controlling the same, for the purposes, in the manner, and with the powers hereinafter specified.

Second. Each of the parties hereto, being a creditor of the said Mobile & Ohio Railroad Company at the time of the execution of this instrument, assigns, transfers, delivers, and makes over to the said William H. Hays, William S. Pierson, and T. Haskins DuPuy, all the evidences of debt issued by said company and claims against said company now held by such subscriber hereto, whether in the shape of bond, coupon, note, judgment, open account, unliquidated demand, unpaid voucher or otherwise, to be held by the said Hays, Pierson, and DuPuy, as such assignees, agents, managers, and attorneys, in the manner and for the purposes and upon the trusts so hereinafter declared concerning the same. Upon this instrument being subscribed by all the creditors of said corporation, holders of evidence of debt issued by said corporation, or of other claims against the same, the said assignees, agents, and attorneys shall have and hold the claims and evidences of debt of such creditors with full power and authority to cancel, surrender, release, and discharge all such evidences of debt, claims, and demands so transferred to them upon receiving from said Mobile & Ohio Railroad Company new evidences of debt and securities to the extent and in the manner hereinafter provided.

Third. Upon the request of the said Hays, Pierson, and DuPuy, or their successors, the said corporation hereby agrees to execute and deliver, or cause to be executed and delivered, to the said William H. Hays, William S. Pierson, and T. Haskins DuPuy, or their successors or appointees, new bonds and obligations, or acknowledgments of indebtedness, secured respectively by a new mortgage and trust-deed to be made by said corporation as hereinafter provided, and containing such stipulations and clauses for the security of the creditors of said company as the said assignees and attorneys shall advise and require not in conflict with the provisions of this agreement.

Fourth. The said new mortgage shall be called the first mortgage, and shall constitute a first and primary lien on all of the main line of the said Mobile & Ohio Railroad, lying at and between the city of Mobile and the city of Columbus, in the State of Kentucky (exclusive, however, of the several branches now possessed or to be acquired or constructed, those now possessed being known as Aberdeen Branch, Columbus

Branch, Starkville Branch, and the Gainesville Branch), covering all and singular the chartered rights, railways, sidings, turnouts, and all connected therewith, bridges, fences, warehouses, depot and office buildings, machine shops, tools, iron, timber, and all materials necessary in the repair of the road, rolling-stock, or machinery, and all wood and coal and other materials necessary in running said road, and all fixtures, privileges, rights, real estate, and all other property owned, and which may be hereafter owned, by said company, and which shall be necessary to the business of said company or for the purpose of carrying freight and passengers upon said main line, but not including any lands granted to said company by any State or by the United States, nor lands which may be situated apart from the line of the road and not actually required for the use or running of the road. The said trust-deed shall be in the form and shall have the effect and operation of a conveyance in trust to trustees of the lands granted to said company by any State or of the United States, as well as all lands belonging to the company and not necessary for the operation of the railroad of said company, and also so much of the net income of said company as shall remain after payment of current expenses, cost of maintenance, improvement, and repairs, and interest on said new first mortgage, and on the debentures, as hereafter more particularly specified.

Fifth. The first mortgage mentioned in the last preceding paragraph shall be made for the security of the holders of the present out-
1303 standing issue of first-mortgage bonds of said corporation, and of the coupons issued with said first-mortgage bonds, whether such coupons are now detached from such bonds or are now attached thereto, and for the benefit and security of the holders of the issues known as the sterling arrearage interest-bonds, the funded arrearage interest-bonds, and the coupons detached from or attached to such bonds, matured and unpaid, and also for the benefit and security of the holders of the issue known as the Tennessee substitution bonds, and coupons detached therefrom or attached thereto, matured and unpaid, all upon an equal footing as to grade of new security (provided such holders become parties to this agreement, and transfer the securities held by them respectively pursuant hereto), and for the purpose of providing funds for necessary expenses and outlay under this agreement. The total amount of principal money secured by bonds issued under the new first mortgage is to be seven millions of dollars, payable in the city of New York, in gold coin of the United States, on the first day of December, in the year 1927, bearing interest payable in lawful money of the United States, in the following manner: Two per cent. on the first day of December, 1877; two per cent. on the first day of June, 1878; three per cent. on each first day of December and June thereafter, and the bonds to be issued under said first mortgage may be in sums of either $1,000, $500, $300, or $100 each, and shall have negotiable interest-warrants or coupons attached thereto, payable in New York. But the holders of the present first-mortgage securities are to be interested in the new securities issued under the new first mortgage, as next hereafter stated; that is to say:

Sixth. Each subscriber hereto, who shall have transferred to the said assignees, agents, and attorneys a first mortgage bond of said company shall be entitled to receive an amount equal to four hundred and forty dollars for each one thousand dollars, or each £225, of the principal sum payable upon such bond so transferred, in a bond or bonds to be issued under the said new first mortgage hereinabove provided for, to be taken at par; and every subscriber hereto who shall have so transferred first-mortgage coupons of said company heretofore issued (pro-

vided the due date originally mentioned therein shall not have been later than the first day of November, 1877), shall receive an amount equal to the value of such coupons, as below estimated, in a bond or bonds, to be issued under said new first mortgage hereinabove provided for, each such coupon to be estimated for this purpose as being worth, and as securing the payment of, thirty-six dollars, except coupons maturing November 1, 1877, which shall each be estimated as worth only six dollars; and each holder of sterling interest bonds who shall have become a subscriber to this agreement, and shall have transferred his bonds in pursuance hereof, shall be entitled, in lieu of each bond so transferred, to a bond or bonds for the principal sum of four hundred and forty dollars each, to be issued under said new first mortgage, for each £200 of the principal amount of the bonds so transferred by him under this agreement; and each holder of coupons heretofore issued with any such sterling interest bond, (provided the original due date named in such coupon shall not be later than the first day of November, 1877,) shall be entitled in lieu thereof to a bond or bonds to be issued under such new first mortgage for the amount of the coupons so transferred, valuing each such coupon at the sum of thirty-six dollars, except coupons maturing November 1, 1877, which shall be valued at only six dollars; and each holder of bonds generally known as arrearage-interest bonds, who shall have become a subscriber to this instrument, and shall have transferred his bonds pursuant to the terms hereof, shall be entitled to a bond or bonds to be issued under said new first mortgage for the principal sum of three hundred and ten dollars for each $1,000 of the principal amount of the bonds so transferred, and each holder of coupons heretofore issued with such arrearage-interest bonds, (provided the original due date of such coupons shall not have been later than the first day of November, 1877,) shall be entitled to new first-mortgage bonds for the amount of the coupons so transferred, valuing each such coupon at thirty-six dollars, except that coupons of which the original due date was the first day of November, 1877, shall be valued at six dollars each; each holder of bonds known as Tennessee substitution bonds, who shall have become a subscriber to this agreement, and who shall have transferred his bonds as aforesaid to said assignees and attorneys, shall receive in lieu of the bonds so transferred a bond or bonds to be issued under said new first mortgage for the par amount of $626 for each bond so transferred, and each holder of coupons heretofore issued with any such Tennessee substitution bonds, (provided the original due date of such coupons was not later than July 1st, 1877,) who shall have become a subscriber to this agreement, and who shall
1304 have transferred his coupons to said assignees and attorneys,
shall be entitled in lieu thereof to receive a new first mortgage bond or bonds for the amount of his coupons so transferred, estimating each such coupon at thirty-six dollars, except the coupons maturing July 1, 1877, which shall be valued at only thirty dollars each.

Seventh. The trust deed hereinabove provided for shall be in part for the security of the same class of present creditors who, as above agreed, are entitled to be secured by the said new first mortgage, to the extent of the difference, as below stated, between the amount of new bonds to be issued to them or for their benefit, as above provided, and the principal amounts of the bonds now outstanding and transferred by them respectively, and also for the benefit of the remaining creditors of said company who shall become parties to this agreement and become entitled to the benefit thereof; and to that end it is now provided—

Eighth. Each bond now held by any such present first-mortgage creditor as last aforesaid for the principal sum of one thousand dollars gold or lawful money, or for the principal sum of £225, £205, or £200, shall, for the purpose of ascertaining such difference, be estimated as worth one thousand dollars; and each bond payable in dollars, gold or lawful money, for a less sum than $1,000, shall be estimated at its face, without interest, and each bond payable in sterling money for less than £200 shall be estimated at the rate of five dollars for each pound sterling of principal money payable by the terms of such bond. And after charging to each subscriber hereto who shall have transferred bonds as above agreed, the principal amount of the bonds to be issued to him as above provided in the sixth paragraph, not taking into account any bonds issued in lieu of coupons transferred under said sixth paragraph, he shall be entitled to a preferred income and sinking-fund debenture or debentures, of the first series to be issued under said trust deed, as hereinafter provided, for the difference between the principal sum of the new first-mortgage bonds so charged to him and the principal sum of the bonds so transferred, valued as above provided.

Ninth. The preferred income and sinking-fund debentures issued under said trust deed may be in sums of $4,000, $500, $300, or $100 each, and shall not have any interest coupons attached thereto, and shall not be payable absolutely, but only out of the sinking-fund hereinafter provided; and shall be registered and shall be transferable only on the books of the company, at the office of the company, in the city of New York, and shall not otherwise be transferable, and shall be issued in successive series, the first series to be known as first-preferred income and sinking-fund debentures, the second series to be known as second-preferred income and sinking fund debentures, the third series to be known as third-preferred income and sinking-fund debentures, and the fourth series to be known as fourth-preferred income and sinking-fund debentures, and such debentures shall be so expressed as that interest at a rate not exceeding seven per cent. per annum shall be payable thereon yearly, that is, on the first day of February in each year after the year 1878, upon the conditions herein specified, that is: on or before the first day of December, in the year 1878 and each year thereafter, said company shall ascertain as closely as practicable the net earnings of such company remaining after paying the expenses of the corporation, cost of maintenance and proper repair, and the interest on the new first mortgage bonds, up to the first day of September next preceding, that being the end of the fiscal year; and in case there shall remain on such first day of December a residue of earnings for the year ending on the first day of the September next previous, and if it shall then be ascertained that up to the first day of September next preceding that first day of December, the earnings of said company, after making provision for such expenses, interest, and the proper maintenance of the property in good order, leave any sum applicable to the payment of interest on such debentures, then such net earnings shall be applied to the payment of interest on said first-preferred income and sinking-fund debentures, not exceeding seven per cent. in lawful money of the United States, and such application and payment shall be made on or before the first day of February in the next succeeding year; and after payment of interest at the rate of seven per cent. per annum on said debentures of the first series, what remains of said net earnings shall be applied to the payment of interest on said debentures of the second series at a rate not exceeding seven per cent. per annum; and after payment of interest at that rate on said debentures of the second series, what remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the third series; and what then re- 1305 mains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the fourth series; but in case the earnings of any one of such years shall not be adequate to the payment of seven per cent. interest for that year on all or either series of said debentures, then the deficiency shall not have any claim upon the net earnings of any succeeding year. And the net earnings shall only be applicable to the payment of interest on either series of debentures in case such earnings shall amount to at least one per cent. or a multiple of one per cent. on the total amount of the debentures belonging to such series, so that fractions of net earnings exceeding such one per cent. or a multiple of one per cent., need not be included in the payment of interest for that year, but shall be carried to the credit of the earnings for the succeeding year.

Tenth. The aforesaid second preferred income and sinking fund debentures shall be issued for the benefit and security of that class of the present creditors of said corporation, who are known as second mortgage bondholders, all to be upon the same footing with each other as to security and priority. Each second mortgage bond of said company, and each coupon thereof, now outstanding shall be considered as of the par value represented on its face in currency, provided the due date originally specified therein shall not have been later than the first day of March, 1878, except coupons maturing March 1, 1878, which when for $80 on their face shall each be estimated as worth only twenty dollars, or in that proportion for any coupon of any smaller amount than $80. Each holder of a present outstanding second mortgage bond or coupon of said company, who shall have become a subscriber to this agreement and shall have transferred his bond or coupon pursuant to the terms hereof, shall be entitled to receive dollar for dollar for the principal of his bond and coupon so transferred as aforesaid in a second preferred income and sinking fund debenture.

Eleventh. The said debentures of the third series shall be for the benefit and security of the holders of the present outstanding bonds of said corporation, known as convertible bonds, and shall be for an aggregate amount sufficient to represent the aggregate amount of now outstanding convertible bonds, and the interest thereon up to the first day of June, 1877. Each holder of a convertible bond who shall have become a subscriber to this agreement and shall have transferred his bond as and in the manner aforesaid, shall be entitled in lieu thereof to a debenture of the third series for the par amount of the bond so transferred, estimating the same at its face value in currency, and the accrued interest on such convertible bond, to be computed up to the first day of June, 1877, shall be replaced by a debenture of the third series for the actual amount of such interest up to that date.

Twelfth. The said debentures of the fourth series shall be for such amount as said assignees and attorneys shall determine to be necessary for the purpose of satisfying such judgment and unsecured indebtedness of the said company as they shall deem to be morally obligatory, in their discretion, so far as the same shall be held by subscribers to this instrument who shall have transferred their claims to the said assignees and attorneys, subject to adjustment by said assignees and attorneys, but the same shall not exceed the sum of the face value of such judgments or indebtedness, and no unsecured or judgment creditor shall be admitted as a subscriber to this instrument, nor entitled to the benefit thereof, for any amount exceeding that which may be adjusted and allowed to him by said assignees and attorneys; and each such judgment and unsecured creditor who shall so become a party hereto, shall be entitled to a debenture of the fourth series for such sum as said assignees and attorneys may adjudge to be justly due to him.

Thirteenth. In case all the holders of the unsecured or judgment indebtedness of said corporation shall not have become parties hereto, or shall not have assented to the adjustment of their claims by the said assignees and attorneys, and the reduction thereof to the amount which said assignees and attorneys shall deem to be justly and equitably due thereon, then said assignees and attorneys, instead of cancelling and surrendering all of said mortgage bonds now outstanding, transferred to them under this agreement, shall hold said mortgage bonds or so much thereof as may in their discretion be necessary for the security of the new securities against said unsecured and judgment indebtedness, except that the new mortgage and trust deed issued by said corporation shall have priority over such old mortgage bonds; but such 1306 original mortgage bonds shall be held by the trustees in the new first mortgage, in trust for the benefit of the holders of the new securities of the said corporation, according to their order and priority, prior to and to the exclusion of the unsecured and judgment creditors who shall not have assented to this agreement. And each of said present mortgage bonds transferred under this agreement and held by said trustees, as before stated, shall be stamped by the assignees and attorneys with the following words: "In pursuance of the terms of agreement made between the Mobile & Ohio Railroad Company and its creditors, bearing date October 1, 1876, this bond is not negotiable, being held subject to the provisions and for the purposes mentioned in said agreement."

Fourteenth. The said assignees and attorneys shall not be authorized to cancel or surrender any of the existing obligations or evidences of debt of the said corporation, transferred to them under this agreement, unless all the present holders of the mortgage securities of said company shall have become parties to this instrument, and transferred the securities held by them on or before the first day of March, 1877, or at or before such time as the said assignees and attorneys shall have fixed, as in their discretion they may, by successive extensions of not more than sixty days each; nor until said corporation, or its stockholders, through legal and proper action of its stockholders, if such action be necessary, or otherwise according to law, shall have entered into an adequate and sufficient arrangement or agreement with said assignees and attorneys, and with the holders of said debentures, enabling the holders of such debentures or the trustees under said trust-deed to vote at elections for directors of the said company, and irrevocably represent such stock or a majority thereof, at all stockholders' meetings until such debentures shall be extinguished; and upon that privilege of representation being acquired by and vested in or secured to the trustees in said trust-deed, or to the holders of the said debentures, by the proper and legal action of such corporation or its stockholders, and upon all the new mortgages and securities above called for being issued, then such cancellation and surrender may be fully completed and consummated (except in the contingency provided in paragraph 13 of this agreement), and the property and management of the corporation may be restored to it, and said foreclosure suits may be discontinued.

Fifteenth. Any surplus of new securities created under this agreement, not required for the satisfaction of the claims of existing creditors, may be applied and appropriated by said assignees and attorneys to the payment of the expenses of making this agreement and carrying the same into effect, as well as the expenses of said foreclosure suits; and the said assignees and attorneys, as transferees and assignees of the subscribers to this instrument, shall have the same rights and relations to the foreclosure suits now pending, and to the complainants in said foreclosure suits, and to the receivers in said suits, and to the funds in their hands, which the subscribers to this agreement now have or would have if they continued to be holders of the bonds and claims subscribed hereto, and shall be entitled to the same share of the proceeds of the present management of the property of said company, and to the same share of the proceeds of the sale of such property which their assignors would have upon a discontinuance of said foreclosure suits, or upon an accounting, or upon a sale or distribution of the proceeds; their several assignors to be considered, in relation to such proceeds, as being upon the same grade of priority and security, as between and among each other, upon which the provisions of this agreement would place them in relation to the new securities to be issued by said company.

Sixteenth. In case a sufficient number of subscribers shall not be obtained to this agreement on or before the time prescribed herein, to put it within the power of said assignees and attorneys to carry into effect the foregoing clauses and stipulations of this agreement, then this agreement shall be binding upon the subscribers thereto, provided it shall have been subscribed by holders of at least a majority in amount of the existing first mortgage indebtedness and Tennessee substitution bonds of said company, as recited in the schedules hereto annexed; and thereupon said assignees and attorneys shall have power and authority to appropriate the bonds, coupons, moneys (if any), and evidences of debt which shall have come into their possession, under the provisions of this agreement, towards the purchase of the property of said railroad corporation, under such decree or decrees of foreclosure as shall be obtained in said pending suits, and shall have power and authority, and it shall be their duty, to aid the complainants in said suits in
1307 speeding said suits to their conclusion, by decrees of foreclosure and sale, or of strict foreclosure, in the interest and for the benefit of the subscribers to this agreement, and they shall have power to turn the securities, received by them under this agreement, into court in payment for said property, upon the purchase thereof by them upon the foreclosure; and in the event of its becoming necessary for the protection of the interest of the parties subscribing hereto, that any cash or other payment than the securities in their possession should be made into court, said assignees and attorneys shall have the power to make such payment for the account of and at the risk of the parties subscribing hereto, or by obtaining the amount thereof upon the security of the bonds and coupons in their hands; and shall likewise have power to apply for and receive dividends upon the bonds and coupons received by them under this agreement from the funds in court in the hands of the receivers, or of any master or marshal or clerk or otherwise to the same extent as the original holders of the bonds and coupons retained and held by them would have been; and while no authority is given to them to make any subscribers hereto personably responsible for the payment of any debt incurred by them, they are authorized with the assent of the trustees of the present first mortgages, or a majority of them, to pledge the bonds and coupons in their possession for the purpose so far as necessary of obtaining means to expedite and bring to a conclusion this compromise or said foreclosure suits.

Seventeenth. The parties subscribing hereto and transferring any

evidence of debt or claim according to the terms of this instrument, shall be entitled to certificates, specifying their contributions respectively and their interests respectively to and in this agreement and the benefits thereof; and each certificate shall be transferable and deliverable to bearer without a transfer being required to be made in any book or in writing, and shall represent on its face the securities deposited therefor.

Eighteenth. Upon the purchase of the property of said company by said assignees and attorneys at any sale or sales under decree of sale or strict foreclosure, it shall be their duty to avail themselves of any existing law in either of the States of Alabama, Tennessee, Mississippi or Kentucky, or to procure legislation, so far as may be necessary, for the purpose of creating a new corporation or new corporations to which it shall be their duty to transfer the property so purchased by them as early as practicable upon receiving from such new corporation the new bonds, debentures, mortgage and trust-deed hereinabove specified for the same amount which would be required to carry the above proposed compromise into effect, such mortgage and trust-deed to be made to one or more trustees in each case to be selected by said assignees and attorneys, and to be properly framed for the security of the several classes of creditors to be benefited thereby; and so far as the evidences of debt to be issued under such new mortgage or trust-deed, whether by said Mobile & Ohio Railroad Company, or by a new corporation, shall not be required to be issued or delivered in exchange for securities which shall have come into and remained in the hands of such assignees and attorneys under this agreement, such surplus securities shall be sold, or so much thereof as in their judgment may be necessary for the purposes hereinafter named; and the proceeds thereof, and also any sums received by them in cash from the receivers, or from any officer of the court, shall be applied, in the first place, in repaying any sums advanced, or procured to be advanced, by said assignees and attorneys for the purpose of meeting the expenses of said foreclosure suits and of carrying this agreement into effect, and the expense of making such purchase and reorganization; and then the surplus, if any, remaining from such disposition of such new securities, as well as any new securities which may remain unsold or undisposed of, and any sums realized by said assignees and attorneys from the receivers or managers of said property in said foreclosure suits, or from the management or running of the road, shall be accounted for by said assignees and attorneys to said new corporation, which said new corporation is to consist of and be created by the subscribers to this agreement, so far as they are entitled to the benefit of the same; and said new corporation, or said existing corporation, in case the compromise above specified shall be carried into effect, shall be considered as subrogated to all the rights of the subscribers to this agreement for the purpose of calling the said assignees and attorneys to account. The said assignees and attorneys shall be allowed out of the fund, for compensation for their services and responsibility, such amounts as
1308 shall be reasonably just according to the character of such services and responsibility; but there is no personal responsibility on the part of any subscriber hereto for any part of such compensation; and said assignees and attorneys, and their necessary clerks, book-keepers, and their employees of any grade or description, shall be entitled to a lien upon the new securities and upon the cash received by said assignees and attorneys, and the cash proceeds of such of the same as they are authorized to dispose of, for their compensation, liabilities

and disbursememts, whether absolute or contingent, until their account shall have been duly and properly settled with such organization; and such existing corporation, or such new corporation or corporations, as the case may require, shall, before payment of interest on any of the new securities, assume and pay any excess of such compensation, liabilities and disbursements above the amount realized by said assignees and attorneys from funds in their hands.

Nineteenth. The subscribers hereto, who shall respectively have transferred to said assignees and attorneys their several claims, provided such claims shall remain under the control of such assignees and attorneys and available for the purpose of purchasing the property now mortgaged in said foreclosure suits, shall be interested in the property after such purchase and so long as the title thereto remains in said assignees and attorneys, as beneficiaries and cestui que trust, in the same proportions, and shall have the same relative rights and interests, as against each other, as in the new securities to be created under this agreement.

Twentieth. The trust-deed hereinabove provided for, whether executed in pursuance of the compromise above agreed upon or by a new corporation or corporations to be created after a foreclosure, shall contain provision for the creation of a sinking fund for the benefit of the holders of said debentures in the order in which the interest on such debentures is as above specified payable.

Such sinking-fund is to consist of the proceeds of all lands owned, and which may hereafter be owned by said company, with the exception of such as are covered by the above-mentioned first mortgage, and with the exception of the railway, rails, bridges, fences, warehouse and other fixtures, rights, privileges, and real estate belonging to the above-mentioned branches, but including all lands not so covered but conveyed to the Mobile & Ohio Railroad Company by any State or by the United States. The trustees under said trust-deed are to have power of sale over said lands from time to time, and such trust-deed shall contain clauses properly framed conveying to the trustees under such deed the same powers of sale in respect to the lands conveyed thereby as are possessed by the trustees under the now existing first mortgage; and the first mortgage to be created under this agreement is not to apply to or cover such lands, and the proceeds of sales of said lands are to be free from the lien of said new first mortgage, and are to constitute a fund for the exclusive benefit of the holders of said debentures. But such new trust-deed shall also contain a provision by way of covenant, declaration, grant, or otherwise, as said assignees and attorneys may direct, in substance and effect that the amount of principal and interest payable upon said debentures shall constitute a lien upon the railway property of said existing corporation, or of said new corporation or corporations as the case may require, to such an extent that in case of a foreclosure of said new first mortgage and a sale thereunder, the trustees in said trust-deed, for the benefit of holders of said debentures according to their order and priority, shall be entitled to the surplus proceeds of such sale next after payment of said new first mortgage, to the amount of the aggregate principal sum due on such debentures, and so that in case any lien upon said railway property, or any part thereof, shall arise, subsequent to the making of said trust-deed, by the act or sufferance of such existing or new corporation, and such subsequent lien shall be enforced to the extent of depriving said existing or new corporation of the possession of such railway property, or any part thereof, then the trustees in said trust-deed may enter into possession of such part of said railway property, and sell the same, clear of all subsequent liens, for the benefit of holders of said debentures according to their order and priority, or may exact redemption and payment in full of the principal amount of such debentures before surrendering such property to such subsequent lienors; and said trust-deed shall also contain proper covenants and securities for the ascertainment and application of the income of the property of said existing or new corporation and its successors, as the case may require, according to the provisions of this agreement; and there shall also be paid into the sinking-fund all the interest accruing on debentures bought for the sinking-fund, until all the debentures shall have been bought, satisfied, or extinguished; and there shall also be paid into the sinking-fund a further amount equal to the dividend which may hereafter be declared upon the capital stock, now existing or hereafter to be 1309 created, of such company, which dividend shall not be declared or paid except an amount equal thereto is also paid in at the same time out of the net revenue into the sinking-fund.

The trustees making sales of said lands are to deposit the proceeds thereof in the Bank of the State of New York, in the city of New York, or such other depository as the trustees in said trust-deed may select in the the said city of New York; and each six months, that is, on the first days of May and November, the trustees shall advertise, in the cities of Mobile and New York, stating the amount so deposited and at the disposition of the sinking-fund, and asking for tenders therefor in the first series of said debentures then outstanding, awarding the amount so deposited to the holders of debentures, tendered at the lowest grades of price, in succession. In default of any bids or tenders therefor at less than par, the trustees shall thereupon draw by lot a sufficient number of debentures of the first series, then outstanding, to absorb such deposits, and shall apply such deposits to the purchase of the debentures so drawn by lot at par. After purchase of the said debentures of the first series, the said sinking-fund shall be applied in like manner, and by the same means, to the purchase of each other of the said several series of debentures in succession.

Twenty-first. In case a prosecution of said foreclosure suits to a sale or to a strict foreclosure is found to be necessary, and it shall also be found necessary to create a new corporation or corporations, then the capital stock of such new corporation or corporations shall be fixed at not exceeding the sum of ten million dollars, to be divided into shares of one hundred dollars each, and shall be in the first instance issued to said assignees and attorneys as a part of the funds in their hands for the purposes of this agreement; and they shall so place a majority of such stock as to secure to the holders of said debentures directly or through the trustees in said trust-deed the control of the management of the corporation; and any surplus of such new stock remaining after that disposition of it, and after the trust under said trust deed shall be fully executed, shall be treated in like manner with any surplus bonds, or other securities, to be issued by the Mobile & Ohio Railroad Company, or by a new corporation or corporations, under the provisions of this agreement.

Twenty-second. Bonds, securities, claims, and evidences of debt transferred to said assignees and attorneys under the provisions of this agreement, shall be deposited at the option of the parties transferring the same, either in the Farmers' Loan & Trust Co. in the city of New York, or in the Bank of Mobile, at Mobile, in the State of Alabama, or with C. M. Lampson & Co., in the city of London, or at the Frankfurter

Bank Verein, in the city of Frankfurt, or with Lombard, Odier & Co., in the city of Geneva, who shall respectively be authorized to give therefor the certificates above provided for, or their receipts exchangeable for said certificates; and the securities so deposited shall remain in the several depositories, subject to the order of said assignees and attorneys, until the same shall be required for cancellation, surrender, exchange, or delivery into court by said assignees and attorneys, or for other purposes of this agreement, in which case the same shall be transmitted from the depositories thereof to such attorneys and assignees, either at the Farmers' Loan & Trust Co. in the city of New York, or at the Bank of Mobile, in the city of Mobile, as said assignees and attorneys may direct, from which depositories the same may be taken by said assignees and attorneys when required for any or either of the purposes aforesaid; and securities and cash funds received by said assignees and attorneys, under the provisions of this agreement shall be deposited by them either in the Farmers' Loan & Trust Co. in the city of New York, or in the Bank of Mobile, in the city of Mobile.

Twenty-third. In case of a vacancy in the office of assignee or attorney under this agreement, arising from death or resignation of either of the parties, or from his incompetency to act, the vacancy may be filled by the unanimous agreement of the trustees acting under the existing first mortgage of said corporation, and the remaining assignees and attorneys under this agreement.

Twenty-fourth. The said assignees and attorneys shall have an office in the city of New York, and shall keep regular accounts and books of account, showing their transactions, which shall be open to the inspection of certificate holders at reasonable times during business hours; and a majority of said assignees and attorneys shall be competent
1310 to transact business at any meeting of which all three of the assignees and attorneys shall have been notified, and any substituted assignee or attorney, duly appointed pursuant to the provisions of this agreement, shall have the same power, authority, and control which his predecessor had; and all the provisions of this agreement, and all the powers conferred thereby, shall apply to and be vested in such assignee and attorney so far as his predecessor had such power, or was subject to such provisions; but so far as any discretionary power is conferred by this agreement, no such discretion shall be or can be used without the consent of all the attorneys and assignees acting at the time under this agreement, and each assignee and attorney shall be responsible only for his own acts and not for the acts of others; and neither assignee or attorney shall be responsible for any error of judgment, nor for any error or negligence of any subordinate officer or agent, unless such officer or agent shall be employed or continued in employment negligently by such assignees and attorneys.

Twenty-fifth. The new securities to be issued by said Mobile & Ohio Railroad Company, or by a new corporation or corporations to be created under the terms of this agreement, shall be in the first instance delivered by the said company to said assignees and attorneys, or their successors, who shall deposit the same in the said The Farmers' Loan & Trust Co., or in the said Bank of Mobile, and no subscriber hereto, or his successor in interest, shall be entitled to any portion of such new securities except upon a return or surrender to said assignees and attorneys at one or other of the said places of deposit of the certificate or certificates held by such subscriber. In case, in the original distribution of the new securities to be issued in pursuance of this agreement, any party shall become entitled to a fractional part, less than $100, of a bond or debenture, a certificate therefor may be issued, which, when united with other fractional certificates, so as to make an entire bond or debenture, for either one of the even amounts in which said bonds or debentures are above authorized to be issued, may be funded in such bonds or debentures of even amounts, as the case may require.

Twenty-sixth. The assignees and attorneys acting under this instrument are hereby invested with full power and authority to execute the provisions of this plan; to supply any and every defect, in any and every case which is unprovided for in its terms, and to do anything and everything that is proper in their judgment to carry out its provisions.

Twenty-seventh. The said assignees and attorneys may, in the transaction of business, call themselves "The Committee of Reorganization of the Mobile & Ohio Railroad Company," and when acting in that name, shall be considered as acting as attorneys, agents, managers, and assignees under this agreement. In the adjustment of their accounts they shall be allowed such payments and expenditures as shall have been made by them in good faith, in the belief of the necessity of making such payments and expenditures for the benefit of the subscribers hereto, and for the purpose of carrying this agreement into effect.

Twenty-eighth. All bonds, securities, and evidences of debt, &c., transferred under this agreement, shall be in the first instance deposited for the purposes of this agreement in one or the other of the depositories herein named, or in others selected as authorized by this agreement; and all new securities to be issued by the present corporation, or by a new corporation, shall, in like manner, be deposited with one or the other of said depositories, to be by such depository distributed to the parties entitled thereto, under the order and with the assent and approval of the assignees and attorneys; and in the transmission of either the present or future securities in fulfillment of this agreement, the assignees, attorneys, and depositories, using due diligence, may, in their discretion, insure or otherwise protect such securities at the expense of the fund, and in case of loss shall be relieved from liability.

Twenty-ninth. Any duplicate or other copy of this agreement which shall be subscribed by any holder of the said bonds, securities, liens, claims, judgments, or stock, and delivered to and accepted by said assignees and attorneys, shall have like effect as if such signatures were herewith subscribed.

1311 In witness whereof the parties hereto have hereunto set their hands and seals or otherwise attested the same as the case may require.

Name and address.	Class of bonds, &c.	Amount.

1312 *Schedule annexed.*

FIRST-MORTGAGE BONDS.

1. Sterling bonds, £225 each (by deed of trust stated as "each of said bonds being the same as $1,000"), issued 1853, due 1883.
2. Arrearage interest bonds, B & C, £200 or £100 each, issued 1867, due 1883.

3. Interest bonds, O P Q, $1,000, $500, $200 each, issued in 1866, due 1876.

4. Arrearage interest bonds, F, F_1, F1, F2, F3, F4, $1,000, $500, $300, $100 each, issued 1868, due 1883.

5. Sinking fund gold bonds (Tennessee substitution), £205 or $1,000, issued 1871, due 1901.

6. The interest coupons on the above first-mortgage issues appear by the books of the company to have been paid up to and including those which matured January 1, 1874, leaving outstanding and unpaid all the coupons on the above issues which matured on or after May 1, 1874.

The foregoing principal and interest to be exchanged for first-mortgage bonds and first preferred income and sinking-fund debentures, as provided by the scheme of reorganization.

SECOND-MORTGAGE BONDS.

Several issues, L, R, S, T, Rr, Ss, Uu, $1,000, $500, $300, $100 and irregular amounts, issued in 1867, 1871, 1872, 1873.

The interest coupons on the above second-mortgage bonds appear by the books of the company to have been paid up to and including those which matured March 1st, 1874, leaving outstanding coupons on above second-mortgage bonds from and including those which matured March 1st, 1876. The principal and interest of these to be exchanged for 2nd preferred income and sinking-fund debentures, as provided by the scheme of reorganization.

CONVERTIBLE BONDS.

Secured next after the above mentioned first and second mortgages by a mortgage known as the consolidated mortgage; also by a deposit of the stock of the M. & O. R. R., 4 shares for each $100 in trust. Of these bonds there were issued in irregular amounts $977,550, but of this issue there remain unused by the company $471,000. The interest upon these bonds appears by the books of the company to have been paid up to and including that which matured December 1st, 1874, leaving outstanding unpaid the interest from that date. The principal and interest of these convertible bonds to be exchanged for 3rd preferred income and sinking-fund debentures, as provided by the scheme of reorganization.

CONSOLIDATED MORTGAGE.

These bonds have been issued only to a very limited amount as security to previously unsecured creditors, to give to them, as far as lay in the power of the company, a lien upon the property of the company after the lien of the first-mortgage (Tennessee substitution), second-mortgage, & convertible bonds above enumerated. The original issue was contemplated to be $15,000,000 for the purpose of consolidating all the previous issues, but none were issued beyond the above amount; and the amount so issued was intended to cover all the floating and otherwise unsecured indebtedness except judgments against the company. In the scheme of reorganization they are not recognized.

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FLOATING DEBT AND JUDGMENTS.

The total amount of judgments outstanding appears, by the records of the several counties through which the railroad runs, to be about

$170,000; but from various considerations it is inferred that many of them have been settled, or for other causes are no longer a claim against the company. The receivers are now engaged in examining into this matter. The total amount of floating debt outstanding, exclusive of interest, appears by the books of the company to amount to $538,702.78 (Aug. 1st, 1876).

This may be increased by other unsettled claims or reduced by realization of securities pledged. The principal and interest of judgments and floating debts is to be exchanged for fourth preferred income and sinking-fund debentures, as provided by the scheme of reorganization.

1314 **EXHIBIT No. 6.**

Schedule of the situation of the bonds of the Mobile and Ohio Railroad Company having liens on the property of the company by way of mortgage.

	Total issue outstanding.	Amount in hands of comm.
First mortgage sterling bonds	$5,609,000	$3,422,000
Interest arrearage funded bonds	2,287,920	1,849,300
Tennessee substitution bonds	1,668,000	1,473,000
Second mortgage bonds	1,451,207	894,861
Convertible bonds	476,000	395,025
	$11,492,127	$8,034,186

It thus appears that out of a total issue of bonds outstanding amounting to $11,492,127, there are now in the possession of the committee, for compromise and settlement and under their power of disposal and control, a very large majority of the amount of said issue of bonds, say $8,034,186 of principal, besides the unpaid interest on said bonds.

Filed with the answer of the Mobile and Ohio Railroad Company in the circuit court of the United States at Mobile, in the suit of Morris Ketchum vs. said company and others, as Exhibit No. 6, and part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol'r for Def't.

Filed April 2nd, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1315 **EXHIBIT No. 7.**

Extract minutes special meeting of the board of directors held February 19th, 1877.

The following preamble and resolutions were presented and read, and each resolution being separately considered and approved, on motion of M'r Henry Hall, seconded by M'r Moses Waring, the whole were unanimously adopted:

This board of directors being informed that proceedings are being

made in the U. S. circuit court for the southern district of Alabama, at the instance of Morris Ketchum, claiming to be a trustee under the first mortgage of this company, for the appointment of receivers and trustees of the property described in said mortgage, and the removal of Mess'rs Duncan and Elliot, who are in possession as receivers, heretofore appointed by said court, from the management of the property, and
1316 pending that motion, for an order restraining *restraining* them
from the expenditure of any money except for operating the railroad, and also for the appointment of trustees in place of John J. Palmer and W'm R. Hallett, former trustees, who are dead, in view of said proceedings this board have deemed it proper to consider the subject and therefore do

Resolve, That in the judgment of this board, any change in the receivership of the property at this time will be disastrous to the interests of the bondholders of the company and to all interested in the property.

The property has been skilfully and judiciously administered. Any restrictions upon the order of this court heretofore made would hamper the judicious administration of the property and be likely to produce injury to the same.

Resolved further, That this board does not recognize the said Ketchum as one of its trustees. He deliberately abandoned his
1317 said office of trustee, to which he was named in the deed, and for
more than ten years has failed to perform or offer to perform any of the duties of the trust. He has never during that time made any claim to that position, and during that time has had no intercourse and has not offered to have any with this company or its officers. He has taken no interest in its affairs, and has as completely severed himself therefrom as if he had never had any connection with them. By his conduct before the late war he showed himself to be an unfit person to hold the position of trustee, and unfaithful to his duties as trustee, and his removal was a matter of necessity and propriety.

Resolved further, That W'm Butler Duncan and A. Foster Elliot were rightfully appointed trustees with the approval of this company, and that the duties of their office have been successfully, diligently, and faithfully performed, and that there is now a prospect of an
1318 early reorganization of the company and a readjustment of its
liabilities, so that the entire earnings of the property will be applied to the payment of its debts in the order of their priorities, and this scheme has received the approval of a majority of the bondholders of the company.

Resolved further, That this board respectfully protests against any change in the trustees or receivers of the property of the company at this time; justice to no party demands such change; no interest of any party requires it, or will be advanced by it; but in the opinion of this board such change would tend to depreciate the present value of the securities of the company and produce distrust and confusion. The interests of the holders of the bonds under the first and all other mortgages in their order, are, in the judgment of this board, safe in the hands of the present management administering the property under the
1319 orders of the honorable court whose protection, instructions, and
decrees, have been invoked by them.

Resolved further, That if there be any vacancy in said trusteeships, this company, by the terms of the deed of trust, have the right to participate in the appointment, and this board respectfully insists upon this right, and by no means waives the same.

I certify the foregoing to be a true copy from the minutes of the board of directors of the Mobile and Ohio Railroad Co.

[SEAL.] (S'gn'd) A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

Filed in the circuit court of the United States at Mobile with the answer of the Mobile and Ohio Railroad Company, in the case of Morris Ketchum vs. said company and others, as Exhibit No. 7, and part of said answer.

(S'gn'd) GEORGE N. STEWART.
Sol'r for Def't.

Filed April 2nd, 1877.
(S'gn'd) N. W. TRIMBLE,
Clerk.

1320 *Order admitting Hayes, Pierson & DuPuy as defendants, &c.*

At a stated term of the circuit court of the United States for the southern district of Alabama, held at the court room in the city of Mobile on the 5th day of June, 1877.

Present, Hon. Jos. P. Bradley, associate justice, &c., Hon. W. B. Woods circuit judge, &c.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD AND OTHERS.

The parties appearing in court by their respective solicitors and counsel, and consenting to this order, it is ordered that W'm H. Hays, W'm S. Pierson, and T. Hastings DuPuy be, and they are hereby, admitted to intervene for their own interest as defendants in this 1321 suit, in the same manner and with the like effect as if they had been named as defendants in the bill and had been brought into court by a subpœna, with leave to file the answer herewith submitted to the court by them and this day filed.

(Signed) JOSEPH P. BRADLEY, *C. J.*
W. B. WOODS, *C. J.*

Filed June 5th, 1877.
(S'g'd) N. W. TRIMBLE,
Clerk.

1322 *Answer of W'm H. Hays & others.*

United States circuit court, southern district of Alabama.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al.

The joint and several answers of W'm H. Hays, W'm S. Pierson, and T. Haskins Du Puy, to the bill of complaint exhibited in this court by Morris Ketchum against the Mobile and Ohio Railroad Company and others, as defendants.

These defendants allege and aver that they are the holders of bonds

issued by the Mobile and Ohio Railroad Company upon the security of
their first mortgage mentioned in the bill of complaint in this cause, to
the amount of three millions nine hundred thousand dollars and
1323 upwards, and of interest arrearage bonds issued on the security
of the first mortgage to the amount of $1,192,800, and of sterling
interest bonds issued under the security of said first mortgage to the
amount of $765,120.00, and of bonds issued upon the security of the sec-
ond mortgage of said corporation to the amount of $961,990.00; and of
all the coupons attached to said bonds and now remaining overdue and
unpaid, and also of coupons formerly attached to said bonds, and which
matured in the year 1874, to the amount of $535,000.00 and upwards,
all of which claims they aver and allege are entitled to be paid in the
order of their maturity out of the proceeds of mortgaged premises, men-
tioned in the bill of complaint in this cause; and they deny all
1324 the averments and allegations in said bill of complaint which in
any way tend to impeach, impair, weaken, or diminish the claims
arising upon the said bonds and coupons. And these defendants accept
and adopt the answer made in this cause by the Mobile and Ohio Rail-
road Company, and the answer made in this cause by W'm Butler Dun-
can and Andrew F. Elliot.

(Signed) F. N. BANGS,
Sol'r for Def'ts.

UNITED STATES OF AMERICA,
Southern District of Alabama:

Before me , personally appeared , one of the respond-
ents in the foregoing answer, who upon his oath saith that the
1325 statements of the foregoing answer, so far as they are made as of
his own knowledge, are true, and so far as the same are made as
upon information or belief he believes the same to be true.

Subscribed and sworn to before me this day of June, A. D. 1877.

Filed June 5th, 1877.

(S'g'd) N. W. TRIMBLE.
Clerk.

1326 *Replication.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, William Butler Duncan, A. Foster Elliot, Adrian Iselin, Robert T. Wilson, William D. Dunn, George H. Young, William Dickson, John Reid, j'r, Robert C. Crawford. } On bill, &c.

The replication of Morris Ketchum, complainant, to the answers of the Mobile and Ohio Railroad Company, William Butler Duncan, A. Foster Elliot, Adrian Iselin, Robert T. Wilson, William D. Dunn, George H. Young, William Dickson, John Reid, j'r, Robert C. Crawford, William H. Hays, W. H. Pierson, and T. H. Du Puy, defendants.

1327 This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

1328 (Signed) E. L. ANDREWS,
Solicitor for Complainant.

Filed June 5th, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1329 *Decree as to Iselin & Wilson.*

At a stated term of the circuit court of the United States for the southern district of Alabama, held at the court-house in the city of Mobile, Alabama, on the 6th day of June, 1877.

Present, honorable Joseph P. Bradley, associate justice, and honorable William B. Woods, circuit judge.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al. } In equity.

Richard T. Wilson and Adrian Iselin, as trustees for the Tennessee substitution-mortgage bondholders, so called, come into court by their counsel, Robert H. Smith, and move for leave to withdraw the appearance heretefore entered for them, and to vacate as against them the order and process to appear, plead, answer, or demur, and that they may be stricken from the bill in this cause as parties defendants, 1330 on the ground that the circuit court of the United States for the western district of the State of Tennessee had, before the filing of this bill, taken jurisdiction of the foreclosure of said Tennessee substitution-mortgage, and still has jurisdiction thereof, and on the ground that, being citizens of the State of New York and the property covered by said mortgage being exclusively within the State of Tennessee, this court has no jurisdiction to foreclose said mortgage or to require said Wilson and Iselin to appear in this cause. And thereupon, all the other parties, by their respective solicitors and counsel, appearing and consenting in open court, it is ordered that said motion be, and the same is hereby, granted.

(S'g'd) JOSEPH P. BRADLEY,
Circuit Justice.
W. B. WOODS,
Circuit Judge.

Filed 6th June, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*
REC. 879—22

United States circuit court for the fifth judicial circuit, southern district of Alabama, in equity.

DORELLI ZIEGLER ET ALS.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.
No. 102.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama:

Your orators, Dorelli Ziegler, of the city and canton of Zurich, Bernaud de Watterville, of the city and canton of Berne, Masson Chavannes, of the city of Lausanne, in the canton of Vaud, and who are citizens of the Republic of Switzerland, and aliens, and Henry Jump, of Liverpool, in the Kingdom of Great Britain and Ireland, and who is likewise an alien, file this their bill of complaint, on behalf of themselves and other first mortgage bondholders of the Mobile and Ohio Railroad Company, who claim like equities, against the Mobile and Ohio Railroad Company, a body politic first incorporated by act of the general assembly of the State of Alabama, and which is a citizen of said State, and William Butler Duncan, Samuel L. M. Barlow, Adrian Iselin, Richard T. Wilson, and Charles Walsh, of the city of New York, and who are citizens of the State of New York, Andrew F. Elliott, of the city of New Orleans, and who is a citizen of the State of Louisiana, George H. Young, of the town of Waverly, and who is a citizen of the State of Mississippi; William Dickson, Robert C. Crawford, John Reid, j'r, William D. Dunn, of the city of Mobile, and who are citizens of the State of Alabama; 1332 and likewise Alexander Jackson of the town of Jackson, and who is a citizen of the State of Tennessee, and Morris Ketchum, of the town of Westport, and who is a citizen of the State of Connecticut.

And thereupon your orators complain and show to your honors:

That the Mobile and Ohio Railroad Company was organized for the construction, equipment and operation of a line of railroad from the city of Mobile, through the State of Alabama, eighty-four and a half miles, and thence four hundred and thirty-three miles through the States of Mississippi, Tennessee, and Kentucky, towards the mouth of the Ohio River;

The said Mobile and Ohio Railroad Company was made a body corporate, and endowed with certain corporate privileges by acts of the general assemblies of the States of Alabama, Mississippi, Tennessee, and Kentucky, which acts were passed and approved in the year 1848. It was empowered, among other attributes conferred on it by the laws of the said States, to borrow money and to give evidences of debt and securities for the payment of the same by mortgage of its real and personal property and franchises;

Your orators further show that the Congress of the United States granted large tracts of public lands to the States of Illinois, Mississippi, and Alabama, to aid in the construction of a public highway and railroad from the northern lakes to the Gulf of Mexico. Portions of the said national grant were donated to the Illinois Central Railroad Company to assist it in the constructing a road from Chicago to the Ohio River, and the remainder of the lands contained in said grant, and situated in Mississippi and Alabama were allotted to the Mobile and

Ohio Railroad Company to aid in the continuation of said line of railroad from the mouth of the Ohio River to the city of Mobile;

Your orators attach copies of the several acts hereinbefore referred to in a printed pamphlet marked "Exhibits A and B," and pray the same may be held and taken as a part of this their bill of complaint;

Your orators further show that the Mobile and Ohio Railroad Company found it necessary for the accomplishment of its enterprise
1333 to borrow money and to issue its obligations. Thereupon and in pursuance of the charter and acts by which it was incorporated, and under which it transacted its business, the Mobile and Ohio Railroad Company on the first day of November, 1853, made, executed, and delivered to Morris Ketchum and John J. Palmer, then of New York, and William R. Hallett, then of Alabama, its certain deed of trust and mortgage, conveying to them in fee simple, its railroad and the appurtenances thereof, and the land grants derived from the United States Government and other property as therein set forth; said deed was accepted by the grantees therein named, and was recorded as required by law in the several States wherein the property thereby conveyed was situated;

The object of the said mortgage to Ketchum, Palmer and Hallet was to provide an adequate security for the payment of bonds then made by said company to the amount of six millions of dollars. Said bonds are each for the sum of two hundred and twenty-five pounds sterling, according to the currency of the Kingdom of Great Britain, and bear date the first day of December, 1853, and are payable on the first day of November, 1883, with interest thereon at the rate of six per centum per annum, payable semi-annually on the first days of May and November, during the time said bonds are running to maturity. All of the said bonds are of the same tenor, and differ only in the number attached thereto; and a copy of one of the said bonds and of the said mortgage is annexed to this bill, marked Exhibit A and B, and prayed to be taken as a part hereof.

Your orators further show that the Mobile and Ohio Railroad Company offered the said bonds for sale at various commercial and money-centres, and to induce the purchase thereof by investors represented in a printed prospectus as follows:

"For the purpose of making the security available to the bondholders, the franchises, road-bed, equipment, rolling-stock of the company, and the lands received from the general government have been conveyed in trust to Morris Ketchum and John J. Palmer, of New York, and William R. Hallett, of Mobile, all gentlemen of the highest respectability and of well-known credit in financial circles, with full
1334 authority to sell said lands, and in case of default by the company, to take possession of, manage, make sale, or otherwise dispose of all of the company's property and franchises for and on account of the creditors of the company."

In reliance upon the trustees so constituted by the deed to Morris Ketchum, John J. Palmer, and William R. Hallett, the bonds described in the said deed were negotiated to parties who advanced valuable consideration therefor, and upon the purchase of the said bonds secured by said trusteeship, the holders thereof became parties in interest in the stipulations of said deed, and were thenceforward entitled to the continuance of the trusteeship and the tenure of the incumbents as therein specified, and as a part and parcel of their contract and security.

Your orators are the owners of one hundred and forty-six thousand dollars of the said first-mortgage bonds and the unpaid coupons attached thereto, and have become thereby entitled to the maintenance of said trusteeship and the performance of the covenants of the mortgage.

Your orators further show that the line of railroad above described as projected in the scheme of said enterprise, was only in part graded, and was almost entirely without superstructure or equipment when the said first-mortgage bonds were negotiated, and a very considerable portion of the security conveyed in trust by the said deed of mortgage for the benefit of the bondholders of the bonds was the land-grant from the Congress of the United States. Provisions were contained in the deed of trust from the Mobile and Ohio Railroad Company in reference to the control and administration of the said land-grant by Ketchum, Palmer, and Hallett, and their survivor, in order that the proceeds of sales of land should be safely held by the trustees for the redemption of the principal of the mortgage-debt. But so it was about the year 1858 that the directors of the corporation debtor made various efforts to defeat the purpose of the trust, and to prevail upon the trustees to convey away and give them (the directors) powers of attorney to convey away the title to tracts of land belonging to the trust without providing an equivalent in money or first-mortgage sterling bonds for the
1335 protection of the fund. These things the trustees had no right to do with due regard to the interest of the bondholders, and they properly refused to accede to these improper demands of the directors.

In 1860, by the deaths of John J. Palmer and William R. Hallett, Morris Ketchum became the sole surviving trustee of the first mortgage of the Mobile & Ohio Railroad Company. Morris Ketchum was likewise the trustee of the other portion of this national land grant, which had been apportioned to the Illinois Central Railroad Company, and of which he remains trustee at the present time without challenge or question. He continued to administer the Mobile & Ohio land trust as he had administered the Illinois portion of the grant, and insisted that the trustee could not turn over his trust to the directors of the mortgage-debtor, nor dispose of the trust property without the most ample security for the bondholders. But so it was, that the directors persisted in their efforts to get control of the trust, and the differences aforesaid were finally submitted to the first mortgage bondholders in Europe for their determination.

The official correspondence on that subject is hereto annexed, marked "Exhibit C," and is prayed to be taken as a part of this bill. The communication therein contained from Morris Ketchum to J. S. Morgan, of London, sets forth the affairs of the trust, and offers, in view of the efforts of the directors to obstruct the proper execution of the trust, to relinquish the same to such persons as might be selected by the bondholders. This was declined by the bondholders, and the course of M'r Ketchum toward the directors was fully and in all respects approved by them as their sole reliance for the defence of their property.

Your orators further show, that about the time the bondholders thus ratified the administration of the trust, there was a period of political disturbances in the United States preceding the late civil war. At that period, and during the summer and autumn of 1860, M'r Ketchum addressed many letters to the officers of the company on the business of the trust, but they refrained from replying to these communications, and in fact maintained express and preconcerted silence towards
1336 the representative of their first mortgage creditors. No attempt was then made by the directors to impugn M'r Ketchum's performance of his duties as trustee, by any legal proceedings or other-

wise, but they merely awaited the events which daily threatened to separate the surviving trustee in New York from the railroad in the Southern States. And so it was, that about the year 1860 several of the Southern States of the Union claimed to secede from the Federal Government and combined into a confederation, having the seat of its authority at Montgomery, in the State of Alabama. These events were followed by a civil war, and the United States then engaged in the effort to subvert the rebellion against its lawful authority in Alabama, Mississippi, Tennessee and Kentucky, where the railroad and other property conveyed in the trust was situated. The Union and the Southern armies extended along the boundaries of the Confederate States, and the fleets of the United States blockaded the Southern harbors. Moreover, the Federal Congress enacted laws forbidding all communication with the Confederate States, and in fact and in law all intercourse between the territories of the contending parties, as well as knowledge of what transpired within their respective borders, was practically unattainable.

Your orators further show, that the Congress of the Confederate States, and the rebel legislatures that were organized thereunder, passed certain acts intended to aid the rebellion against the lawful government of the said States, and to assist in prosecuting war against the United States. Some of these acts were designed to give circulation to the paper currency of the Southern Confederacy, and some provided that the paper money of the said government should be a good discharge of debts due to trustees under mortgages and deeds of trust. The said acts, besides their hostility to the United States, had the effect of impairing the obligation of the contract between the Mobile and Ohio Railroad Company and Morris Ketchum, as surviving trustee for the first mortgage bondholders. Under these circumstances, the sole protection for the first mortgage bondholders, both in the United States and in Europe, and the means by which the trust lien could be
preserved from satisfaction in and sale for the paper money of
1337 the Confederate States, was by the preservation of the trust es-
tate in Morris Ketchum, a loyal citizen residing in New York,
where he was not amenable to these Confederate enactments, or to process for their enforcement. Any transference of the estate of M'r Ketchum to any citizen of the rebel States could be followed by a sale of the Mobile and Ohio Railroad in the Southern Confederacy for the worthless and illegal paper money issued by the rebel authorities.

But so it was, that soon after the commencement of the said civil war the directors, unmindful of their obligations to the bondholders, sought to avail themselves of the barrier which the military operations interposed between them and Morris Ketchum and the bondholders, and to repudiate the obligations of the mortgage, executed for the protection of the bondholders; they pretended to institute a suit in the name of the company against M'r Ketchum, and therein asserted as grievances against the corporation the same matters which, before the commencement of the civil war, had been examined by the first mortgage bondholders, and approved by them as meritorious action by M'r Ketchum for the defense of their interest. On the above and false and fraudulent statements, under the form of a bill in chancery, the directors sought to divest the bondholders of their trust estate in M'r Ketchum and their contract rights; M'r Ketchum being averred in their bill to be "an alien enemy of the Confederate States of America." In such a proceeding during the war they attempted to cite M'r Ketchum before a pretended court, sitting at Mobile, by the form of a publication in a

Mobile newspaper. Upon such a sham process a pretended decree was passed, on the sixth of April, 1863, in the following words: "The court is satisfied of the fact that said Ketchum is an alien enemy. * * * It is therefore ordered, adjudged and decreed, that said Ketchum be removed from his said trusteeship."

Thereupon there was a pretended appointment, on the nomination of the directors of the mortgage debtor, of Charles Walsh, Alexander Jackson and George H. Young, "all citizens of the Confederate States," as set forth in said proceedings, to be trustees of the mortgage. A copy of these Confederate orders, with the accompanying papers,
1338 are hereto attached, marked "Exhibit D," and prayed to be
taken as part of this bill. As the consequence of said proceedings, portions of the land grant donated by the United States, on condition that it should be utilized for the building of a railroad, to be at all times kept free for the transportation of Federal troops in time of war, and mails in time of peace, were sold by these appointees of the rebel court for Confederate currency, to the great detriment of the trust estate, which would have been totally exhausted by the continuance of the same process. While these proceedings were transpiring, M'r Ketchum was in New York, and knew nothing whatsoever of their existence. No notice of the proceeding was given to any first mortgage bondholders, and no proceedings were undertaken elsewhere, nor in the States of Mississippi, Tennessee and Kentucky. In fact, during the pendency of the said proceedings against the trustee, the sections of the said railroad in Alabama and the southern part of Mississippi were under the control and in the possession of the military authorities of the Southern Confederacy, while those sections situated in Kentucky, Tennessee, and the northern part of Mississippi were in the custody of the armies of the United States.

The said rebel proceedings were without jurisdiction, and impaired the just rights of citizens under the Constitution, and were hostile in their purpose and mode of enforcement to the national authority, and the persons who participated in rendering the same were only a pretended court. The said proceedings were null and void and of no effect whatsoever on the title to the trust estate.

Your orators further show that the Mobile and Ohio Railroad Company did not pay the coupons on its first-mortgage bonds, which fell due during the civil war in the United States, and some time after the termination of hostilities the bondholders consulted as to the course to be pursued in reference to their overdue interest. About this time the first information of the said Confederate proceedings came to the knowledge of M'r Ketchum. By the terms of the mortgage the trust was entirely passive, so far as the railroad was concerned, until default in the payment of interest. Under the arrangements made at the inception
1339 of the trust, and predicated upon the mortgage, the directors
acted as agents for the trustees in negotiating sales of the lands, and after contracting to sell were to transmit the drafts of deeds to the trustees for signature. The trustees were never in actual possession of the lands, save by the company, nor was such possession necessary, the lands being waste; the reports of land transactions had therefore necessarily to be made by the directors to the trustees.

This condition of the land department had continued until the breaking out of the war. When the bondholders and trustees were apprised of the above-recited war proceedings, none of them attached thereto the slightest importance, and when the bondholders discussed the question of adopting foreclosure proceedings after the war, no reliance was placed by them upon any other trust title than the one held by Morris Ketchum. Furthermore, and out of abundant caution, M'r Ketchum promptly notified the officers of the company that he disregarded their Confederate proceedings, and he asserted the continued right of the bondholders to the trust estate as confided to him by the terms of the mortgage. But so it was that the officers of the corporation avoided the trustee of their creditors, M'r Ketchum, and purposely disregarded his said communications, and took no heed of them. Many persons were likewise informed by M'r Ketchum that no valid conveyance of any portion of the United States land grant could be made without his deed, and due security taken by him according to the terms of the mortgage. But still the directors failed and refused to transmit any deeds for the signature of the trustee, Morris Ketchum, according to the administration of the trust throughout its continuance, and sought to sustain their spoliations of the trust property under the aforesaid Confederate proceeding, though well knowing that it was invalid, as shown by their annual report at the meeting of stockholders, held at Mobile, April 17, 1866, which contained the following language:

" W. R. Hallett, of Mobile, and John J. Palmer and Morris Ketchum, of New York, were the original trustees in the mortgage to secure the payment of the sterling bonds. Hallett and Palmer died, leaving Morris Ketchum the sole surviving trustee.

1340 " He took advantage of his position, and refused to allow other trustees to be appointed, and refused to authorize the sale of lands, and claimed the right to establish a land bureau in New York and conduct all the company's land sales in New York, instead of Mobile. This would have been immensely expensive and led to endless frauds. A bill in chancery was filed to supercede him as trustee, and a decree was made removing him and appointing Charles Walsh, of Mobile, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, trustees under the mortgage. This bill was filed before the war, but the decree was rendered during the war. It had been impossible to pay the coupons on the sterling bonds during the war, and those that had matured necessarily remained unpaid, and it was contended that the decree removing Morris Ketchum was void, being rendered during the war, and that he was still sole trustee, and had a right to take possession of the road. The bondholders, however, had confidence in the integrity of the management of the road, and did not wish to commit their interests into the hands of M'r Ketchum. This movement therefore failed, and since then the convention of the State of Alabama has ratified the judgments and decrees rendered during the war as far as private rights are concerned, which, it is hoped, will give permanent rest to this question, and save us from trouble hereafter."

And so it was that the relation of the trustee, Morris Ketchum, to the directors continued for some years as hereinbefore stated. The interest on the first-mortgage bonds continued to be paid by the company, and the active intervention of the trustee under the arrangements set forth was not required nor invoked. At the initiation of the Mobile and Ohio Railroad enterprise, the stockholders sent a representative to New York and solicited Morris Ketchum to become a sponsor for their bonds in the money markets of the world, and a trustee of the first mortgage. The onerous duties and heavy responsibilities of the trust were accepted by him, and had been discharged without the slightest expression of dissatisfaction from the first-mortgage bondholders, but, on the contrary, with their fullest sanction. He could not, in
1341 duty to the bondholders nor with honor to himself, yield the trus-

teeship under the malicious perversions of his acts and with the undeserved obloquy sought to be imposed on him by the directors. He did not seek the trust, but, being invested with it, he would not be driven from it by such an attack, made during a time of war, when he had no opportunity to defend himself. He was advised that he was legally entitled to treat this action of the directors as mere waste paper, and he and his constituents, the first-mortgage bondholders, did so treat it and disregard it.

Your orators further show that default in the payment of the first-mortgage interest, due on the first of May, 1875, had been anticipated for several weeks by the officers of the company. At this time William Butler Duncan was the president of the Mobile and Ohio Railroad Company, and Andrew Foster Elliott was a director thereof, and both of them were interested in the firm of Duncan, Sherman & Co. The said firm had been for some time purchasing and acquiring subordinate claims against the company, and they were at this time largely interested in such claims. Alexander Duncan, the father of the said William B. Duncan, had not exceeding seventy-five thousand dollars of first-mortgage sterling bonds, but he has since claimed to hold certain coupons, principally for May and November, 1874, amounting to upward of ($700,000) seven hundred thousand dollars, as first-mortgage liens on the property. These coupons were paid and surrendered in great part, on and after they became due, without notice being brought to the knowledge of most of the bondholders that any claim was set up to purchase them. In fact, the official reports of the company for the year 1874 exhibit net earnings to the amount of $707,865.04.

During the entire year 1874 W. B. Duncan was a director of the company, and in general and substantial control of its board of direction, and of its financial affairs, and from the first day of May, 1874, A. F. Elliott has been a director and Duncan the president. But so it is that under this regime the greater part of the said sum of net earnings, to wit, nearly $700,000, was appropriated to satisfy bills payable and other floating claims, instead of being applied to first-mortgage interest.
1342 Most of these misapplications of funds were made by and through Duncan, Sherman and Company, and about ($100,000) one hundred thousand dollars of the said payments were made by Duncan, Sherman and Company on the 30th day of April, 1874, the very day before the May coupons on the first-mortgage bonds fell due, and are claimed to have defaulted, and to have been acquired by Duncan, Sherman & Co., and by them afterwards transferred to Alexander Duncan. But so it was that, with these claims against the property, and the default in the coupons due May 1st, 1875, being expected by W. B. Duncan, an attempt was made to grasp and seize the trusteeship of the first mortgage. Letters addressed by Walsh, Jackson, and Young, the appointees of the Confederate court, to the solicitor and vice-president of the company, were obtained a few days before the first of May, 1875, in which communications they purported to tender resignations of their claims to the trusteeship. As legal resignations, said documents would have been utterly futile and void, even had the writers possessed anything to resign. But Charles Walsh thereupon proceeded with the form and pretence of filling vacancies so created, and Duncan being then president, and Elliott a director, and the board being under the control of the former, M'r Walsh united with such a board in the pretended appointment of Duncan and Elliott as trustees. Copies of the aforesaid letters are hereto attached, marked "Exhibit G," and prayed to be taken as part of the bill. There was no power of appointment to fill vacancies in

the trust in any one save the persons agreed upon by the bondholders, Ketchum, Palmer, and Hallett. No valid resignation of the trust estate could be had in the manner aforesaid, and no valid appointment of Duncan and Elliott ever took place, nor have they ever been trustees under the said mortgage.

But so it was that in this manner, only a few days before the default in the first-mortgage interest on May 1st, 1875, W. B. Duncan and A. F. Elliott claimed to become trustees of the first sterling mortgage; and a few days thereafter, having procured a request from some bondholders by suppressing the true state of facts, they, on the 8th of May,
1343 1875, took possession of the Mobile and Ohio Railroad under such
an unfounded claim to be trustees, and by consent of their board of directors. The mortgage provided for three months' grace after default, but only eight days were allowed by Duncan and Elliott before clutching possession, though their firm of Duncan, Sherman & Co. failed, and made an assignment in insolvency within less than three months from the day of the said default of the Mobile and Ohio Railroad Company. And so it was, that when the 1st day of August, 1875, arrived, three months after the May coupons fell due, these two insolvents, Duncan and Elliott, had placed themselves in control and possession of this railroad, having no personal interest in its securities, and M'r Alexander Duncan having only a comparatively small interest in the first-mortgage bonds, claiming nearly three-quarters of a million of dollars lien on the property for the back coupons, arising in the manner and under the circumstances hereinbefore set forth.

Nevertheless, on or about the 12th of May, 1875, Duncan and Elliott brought a bill in this court, in which they rested their sole claims as complainants upon the above described pretence of being trustees of the first mortgage. In the said bill they suppressed the fact that M'r Ketchum's removal had been sought and claimed to have been obtained before a rebel court during the civil war, and by such a false statement of their claim to the trusteeship they obtained orders from this court giving them powers of receivers under their claim of trusteeship, and under the bill filed by them assuming to be trustees. In the same bill they claimed that the coupons of May and November, 1874, above described as held by Alexander Duncan, were still outstanding and valid liens on the mortgage estate. They also alleged that certain claims, to the amount of one million six hundred and eighty-five thousand dollars, known as substitution bonds, were secured by a valid and paramount lien on one hundred and eighteen miles of road in Tennessee. The lien claimed by the holders of said bonds has been paid and satisfied nearly six years ago by the Mobile and Ohio Railroad Company and with its consent and greatly to its profit.

1344 But so it is that under a claim of title so baseless and so hastily and newly acquired, and under a proceeding so originating and instigated for the purpose of imposing on the property and against the just rights of the first-mortgage bondholders the pretended claims above described, this property has been held and disposed of to the present time. Its administration has been designed and shaped to further the said object and collect the claims above described, adversely to the rights and interests of the first-mortgage bondholders. According to the official reports, the property has produced net earnings of more than $500,000 from the time Duncan and Elliott obtained possession, May 8th, 1875, to August 31st, 1876.

Nothing has been paid in mortgage interest by their administration. Large amounts, aggregating more than $300,000, as appears by the offi-

cial reports, have been disbursed for additions, conceded to be extraordinary in character, and in some instances considerable amounts of the trust fund have been used by them for their own personal gratification. The most feasible method whereby Duncan and Elliott could secure the satisfaction of the claim of Alexander Duncan for more than seven hundred thousand dollars, was by using, and in great part exhausting, the revenues of the property in the course of their administration, instead of applying them to the payment of the next accruing coupon interest. And so, the interest of the first mortgage not being kept down by them, they have sought to procure the adoption by the bondholders of an agreement admitting the aforesaid detached coupons of Alexander Duncan as a first-mortgage claim. It has not been to the interest of Duncan and Elliott to pay over the accruing net revenues to the first-mortgage bondholders, but, on the contrary, such payments would have interfered with the admission of the coupons of Alexander Duncan into an agreement of reorganization, or any other mode of future recognition in the rank of first-mortgage liens. And though the said Duncan and Elliott are insolvent, their bondsmen, from whom the bondholders must seek pecuniary redress for the maladministration of the property, are two attorneys at law of the city of New York—S. L. M. Barlow
1345 and W. W. Macfarland; and the former is on the bond of W. D. Shipman as assignee in insolvency of Duncan, Sherman & Co., for five hundred thousand dollars, and the latter is on the same assignee's bond for one hundred and fifty thousand dollars; and your orators are informed and believe, that the said Barlow and Macfarland are not able to respond to their liabilities on the bond for Duncan and Elliott over and above their other debts and liabilities. But so it is that your orators' trust estate, which is their sole substantial security for the loans they made to this railroad company, is in the hands and under the administration above described.

Your orators further show to your honors that Morris Ketchum, the trustee named in the first mortgage, has filed bills for the execution of his trust and the realization of the mortgage security in this and other circuit courts of the United States where the railroad is situated, and the said Duncan and Elliott are made co-defendants in said bills. A motion at chambers for the appointment of receivers under one of said bills was denied. Subsequently the cause came on for hearing at a regular term of this court, and the plea of the Mobile and Ohio Railroad Company, setting up the claim of Duncan and Elliott to the trusteeship, was overruled by the United States circuit court in this district, and the demurrer of W. B. Duncan to said Morris Ketchum's bill was also overruled by this court. The opinions in the said cause are hereto attached, marked "Exhibit E and F," and prayed to be taken as part of this bill.

Your orators further show to this court of chancery that they do not know who is the legal trustee of their mortgage; your orators do not know whether there is any legal trustee of their mortgage; your orators do not know whether the said trusteeship is now vacant; your orators do not believe that W. B. Duncan and A. F. Elliott, or either of them, have ever acquired any title to the trusteeship of their mortgage; your orators do know that the question of title to the said trusteeship is now in contest and litigation before this court.

Your orators further show that it is a matter of the utmost importance to them and to other first-mortgage bondholders, that all legal
1346 proceedings under which their estate is administered, and under which their mortgage is foreclosed and the property sold, should

be instituted and conducted by parties having a valid right and title to become complainants therein, and to have the relief above described.

Your orators further show that the Mobile and Ohio Railroad Company has defaulted in four successive installments of first-mortgage interest, from May, 1875, to November, 1876. The revenues of the estate should be applied for the benefit of the first-mortgage bondholders. Such revenues, when administered under a proper management, should be applied to keep down the mortgage interest, and for the balance of such interest which cannot be so discharged, the property should be sold. No valid title can be given to any purchaser at a sale of this property under the suit brought by Duncan and Elliott, claiming as trustees. Any pretended sale thereunder can only result in clouding the title to the property and grievously complicating its affairs. Any of the purchasers at such sale, or any organization of such purchasers composed of any majority less than the entire number of all the parties in every interest in said property, would fail to acquire any valid or substantial title.

Your orators further show that the continuance of the possession and disposal of the railroad and its equipment and resources by W. B. Duncan and A. F. Elliott, is a daily injury to the resources and credit of the property. This court has never, upon a disclosure of the facts, adjudicated that they had a proper or legal claim to the trusteeship. Many of the acts which they are now performing under such a claim will be contested.

Your orators show to this court that, under the circumstances hereinbefore set forth, it is unjust and inequitable that this trust estate should be thus wasted, and its beneficiaries injured and despoiled; and your orators now submit, for the first time, many of the above stated matters and things to this honorable court.

And your orators now submit to your honors that the custodianship of the Mobile and Ohio Railroad should be held by this court in this suit, based on the equitable title of the first-mortgage bondholders.

And the decree on the first sterling mortgage for the sale of the
1347 property and the execution of the trust of said mortgage should
be rendered under this bill, wherein the equities and rights of the holders of bonds secured by the said mortgage are fully, legally, and in all respects represented before the court. The first-mortgage bondholders are the only real and substantial parties interested in this property as at present situated, and their resources should not be involved and wasted in controversies among doubtful legal titles, to subserve antagonistic purposes. Your orators have therefore filed this bill in order that their bonds and the lien of the mortgage may be fully protected and enforced. They have joined as co-defendants to this bill all the claimants and all those having any pretence of claim to the legal estate in trust, in order that the property may be administered under a valid title, and in the interest of the first-mortgage bondholders, and finally sold for their best advantage under a clear and unquestioned title.

Your orators further show that the Mobile and Ohio Railroad Company has executed several conveyances of the property which had been previously conveyed to secure your orators' bonds.

William D. Dunn, William Dickson, and George H. Young have been named in the commencement of this bill because they are trustees, holding the legal title under one of the aforesaid conveyances, known as the second mortgage; and S. L. M. Barlow and W. B. Duncan, also named in the former part of this bill, are the trustees under a deed made to secure the holders of claims known as consolidated bonds. Adrian

Iselin, Richard F. Wilson, and William B. Duncan are trustees named in a deed from the company purporting to secure the substitution-bonds, above described. Copies of the said mortgages and deeds are hereto attached, in a printed pamphlet, marked Exhibits A and B, and your orators pray that the same may be taken as a part of this bill. The corporation has defaulted in the payment of interest on all of the bonds secured by the foregoing deeds, and also upon the mortgage executed on the Gainesville branch to William D. Dunn, John Reid, j'r, and Robert C. Crawford, made defendants herein, and a copy of the said deed is likewise contained in the pamphlet aforesaid.

1348 Your orators further show that the said railroad property is a single and entire estate, and that there should be a unity of management over the whole property, so that the same may be devoted effectively to the trusts for which it has been conveyed.

Your orators further show that this court has taken supervision over the affairs of the property, and now maintains such supervision; that, in the course of this proceeding, for the benefit of all the cestuis que trust under the first mortgage and in directing the administration of the trust-estate herein, many difficult and complicated questions in reference to the affairs of a property of this magnitude, running through four States of the Union and extending five hundred miles, will necessarily arise; that your orators, who are likewise cestuis que trust, are advised that they may have the advice and protection of a court of equity under the aforesaid circumstances, and for that purpose they submit the trust and their interest herein to this court.

Your orators further show that the number of holders of bonds under the first mortgage is very great, and their names are, in most part, unknown to your orators, and it is impracticable to make them parties to this suit.

Your orators likewise say that they are totally remediless to enforce their said claims at law, or without the intervention of a court of equity.

In consideration whereof, your orators pray process of subpœna against the Mobile and Ohio Railroad Company, William B. Duncan, Andrew F. Elliott, Samuel L. M. Barlow, Adrian Iselin, Richard T. Wilson, Robert C. Crawford, William D. Dunn, William Dickson, John Reid, j'r, Charles Walsh, George H. Young, Alexander Jackson, and Morris Ketchum, commanding them, and each of them, to appear and answer this your orators' bill of complaint.

And, as to such of the defendants who may be out of the jurisdiction of the court, your orators pray that process may be issued to make them parties, if they come within this jurisdiction, or that such proceeding may be had in regard to such defendants, by publication or otherwise, as may be, according to the forms of the statutes in such cases made and provided.

1349 Your orators pray your honors to make such interlocutory orders of injunction, and such decretal orders, as may be requisite to protect the said railroad and property from interference by any party or parties whomsoever, except by and with the approval of this honorable court, upon application, for good cause to be shown by such applicants. And your orators likewise pray for such interlocutory orders as may be requisite for the due and proper purposes of this proceeding, and for the administration of the property herein. Your orators further pray for the appointment of an officer or officers of this court, who may as receiver or receivers, or in any other capacity, take possession of the said The Mobile and Ohio Railroad and its appurtenances, and all the property hereinbefore referred to, under the orders of this court and under this bill and title; and that this receiver or receivers may preserve, sustain, operate, and administer the said railroad and its business and affairs, to the best advantage of the holders of the bonds secured by the first mortgage above described, and that the income and tolls of the said railroad be applied by them according to the terms of said mortgage, and that they may have the usual powers of receivers of this court.

Your orators also pray that they may have leave to apply to this court of equity from time to time, as the trust is administered by this court herein, for its orders and instructions in and about the due and proper course of administering the trust estate.

Your orators further pray that an account may be taken and stated before a master to be appointed by this court of all debts of said company, and all liens and claims of liens on the aforesaid property, with power to report thereon and on the priorities of the same, and that this court will adjust the said claims and priorities.

And to the end that the said railroad and other property above referred to may be properly applied to the satisfaction of the said first mortgage and other liens upon the said estate according to the lawful order belonging to them, your orators pray that the said mortgage and the trusts thereby conferred may be fully executed by this court, and that the said The Mobile and Ohio Railroad Company and
1350 all of the defendants to this bill may, by the final decree of this court, be barred of all equity of redemption in and to the said railroad, its equipment, appurtenances, and lands, rights, credits, franchises, and effects, and that the same may by such final decree be sold, and that such other final and decretal orders as may be requisite to accomplish the objects of this bill and the preceding prayers may be made and granted by this court.

And your orators finally pray for such other and further and different relief as may be just and equitable.

And your orators will ever pray, &c., &c.

E. H. GRANDIN,
Solicitor of Complainants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Come Charles Moran, Daniel C. Moran, and Amedee D. Moran, who, being duly and severally sworn, deposes and says each for himself:

That he has read the foregoing bill, and knows the contents thereof; that the said bill is true of his own knowledge, except as to the matters therein stated on information and belief, and as to said matters he believes the same to be true.

That he is a member of the firm of Moran Brothers, in the city of New York, which firm is composed of Charles Moran, Daniel C. Moran, and Amedee D. Moran, above named; that the said firm are the agents of the complainants in the bill above referred to, namely, Dorelli Ziegler, Bernard de Watterville, Masson Chavannes, and Henry Jump, in and about their ownership and rights of and concerning the first-mortgage bonds of the Mobile and Ohio Railroad Company owned by them.

That the complainants above named are aliens, and are now residing in and are at present in Europe.

CH'S MORAN.
D. COMYN MORAN.
A. D. MORAN.

Sworn to before me this 30th day of March, 1877.

JAMES RICHARDS,
Notary Public 78, N. Y. Co., acting as
U. S. Commissioner, under statute.

Filed April 2, 1877.

N. W. TRIMBLE, *Clerk.*

1351 EXHIBIT C.

NEW YORK, *March* 16, 1859.

DEAR SIR: I have received your letter of the 4th March, and in reply I have to state that, as you know, the correspondence of the trustees of the M. & Ohio Railroad Co., was with our late lamented friend J. J. Palmer. Most of the letters written by him to the co. have been submitted to me and received my approval; all the papers relating to our business with the co., and the correspondence, was in the possession of M'r Palmer, and soon after the death of that gentleman I applied to his son, requesting him to turn them over to me. Within the last few weeks I have applied again, and he has promised to collect all the papers and correspondence with the co. and hand them over to me, which he will no doubt do, and when he does I shall be prepared to do all that is proper and necessary in the premises as a trustee.

With regard to President Brown's strictures on the conduct of the trustees, I can only say that they are unnecessarily severe and 1352 utterly uncalled for. I have acted as one of the trustees of the great landed estate of the Illinois C. R. R., and am daily in the habit of signing deeds transmitted me, when the final payments have been made, and no inconvenience has been experienced, nor any complaints made, as to the course taken by the co. If the Mobile & Ohio R. R. Co. will consent to do their business in the same simple and business-like way, the' cannot fail to experience the same facility in transacting the business of the land department. And that they may understand how this done, I will send them an explanation of the mode, with a copy of one of the deeds. The acceptance of this trust was not a mere matter of form, the execution of which was to be confided to others, at least that is not the way I shall perform my duty. The co. can sell by contract, but when a deed is presented it should show in the face that a bond, or a portion of a bond by endorsement, has been canceled, equal to the amount the deed calls for. I know of no other mode in which I can execute the trust.

With regard to the compensation to be paid to the trustees, and their withholding $18,000 of the bonds, and the amount seeming 1353 to the company excessive, but forced to reluctant acquiescence, and that the coupons will be promptly paid, past and to become due, but with the express understanding that the amount retained by them as compensation, is to include future as well as past services, I can only say to the best of my recollection of the correspondence held between the late M'r Palmer and the company on the subject of compensation, the company made a specific proposal as to their compensation, which, after mutual consultation, was accepted by them; all of which will be found in the records of the company. I adhere to that arrangement, and shall expect the M. & O. R. R. Company to adhere to it also, without any further stipulations. I have no particular desire to receive these bonds in payment, and am quite willing to surrender them to the company.

We took them, as you will remember, at their suggestion, and if they suppose that they were coerced we can return them and reimburse ourselves from the trust fund.

If the company should conclude to adopt the simple plan of the Illinois Central R. R. Company, which I trust they will, then, 1354 so far as they have gone, for the sake of despatch, it would be best for the company to make out an abstract of the lands ready to deed, approved by you and the company, and then send it to me, and I will approve and transmit to you and you can deliver it to the company for record, you seeing that an amount equal to the amount received by the company is endorsed on a bond or bonds of the company.

Very respectfully, your obedient servant,

MORRIS KETCHUM, *Trustee.*

To W. R. HALLETT, Esq., *Trustee.*

EXHIBIT B.

NEW YORK, *March 24th*, 1859.

DEAR SIR: Some days since I requested the secretary of the Illinois Central R. R. Co. to furnish me with all the forms incidental to the sale of the lands by the land department of that co., thinking that 1355 some of them might be found useful in the land department of the M. & O. R. R. Co.

These documents have been gotten up by men of great experience in the sale of lands, (Mr. Wilson, late of the land department at Washington, having been at the head of the office for the last two or three years,) and probably many of the forms have grown out of the practical operation of the system.

Should any of them be found useful to the M. & O. R. R'd Co., in the sale of the lands, I shall not regret having forwarded them.

Very respectfully, your ob't s'v't,

(Signed) MORRIS KETCHUM, *Trustee.*

To W. R. HALLETT, *Trustee.*

EXHIBIT C.

NEW YORK, *Jan'y 6th*, 1860.

MILTON BROWN, Esq.,
Pres'd't Mobile and Ohio R. R.

DEAR SIR: On the 21st of May I addressed a letter to the late W. R. Hallett, my associate trustee in the Mobile and O. R. R'd Co. 1356 trust, with the request that he would lay it before your board.

Mr. Hallett, as you are doubtless aware before this, has deceased.

The letter on inquiry I find could not have been received by him before he left for the North, consequently could not have been passed over to you as I desired. I now enclose a copy of that letter, which I believe embraces all that is necessary for me to say to the R. R. Co. I regret that there should have been any difference of opinion between us as to the course to be pursued in the sale of the bonds, or the manner of executing the trust, and shall be most happy to do all in my power to forward the interest of the co. consistent with the trust confided to me.

I am now the only trustee left, and I deem it important that one or more should be appointed, and should be glad to hear from you on this subject. You will see that they are appointed with the surviving trus-

tee. I should also be glad to know if the co. desire to act as the agent of the trustees, in conformity to the mode adopted by the trustees for conveying the fee. If they do not, then I shall deem it my duty
1357 to establish an agency for that purpose. I again enclose a blank form of the Ill. Cen. R. R'd Co. to be used by the M. & O. R. R'd Co., which I would recommend be adopted in this instance; it has been found to work well. They like it very much after having used it for some time.

Very respectfully, your ob't serv't,

MORRIS KETCHUM,
Trustee M. & O. R. R. Co.

EXHIBIT D.

(Confidential.)

NEW YORK, *June 6th*, 1860.

Mess'rs ARCH. GRACIE & SON, *Mobile.*

GENTS: Presuming upon my long acquaintance with the senior of your house, Mr. A. Gracie, I take the liberty of committing to you some business, not very profitable to you, but which I doubt not will receive your attention.

The writer is one of the trustees, and now the only surviving trustee to the deed of trust of the Mobile and Ohio Railroad Company, Mr. Pal'mer, of this city, having deceased, and now Mr. Hallett, of Mobile

1358 By a notice which I enclose, which is all the information I have on the subject, it would seem there is a suit pending against the trustees which comes on the 26th inst. I had written M'r Hallett on the subject, but the letter could not have reached him before he left for the North. I therefore do not know whether M'r Hallett had employed counsel to answer on behalf of the trustees or not, and the object of this letter is to have counsel employed, if he, M'r Hallett, had not done it. This may be ascertained by applying to the counsel of the plaintiff in the suit. I enclose a copy of my letter to M'r Hallett, which, together with this letter, you will please hand over to the counsel you may employ, which will be quite sufficient for him to make an answer.

It is quite possible, from some things that have come to my knowledge, that the company may be accessory to this suit for some purpose of their own, and, if this is the case, I desire to show through the counsel of the trustees that it is not their fault, but the fault of the company in not preparing the deeds for our execution, they having assumed to act for the trustees (by their consent), on the sale of the lands conveyed to us.

1359 In employing counsel be particular that the party employed is not in the interest of the M. & O. R. R. Co., and the counsel will understand that he is to act for me individually as a trustee, unless in conferring with the counsel employed by M'r Hallett (if such counsel has been employed by M'r Hallett) he finds that all has been done to place the trustees on the right ground before the court.

The counsel must bear in mind that it is possible my interests and that of the company may be adverse.

For whatever cost may be necessary, you will please check on me as trustee of the M. & O. R. R. Co.

Very respectfully, your ob't s'v't,

MORRIS KETCHUM,
Trustee M. & O. R. R. Co.

EXHIBIT E.

To the directors of the Mobile and Ohio R. R.

NEW YORK, *July 25th*, 1860.

GENTLEMEN: Your president, M'r Milton Brown, has been here,
1360 and by an arrangement with him, the deeds called for by the full
payment on the tracts of land sold will be made out here. I have ordered a form printed, and in the early part of the week will have them filled out in conformity to the descriptions furnished to me, which I think are somewhat incomplete, as in many instances the initials only of the Christian names are furnished. From your returning them in this way, I take it for granted you deem that sufficient.

I would have preferred that the deed should have emanated from the land department at Mobile, but it seems that it is necessary these deeds should be furnished as soon as possible, and to facilitate this object, I shall have them all completed, executed, and finished the early part of next week, when I shall expect a corresponding amount of bonds cancelled and delivered to me. Of this I will write more particularly when I forward the deeds.

I have received but one return of land sections and lots sold where the payments have been made in full, and the parties consequently entitled to deeds. The document is marked thus: "Abstract 111
1361 continued," from which it would seem a previous abstract had
been furnished some one of the trustees, which would confirm president Brown's impression that a large amount of payments in full had been made, and yet the numbering of the deeds in the abstract commencing with sale No. 1 would indicate this to be the first return. Please set me right on this point, and if there are other parties entitled to deeds send a description, and the deeds will be executed and returned at once.

I would suggest, as we are now commencing to deed this property, that a book be properly prepared and gotten up, in which these deeds shall be registered. Such a book I shall have prepared here for my own guidance, but I desire such a record kept at the department in Mobile, so that no possible difficulty can hereafter occur in regard to sales and deeds; and that the page of the book in which the deed is entered as having been executed and delivered be endorsed on the back of each deed.

Yours, respectfully,

MORRIS KETCHUM, *Trustee.*

1362 F.

NEW YORK, *July 25th*, 1860.

CHAS. WALSH, Esq., *Pres't:*

DEAR SIR: Accompanying this I have forwarded you 88 deeds of the trustee of the Mobile and Ohio Railroad Co., for lands sold by the co. under the instructions of the trustee, upon which the co. make returns, after full payments having been made. The aggregate amounts of these deeds is $49,881.41, which, by an arrangement with the R. R. co. I have stipulated to receive in the sterling mortgage bonds of the trustees of that co.

I have taken the liberty of confiding this business to you, from the circumstance of your filling the same official status in the Bank of Mobile as my late associate trustee, M'r Hallett, and also from your name

having been proposed as his successor in this trust. With this explanation, may I ask that you will make this exchange with the M. & O. R. R. Co. the deeds for a corresponding amount of the above-described bonds, which bonds, when rec'd, I desire you to cancel in the usual way,
sending me a return of the numbers, and holding them subject to
1363 the order of the trustee or trustees of the Mobile and O. R. R. Co.

It is my intention to make some change in the future mode of disposing of these lands, in which event I shall direct the money rec'd on acc't of land sales deposited to the credit of the trustees in your institution, which will, I trust, be some equivalent for any favors I may ask in this way.

Very respectfully, yours,

MORRIS KETCHUM, *Trustee.*

G.

N. Y., *Oct.* 23, 1860.

To the pres't and directors of the M. & O. R. R'd Co.:

GENTS: On the 25th of July last, I addressed you a letter and requesting you to give me a new statement of sales of land previous to 1 July, 1857, arranged so that I could make out the deeds to the parties, to which letter I have rec'd no answer. I now call your attention particularly to it, and request you will furnish me with the necessary information.
I also wish a duplicate of sales, No. 3, and transcript
1364 of your land department cash-book from July 1, 1857, (the bal-
ance as then brought down was $37,300.80), that I may have a correct record of the sales of the land, and the receipt of money on account of the trust.

I remain, yours respectfully,

MORRIS KETCHUM,
Trustee M. & O. R. R. Co.

H.

NEW YORK, *Nov.* 21*st*, 1860.

MILTON BROWN, Esq.,
President of the M. & O. R. R. Co.:

DEAR SIR: I received your letter of the 16th inst., some three days since. We have been in the midst of a financial crisis, to which you may attribute my not giving you an immediate answer, which I will now do. I have read with care the papers enclosed, and beg to state that I see nothing in them to change my views on the subject of electing two additional trustees, as communicated to you in my letter of the 7th of July last. That proposition was entirely reasonable and in strict con-
formity with the requirements of the deed of trust, and I
1365 cannot but regret that we should have any disagreement on that
subject.

I have written you two or three letters that have an important bearing on this trust, to which I have rec'd no answer. I now beg to call your attention particularly to them, and request that you will give me the information desired, so that the deeds may be made out and delivered to you, and the bonds cancelled and deposited in the bank of Mobile subject to my order.

Very re'p'ly,

MORRIS KETCHUM, *Trustee.*

Exhibit I.

New York, *April*, 1860.

J. S. Morgan, Esq.:

Dear Sir: Yours of the 21st duly received. I sent you a hasty note by last steamer, in which I promised a full statement for the consideration of the bondholders of the Mobile and Ohio R. R. Co. by next mail,
which I now submit.

1366 In yours of the 21st you state that the directors of the M. & O.
R. R. Co. have made a communication to the English bondholders, in which they are asked to sign a request to the trustees to allow the parties purchasing the lands of the co. to pay for the same in the bonds of the co., which shall be cancelled when the deed is given, similar to the plan adopted by the Ill. Central Co.; that there is a considerable amount of these bonds held in England, and the holders are disposed favorably to consider the plan, but as they learn the trustees object to such an arrangement, they hesitate; and that you have promised to write me and ascertain what are the objections.

There is some great mistake or misapprehension somewhere. The statements are erroneous in almost every particular.

By the enclosed correspondence you will see that, so far from objecting to the plan suggested, I had proposed it, and sent them all the blanks used by the trustees of the Illinois Central trust, in order that they might at once adopt them.

I have never made any objections to signing deeds, because none
have been made out by the company and sent me for that pur-
1367 pose. Whenever they are sent me, with the cancelled bonds to the
amount of the purchase-money, they will be executed and returned without delay.

The company have written requesting me to give some one a power of attorney to sign deeds, which I agreed to do as far as lands have been paid for, though on mature reflection I have my doubts of the full propriety of my giving them even that authority, in view of my responsibility to the bondholders, for whose benefit I have been appointed, and shall now insist on separate deeds being sent me for signature for all the lands sold, with the numbers and amounts of bonds cancelled and endorsed in each deed, in the same manner as is done by the Ill. Central R. R. trust.

It is quite certain that the managers of this company could not so far have, knowingly, departed from the facts in the case in these representations to the bondholders without an object; what that object is, I will not pretend to say.

You will see by my letter to M'r Hallett, also to the executive com-
mittee, dated March, 1859, copies of which I herein enclose, that
1368 though all the necessary blanks used by the Ill's Central trust
(and these schemes are identical) were forwarded that they might
at once have prepared to conduct this department without any delay or embarrassment, yet no reply has ever been received from M'r Hallett or the executive committee, nor have they indicated to me any plan of operation except the one before referred to, which will not be submitted to.

With regard to the charge of my having thrown obstacles in the way of what was proposed by the directors, in order to throw the money into my hands on which to charge a commission, is simply ridiculous. The plan of conducting the land sales presupposed the co. to be provided with the bonds of the road, which would be absorbed at par just as fast as the money came in; and if this was done in good faith no money would, as there never has any, reached the hands of the trustees, we preferring the company to sell the lands, as they should do, and furnishing the bonds, whereby they realize a profit of the difference between the market value and par.

1369 I have deeded in this way nearly a million and a half of the Illinois Central lands, and cancelled that amount of their bonds; have never charged them any commission, nor has a dollar of their money passed through our hands. It was just this system I desired this company to adopt.

I have now disposed of all the charges, and I thank for giving me an opportunity of correcting these misrepresentations to the bondholders. The trust is a large and responsible one, and I should like to be relieved from it; it is not only the responsibility, but to protect the bondholders it is likely to be annoying.

It has always appeared to me that the M. and O. R. R. has felt restive under the restraint of the N. Y. trustees, and now, while the bondholders are together, I beg you will induce them to designate some responsible person in Mobile to supersede me.

I am the only N. Y. trustee left, and it would be more agreeable to the managers to have one of their own people to fill the station, and, by a judicious selection, equally safe for them.

1370 If they will do this, I will speedily adjust my account with the co., and make a transfer of the trust.

The enterprise, in my judgment, when unembarrassed, is destined to become a successful one, and the bonds a good and improving security. It only requires an honest, economic and persevering administration, which I have no reason to doubt it now has, except the shade thrown over it by these erroneous statements, to realize all the success that its friends have anticipated.

I am, dear sir, yours very truly,

MORRIS KETCHUM.

1371

EXHIBIT E.

Opinion of W. B. Woods, judge.

U. S. circuit court, southern district of Alabama.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD COMPANY AND others.
} Decision.

In equity; heard on motion for the appointment of a receiver of the property and effects of the defendant railroad company.

The fact, so far as necessary to the decision of the motion, were as follows:

The Mobile & Ohio Railroad Company was an Alabama corporation, having its principal office at Mobile.

On the first day of November, A. D. 1853, said company executed its deed of trust, conveying to Morris Ketchum and John J. Palmer, then of New York, and William R. Hallett, then of Mobile, and to the survivors and successors of them, in fee simple, all its railroad property and franchises, in trust, to secure six thousand bonds of one thousand dollars each, to be issued by the company, with semi-annual interest, and payable in thirty years. Among the property conveyed by said deed of trust were one million one hundred and fifty-six thousand six hundred and fifty-eight acres of land donated to said company by act of Congress. The said deed provided that "said Ketchum, Palmer and Hallett shall at once have possession and control of said lands and any other lands that may be obtained by said company, with authority to devise and determine rules of management of sales, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds; said Ketchum, Palmer and Hallett rendering an exhibit and account of their doings on or before the first day of January of each and every year during the period of the trust herein made to the said railroad company.

The said deed of trust further provided, that "if either of them, the said Ketchum, Palmer or Hallett, shall at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company or said Ketchum, Palmer and Hallett, or either of them, may select some other person to fill the vacancy occurring."

1372 No provision was made by the trust deed for any compensation to the trustees. Ketchum was not and is not a bondholder, stockholder or officer of the railroad company. He was a naked trustee.

The bonds secured by this deed of trust were issued by the company and sold, some in the United States and some in Europe.

Before July, 1860, both Palmer and Hallett had deceased. On the 6th of January, 1862, the railroad company filed its bill in the chancery court for the county of Mobile, in the State of Alabama, against Morris Ketchum, who was represented to be, and was in fact, a citizen of New York, and who was alleged to be, and was in fact, the sole survivor of the trustees named in said deed of trust.

The bill charged upon Ketchum, among other things, neglect of duty as trustee, refusal to unite with the company in the appointment of new trustees, and that the trust property was entirely within the Confederate States, and that he was an alien enemy, and that the trust property was suffering for the want of a trustee capable of acting, and that the interests of holders of bonds secured by deed imperatively demanded the appointment of trustees residing within the territory of the Confederate States, who could perform the duties incident to the trust.

The bill prayed that Ketchum might be removed from his position as trustee under said deed of trust, and that the vacancies caused by the death of Palmer and Hallett and the removal of Ketchum might be filled by the appointment of the court.

Upon this bill proceedings were taken, according to the code of Alabama, to bring in said Ketchum by publication. Notice of the filing, pendency, and prayer of the bill having been made by publication, according to the statute law of Alabama, and Ketchum having made default, a decree pro confesso was taken against him, and in due course a final decree was made, removing him from his office as trustee, and appointing Charles Walsh, George H. Young, and Alexander Jackson as trustees under the deed of trust.

1373 The provisions of the code of Alabama, under which these proceedings were taken, are to be found in the code of 1852, and were in force in 1853, when the trust deed was executed, and in 1863, when the bill was filed and the decree made.

These provisions (section 2,872) give the court jurisdiction over nonresidents "when the object of the suit concerns an estate of lien or charge upon lands, or the disposition thereof * * * within the State, provided (section 2,884) for service upon a non-resident by publication, and declared (section 2,999) that upon the petition or bill of any person interested in the execution of a trust, the court of chancery may remove any trustee who has violated, or threatened to violate, his trust, * * * or who from any other cause is an unsuitable person to execute the trust." And section 3,000 of the same code provides that "such court has the authority to appoint a new trustee in the place of a trustee removed."

The trustees appointed by the said chancery court accepted said trust and discharged the duties thereof for many years, without challenge or question, were in the possession and management of the lands of said railroad company not appurtenant to the line of railroad, and sold portions thereof, and made deeds therefor. They continued in said trust until the 19th of April, 1875, when, said Young and Jackson having resigned, the said Walsh, then sole trustee, and the said railroad company, in accordance with the provisions of the deed of trust, appointed W. Butler Duncan and A. Foster Elliot trustees under the same, who accepted the trust and at once entered upon the duties thereof. From a period before the commencement of the late war down to the filing of his bill in this case, Ketchum did not act, and set up no claim to the office of trustee. In 1865 he learned of the proceedings of the Mobile chancery court, and of the decree purporting to remove him and appoint Walsh, Young, and Jackson.

1374 The railroad company having made default in the payment of the interest due upon the bonds secured by said deed of trust, on the first days of May and November, 1874, said Duncan and Elliot, on the 8th day of May, 1875, by virtue of the premises of said deed of trust, and the assent of the said railroad company, took full possession of all the property of said railroad company, and on the 11th of May, 1875, filed their bill in equity in this court, praying, among other things, to be confirmed in their possession and protected from all interference by any party or parties whomsoever, for leave to apply to the court for instructions in the discharge of their duties, and that the equity of redemption of the said railroad company in said railroad property, &c., might be forever foreclosed, &c.

Upon this bill the court, by its decretal order, recognized Duncan and Elliot as trustees in possession, and made various other orders directing them in the discharge of their duties as such, and appointing a master to examine their accounts and to discharge the other duties appropriate to the office of master in said cause.

After all these proceedings, and not until after the filing of the bill of Duncan and Elliot, to wit, on March , 1876, Morris Ketchum filed the present bill, to which he made the railroad company, Duncan and Elliot, and others, defendants, in which he alleged that he was the sole surviving trustee of the said deed of trust; that Duncan and Elliot had, without authority, intruded themselves into said trusteeship.

The prayer of his bill is that the property conveyed by deed of trust, in which he is named as trustee, may be sold and disposed of for the benefit of the bondholders, and that a receiver may be appointed to take charge of and administer the mortgage property until such sale can be made.

1375 The railroad company filed its plea, setting up the proceedings and decree of the Mobile chancery court, and alleged the removal of Ketchum thereby, as a bar to any relief prayed by the bill.

The cause was heard on motion of complainant for the appointment of a receiver, and upon the bill, plea, and various affidavits.

Mess'rs Edward L. Andrews, Alexander McKinstry, D. C. Labatt, and B. F. Jones for the motion.

Mess'rs John A. Campbell, George N. Stewart, Peter Hamilton, and T. A. Hamilton, contra.

Woods, circuit judge:

Complainant's claim is that he is still trustee, under the deed of trust, and that Duncan and Elliot are not; that the proceedings in the Mobile chancery court, which took place during the late war of rebellion, and while Ketchum was a citizen of and actually residing in New York, was entirely inefficient to remove him from his trusteeship, which was not only an office, but an estate, and were absolutely null and void. That said court by the publication of a notice, which could not lawfully reach him, acquired no jurisdiction over his person, and that its proceedings and decree in the premises are absolutely without effect. In support of this claim, he cites the following cases: Livingston & wife vs. Jerome, 10 Am. Law Reg., 53. Cuyler vs. Ferrill, 1 Abbott's U. S. Rep., 169. Dean vs. Nelson, 10 Wall., 158.

In these cases it was held that the decree of the court of a country engaged in war, by which the estate of a party was divested, who was prevented from appearing in the court by the fact that he was outside the military lines of the country, in which the court was held, and was prohibited from entering those lines, was absolutely null and void.

I think this case is clearly distinguishable from those above cited. Ketchum was a naked trustee. He had no personal interest in the property conveyed to him by the trust deed. It was a property which according to the record cost $20,000,000, and the cestuis que trust 1376 of this immense estate were scattered all over the United States and Europe. Ketchum's co-trustees were both dead, and the war which existed between the United States and the Confederate States, rendered Ketchum as impotent to discharge the duties of the trust, as if he also had been dead. The interest of cestuis que trust imperatively demanded the services of a trustee. In this condition of things the settlor of the trust, namely, the railroad company, applied to a court of competent jurisdiction, alleging neglect of duty on the part of the surviving trustee, and stating such facts regarding the trustee as showed that it was impossible for him to discharge the duties of his trust by reason of the war then raging. The filing and averments of this bill, and the subsequent proceedings and decree, were in strict conformity with the statute law of Alabama, which had been enacted and was in force when the trust deed was executed.

It is true that the notice to Ketchum by publication was ineffectual to bring him into court, but does that fact render the proceedings and decree of the chancery court absolutely void? The court was called on to act in the conservation of an immense property lying within its jurisdiction, in which thousands of persons, among them aliens, married women, infants and trustees, were interested. The court acts to preserve this property, and acts in strict conformity to law. Can it be possible that the proceedings of the court are absolutely void because service was not made upon a naked trustee, whom it was impossible to serve? Is the removal of a trustee incapable of acting and the appointment of another to act in behalf of such a trust one of the class of decrees declared by the authorities to be void, because the removed trustee was beyond the military line and could not be served? In my judgment the proceeding was not absolutely void. It was at least effectual for the valid appointment of trustees to act during the disability of the original surviving trustee.

1377 This view is supported by the language used by the Supreme Court of the United States in the case of Lockhart vs. Horn, 17 Wall., 580: "We admit," says the court, "that the acts of the several States, in their individual capacities, and of their different departments of government, executive, judicial, and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the national authority or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding. The existence of a state of insurrection and war did not loosen the bonds of society or do away with civil government or the regular administration of the laws. Order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated precisely as in time of peace. No one, that we are aware of, seriously questions the validity of judicial or legislative acts in the insurrectionary States touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the national government and did not impair the rights of citizens under the Constitution?"

If the decree of the Mobile chancery court was not absolutely void, it was the duty of Ketchum, as soon as peace was restored, to assert his right to the office of trustee. He says, by implication, in his bill, that in 1865 he learned of the decree which purported to remove him and appoint others in his stead. The laws of Alabama gave him until the 26th of June, 1869, to apply to the court to open its decree and allow him to make his defence to the bill. He never made such application. On the contrary, although important duties, such as making conveyances for lands sold, were imposed upon him by the deed of trust, although the same instrument required annual reports to be made by him to the railroad company, he never did an act of any kind under
1378 his trust, held no communication with the railroad company, its officers or agents in reference thereto, and set up no claim to the office of trustee until the filing of the bill in this case in March, 1876.

In the mean time the trustees appointed in his stead were active in the discharge of their duties, were making conveyances to vast quantities of the trust lands sold by the railroad company, and finally Walsh, the remaining trustee, concurred in the appointment of Duncan and Elliot, whose title to the office of trustees has been recognized by this court.

Clearly, such a course of conduct on the part of Ketchum is an abandonment of any title he may have had to the office of trustee, and an acquiescence in the order of things established by the decree of the Mobile chancery court.

Where there has been a long acquiescence in an irregular appointment the court will not remove. (Attorney-General vs. Cummings, 2 Youngs & Collyer, Ch. Ca., 150.)

"It is to be noticed that long acquiescence in a particular grievance, without effort to redress it, is generally held to be a complete bar to relief in equity, either by a receiver or an injunction."

And plaintiffs, who had quietly acquiesced in defendant's possession of property for a long period of years, without attempting to assert their rights to the property, and who then seek to change such possession by a receiver, will be denied the aid of a court in limine. (High on Receivers, sec. 742.)

If Ketchum, at the close of the late war, had the right to disregard the proceedings of the Mobile chancery court, by which he was removed, and to resume his duties as trustee, he has clearly lost that right by neglect to do so, and by long acquiescence in the existing order of things. (McQuidy vs. Ware, 20 Wall., 19.)

1379 The result of these views is that Ketchum is not trustee in the deed of trust, as claimed by him in his bill. As all the relief asked by him is based on the claim that he is such trustee, his motion for the appointment of a receiver is without grounds to support it, and must be overruled.

1380 UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and the southern district of Alabama, at Mobile.

DORELLI ZIEGLER, BERNARD DE WATTERVILLE, Masson Chavanes, and Henry Jump, complainants,
vs.
THE MOBILE AND OHIO RAILROAD CO., William Butler Duncan et als., defendants.
} In equity.

The President of the United States of America to the Mobile & Ohio Railroad Co., William Butler Duncan, Robert C. Crawford, John Reid, jr., & William D. Dunn, who are citizens of the district aforesaid and of the State of Alabama, greeting:

You, and each of you, are hereby commanded and strictly enjoined, that, laying all other matters aside, and notwithstanding any other excuse, you, and each of you, personally be and appear before the judge of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, at Mobile, at the clerk's office of the said court in the city of Mobile, at rules to be had on the first Monday of May (being the 7th day of said month) next, to plead to, answer, or demur to a bill of complaint, exhibited against you in the said court by Dorelli Ziegler, Bernard de Watterville, Masson Chavannes, and Henry Jump, who are citizens of the republic of Switzerland and of the
1381 kingdom of Great Britain and Ireland, and to do further and receive what the said court shall have considered in that behalf; and this you are not to omit, and have you there this writ.

To the marshal of the United States for said district to execute.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court at Mobile, this the 4th day of April, in the year of our Lord one thousand eight hundred and seventy-seven and the Independence of the United States of America the 101st year.

Attest:

N. W. TRIMBLE, *Clerk.*

NOTE.—The defendant is required and hereby notified to enter appearance in the above-entitled cause in the clerk's office of said court, in the custom-house building, in the city of Mobile, on or before the rule day next ensuing, to wit, the first Monday of May, anno Domini 1877, or the bill may be taken pro confesso against them.

N. W. TRIMBLE, *Clerk.*

E. H. GRANDIN,
Complainant's Solicitor.

Received in office this 5th day of April, A. D. 1877, and executed by serving copy of the within subpœna on A. L. Willoughby, treasurer, and on W. H. Pratt, representing the Mobile and Ohio Railroad Company, not being able to find T. Haskins Du Puy, also on John Reid, Rob't C. Crawford, this 17th day of April, A. D. 1877.

GEORGE TURNER,
U. S Marshal,
By F. Y. ANDERSON,
Deputy.

Executed by serving copy of the within subpœna on T. Haskins DuPuy, vice-president of the Mobile and Ohio R. R'd Co., this 18th day of April, A. D. 1877.

R. T. PAYNE, *Deputy.*

1383 *Petition for order of publication as to non-residents.*

United States circuit court, southern district of Alabama.

DORELLI ZIEGLER ET AL., ON BEHALF OF first mortgage bondholders of the Mobile and Ohio Railroad Company,
versus
THE MOBILE AND OHIO RAILROAD COMPANY, William B. Duncan, Samuel L. M. Barlow, Adrian Iselin, Richard T. Wilson, Andrew F. Elliott, George H. Young, Charles Walsh, Alexander Jackson, Morris Ketchum.

To the honorable judges of the circuit court of the United States for the southern district of Alabama:

Your petitioners respectfully show to this honorable court that they have, as complainants, heretofore a bill in this court praying for equitable relief, and among other things to enforce an equitable lien on real property situated in the southern district of Alabama, upon the said suit is brought.

That Samuel L. M. Barlow, William B. Duncan, Adrian Iselin, Richard T. Wilson, Andrew F. Elliott, Charles Walsh, Alexander Jackson, George H. Young, Morris Ketchum, *and* defendants in said suit, and none of them is an inhabitant nor found within said district, nor voluntarily appeared or appears in said suit. 1384

That the defendants above named, Duncan, Barlow, Iselin, Wilson, and Walsh, are residents of the State of New York, as your petitioners are informed and believe; that the defendant Young resides near Waverly, in the State of Mississippi; that the defendant Jackson resides at the town of Jackson, in the State of Tennessee; that the defendant Ketchum resides at Westport, in the State of Connecticut; that the said Elliott resides at New Orleans, in the State of Louisiana.

Wherefore your petitioners pray this honorable court to make an order directing such absent defendants to appear, plead, answer, or demur to the bill of complaint herein by a day certain to be therein named, and to direct that if it be not practicable to serve said order personally it may be published in certain newspapers to be therein designated, and for such other relief as may be just.

1385 **DORELLI ZIEGLER,**
BERNARD DE WATERVILLE,
MASSON CHAVANNES,
HENRY JUMP,
Petitioners,

By their solicitor, **E. H. GRANDIN.**

UNITED STATES OF AMERICA,
Southern District of Alabama, ss:

Egbert H. Grandin, of the city of Mobile, in said district, being duly sworn, deposeth and saith that the facts set forth in the above petition are true, according to the best knowledge, information, and belief of deponent.

E. H. GRANDIN.

Sworn to and subscribed before me this 19th April, 1877.
HENRY S. SKAATS,
U. S. Commissioner, So. Dist. Ala.

Filed April 30, 1877.
N. W. TRIMBLE, *Clerk.*

1386 *Order or petition authorizing service by publication.*

United States circuit court, southern district of Alabama.

DORELLI ZIEGLER ET AL., ON BEHALF OF FIRST MORTGAGE bondholders,
versus
THE MOBILE AND OHIO RAILROAD COMPANY.
} In equity.

On the verified bill in this cause and on the petition hereto annexed and on motion of E. H. Grandin, solicitor for complainants, it is hereby ordered that the defendants Samuel L. M. Barlow, W'm B. Duncan, Adrian Iselin, Richard T. Wilson, Andrew F. Elliott, George H. Young, Charles Walsh, Alexander Jackson, and Morris Ketchum, and each of them, appear, plead, answer, or demur to the complainant's bill on or before the first Monday of June, 1877, upon the service of a copy of this order upon them on or before the 15th day of May, 1877.

And it is further ordered that if personal service of this order
1387 be not practicable, then this order shall be published once a week for three weeks, before the 20th of May, in the New York Times and the New Orleans Picayune.

And it is ordered that said defendants, if this order is so served by publication, appear, plead, answer, or demur at the time hereinbefore named, to wit, the first Monday of June, 1877.

(Signed) **JOHN BRUCE,** *Judge.*

Filed April 30th, 1877.
N. W. TRIMBLE, *Clerk.*

Service of the within acknowledged this 8th of May, 1877.
GEO. H. YOUNG.

At a stated term of the circuit court of the United States for the southern district of Alabama, held at the court-room in the city of Mobile, on the 5th day of June, 1877.

Present, Hon. Jos. P. Bradley, associate justice, &c.; Hon. W. B. Woods, circuit judge, &c.

DORELLI ZEIGLER
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
& others.

The parties appearing in court by their respective solicitors and counsel and consenting to this order, it is ordered that W'm H. Hays, W'm S. Pierson, and T. Haskins DuPuy be, and they are hereby, admitted to intervene for their own interest as defendants in this 1389 suit in the same manner and with the like effect as if they had been named as defendants in the bill and had been brought into court by a subpœna, with leave to file the answer herewith submitted to the court by them and this day filed.

(Signed) JOSEPH P. BRADLEY,
Cir. Justice.
W. B. WOODS,
Circuit Justice.

Filed June 5th, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1390 *Answer of W'm H. Hays & others.*

United States circuit court.

M. DORELLI ZEIGLER
vs.
THE MOBILE AND OHIO RAILROAD CO.

The joint and several answer of W'm H. Hays, W'm S. Pierson, and T. Haskins DuPuy to the bill of complaint exhibited in this court by M. Dorelli Zeigler against the Mobile and Ohio Railroad Company and others as defendants.

These defendants allege and aver that they are the holders of bonds issued by the Mobile and Ohio Railroad Co. upon the security of their first mortgage, mentioned in the bill of complaint in this cause, to the amount of three million nine hundred thousand dollars and upwards, and of interest arrearage bonds issued on the security of the first mortgage to the amount of $1,192,800.00, and of sterling interest 1391 bonds issued under the security of said first mortgage to the amount of $765,120.00, and of bonds issued upon the security of the second mortgage of said corporation to the amount of $361,990.00, and of all the coupons attached to said bonds and now remaining overdue and unpaid, and also of coupons formerly attached to said bonds, and which matured in the year 1874, to the amount of $535,000.00 and upwards, all of which claims they aver and allege are entitled to be paid in the order of their maturity out of the proceeds of the mortgage premises mentioned in the bill of complaint in this cause.

And they deny all the averments and allegations in said bill of complaint which in any way tend to impeach, impair, weaken, or 1392 diminish the claims arising upon the said bonds and coupons; and these defendants accept and adopt the answer made in this cause by the Mobile and Ohio Railroad Company and the answer made in this cause by William Butler Duncan and Andrew F. Elliott.

UNITED STATES OF AMERICA,
Southern Dist. of Alabama:

Before me , personally appeared , one of the respondents in the foregoing answer, who upon his oath saith that 1393 the statements of the foregoing answer so far as they are made as of his own knowledge are true, and so far as the same are made as upon information or belief he believes the same to be true.

Subscribed and sworn to before me this day of June, A. D. 1877.

Filed June 5th, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1394 *Answers of Duncan & Elliot.*

Circuit court of the United States, southern district of Alabama.

DORELLI ZIEGLER ET AL.
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL.
} In chancery.

The joint and several answers of W'm Butler Duncan and A. Foster Elliott, defendants named in the bill of complaint of Dorelli Zeigler, Bernard de Walterville, Masson Chavannes, and Henry Jump, as plaintiffs in the said circuit court against them and other defendants.

And the said defendants, saving and reserving to themselves the benefit of all defences which they could obtain by demurrer or plea to the imperfections of the said bill, for answer say:

1395 That by a decree rendered in the court of chancery of the State of Alabama for the first district of the southern chancery division at Mobile, in a cause between the Mobile and Ohio Railroad Company, a corporation of the State of Alabama, and Morris Ketchum, the said Morris Ketchum was removed from the office of trustee under the deed of said company bearing date the first day of November, 1853, wherein he had been nominated and appointed as trustee, and George H. Young, Alexander Jackson, and William Dickson were appointed instead of the said Ketchum who was removed, and W'm R. Hallett and John J. Palmer who were dead at that time.

These respondents say that the said Morris Ketchum had been duly made a party to the cause, and that the bill was filed for his re- 1396 moval because he had been unfaithful as a trustee, had failed in the performance of his duty, and was entirely unsuitable for the office, and resided permanently beyond the limits of the State in a territory hostile to the State of Alabama, and the said decree was carried into execution in the year 1863 by the entry of the appointees into the trust property, and that from the said date the said Ketchum has made no effort or attempt to execute the office of trustee and asserted no title to the office until the month of March, 1876, and that the said ap.

pointees continued in possession and performed the duty until their resignation in 1875, when these defendants became the successors by due and legal appointment, and were vested with all the rights and faculties conferred by the deed.

1397 These defendants, further answering, say that the decree aforesaid has remained in full force and effect, and is binding and operative, has never been raised or reviewed, appealed from, nor reheard.

These respondents say that as trustees they entered upon the trust property in May, 1875, because the Mobile and Ohio Railroad Company failed to pay the interest due on the bonds mentioned in the deed during the year' 1874 and 1875, and that the said default still continues.

Your respondents further say that in May, 1875, they filed a bill to enforce the trusts of the deed of trust in this court and made the company aforesaid defendant, and all the incumbrances of said property within the jurisdiction of the court, and that answers and replications were filed to the bill by the parties and the cause was at issue in March, 1876.

1398 Your respondents, further answering, say that in March, 1876, an order was made to refer the cause to a master of the court to take an account of the debts and the property of the corporation by mortgage on which created a charge on the trust property and to provide for the sale of the property for the payment of the same, in order that the trusts of the deed might be carried into effect.

Your respondents state that the master has made his report of the matters submitted, and that the same has been open for exceptions for one month prior to the date of the filing of this answer.

Your respondents, further answering, say that the bonds held by the said plaintiffs as set forth in the bill were all proved on the said reference on their behalf, and the same are reported by the mas-
1399 ter as a charge on the said trust property, and the said plaintiffs
did not file exceptions to any part of the said report, nor in any manner did they controvert the same, and these defendants aver that the said plaintiffs have no right to be heard to aver anything adversely to the title of these defendants, nor to impugn the conclusions of the said report, and the defendants plead the pendency of the said suit and the connection of the said plaintiffs with the same as parties, and their submission to accept the benefits of the same as a ground for refusing the prayer for relief.

And these defendants aver that their administration of the said deed of trust and of the powers granted has been just, impartial, and faithful. They deny that they have given any acknowledgment of any inferior or invalid claim upon the company, or upon the trust
1400 property. They aver that the claims of the Tennessee substitu-
tion bondholders have not been submitted to them, but have been submitted to the circuit court of the United States for the western district of Tennessee, and that in a suit involving them a case has been agreed to among all the different parties interested, and that this statement was consented to by the said respondents, or by their agents, and by persons in the same condition as themselves.

This statement of facts is just and fair, and the agreements allow these plaintiffs to appear on their own behalf to maintain their own rights.

These defendants aver that the imputations upon them are malicious and wholly destitute of any foundation in truth.

1401 These defendants deny that the said plaintiffs have any important support from the bondholders; that two-thirds of the bondholders have united in suits to confirm and to approve the title of these defendants and to sanction their administration as trustees and as receivers, and that all of their conduct has been supported in the reports filed in this court by masters appointed by the court.

These defendants deny the title of the plaintiffs to maintain this bill, or to call in question the title of the defendants, or to dispute the reports of the master in the cause of Foster and Elliott against the Mobile and Ohio Railroad Company and others, in this court, in this form. And these defendants pray to have the benefit of the statutes of limitations of ten years and all other statutes 1402 applicable to the delay on the part of the said Morris Ketchum to take any step to annul or to set aside the decree of the court of chancery at Mobile, which removed him from office, and also in the delay to assert any title to the office of trustee, and because of his acquiescence in the decree of removal and his abandonment of the position of trustee.

And these defendants, having considered the answer of their codefendant, the Mobile and Ohio Railroad Company, adopt the same as their own, and crave the benefit of all the matters therein set forth, averred, or pleaded, as if they had been named as respondents therein.

(Signed) J. A. CAMPBELL,
Sol. for Defendants.
P. & T. A. HAMILTON,
Sol'rs for Respondents.

1403 UNITED STATES OF AMERICA,
Southern District of Alabama:

Before me, James Gillette, a commissioner in and for the southern district of Alabama, personally appeared W'm Butler Duncan, one of the respondents in the foregoing answer, who, upon his oath, saith that the statements of the foregoing answer, so far as they are made as of his own knowledge are true, and so far as the same are made as upon information or belief, he believes the same to be true.

(S'g'd) W. BUTLER DUNCAN.

Subscribed and sworn to before me this day of June, A. D. 1877.
(S'g'd) JAMES GILLETTE,
U. S. Com'r.

Filed June 5th, 1867.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1404 *Answer of S. L. M. Barlow.*

In the circuit court of the United States for the southern district of Alabama.

D. ZIEGLER ET ALS.
vs.
MOBILE AND OHIO RAILROAD COMPANY ET ALS.

The separate answer of Samuel L. M. Barlow to the bill of complaint of Dorelli Zeigler and others filed against him, the Mobile and Ohio Railroad Company, and others in this honorable court.

This respondent, reserving to himself all right of exception to said bill of complaint, for answer thereto, admits the incorporation of said rail-

road company and the construction of its said railroad as stated in the bill. He admits that said company executed the several mort-
1405 gages as therein stated, and that there is a large amount of debt due upon said mortgages for principal and interest, and that said company is in default in payment of the interest upon all of them; and as to interest due upon the first mortgage, which was executed 1 November, 1853, this respondent states said corporation made default on 1 May, 1874, and has ever since continued in default upon all interest on said debt.

This respondent shews that Palmer and Hallett, two of the trustees named in said deed, died, the one in 1859, the other in 1860, and that the survivor, Morris Ketchum, was removed from the trust by decree of the court of chancery of the State of Alabama, sitting in Mobile in 1863, which was a court of competent jurisdiction, and said decree is in full force, and from that time all right on his part to be said trustee
1406 entirely ceased. Said court of chancery appointed other trustees in place of said Ketchum, Hallett, and Palmer, to wit, George H. Young, Alexander Jackson, and Charles Walsh, who performed all the duties to be done by said trustees till April, 1875, when they resigned, and the co-defendants of this respondent, viz, W'm Butler Duncan and A. Foster Elliott, were appointed trustees of said deed by the joint appointment of Walsh, the latest continuing of said trustees, and the said railroad company, as provided by the said deed of trust and the decree of said court of chancery; that they have gone into possession of said trust estate, and have filed their bill to foreclose said mortgage. Said Duncan and Elliot have been appointed receivers by this honorable court, and this respondent is entirely satisfied with their execu-
1407 tion of the trust and management of said property as trustees and receivers.

This respondent, with said Duncan, represents a mortgage deed of trust executed by said corporation 1st January, 1874.

A large majority of all the mortgage debt of said corporation has been assigned to W'm H. Hays, W'm S. Pierson, and T. H. Du Puy, with the design of reorganizing the said corporation and readjusting its debts and its affairs so that its business can be successfully and profitably conducted to the security and advantage of its creditors, to whom of right said property should be appropriated.

This respondent is content that said mortgage may be foreclosed and the property sold under the decree of this honorable court, so that parties entitled may receive payment of their several debts from
1408 the proceeds thereof according to their just right of priority, as it may be equitably decreed and established, but he does not admit that said Ketchum has any right in the premises. He does not admit that said complainants are the holders of bonds, as asserted by them, and insists that they be compelled to prove their allegations in this respect, and having answered, he prays to be dismissed with his costs.

(Signed) P. & T. A. HAMILTONS,
Sol'rs Resp't.

Filed June 5th, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1409 *Answer of W. D. Dunn, Geo. H. Young, & W'm Dickson.*

Circuit court of the United States, fifth judicial circuit, southern district of Alabama.

DORELLI ZIEGLER & OTHERS, COMPL'TS, *vs.* THE MOBILE AND OHIO RAILROAD CO., DEFENDANTS.	In equity.

The answer of William D. Dunn, William Dickson, and George H. Young, defendants, to the bill of complaint of Dorelli Ziegler & others, complainants, against the Mobile and Ohio Railroad Company, these defendants, and others in this honorable court:

These defendants, saving and reserving to themselves all benefit of any exception to any errors and insufficiencies in said bill, for answer thereto, or so much thereof as they are advised it is material for them answer, say:

1. They admit that they are trustees of and under the second mortgage of the Mobile and Ohio Railroad Company, mentioned in the complainant's bill, and they say that in suit in equity of William B.
1410 Duncan and A. Foster Elliot against the Mobile and Ohio Railroad
Company and others, heretofore brought and now pending in this honorable court, to foreclose the same first mortgage mentioned and sought to be foreclosed by the bill of the complainants in this case, these defendants have filed their answer, and they have also answered to the bill in equity heretofore filed and now pending in this court by Morris Ketchum, complainant, against the said railroad company and others, defendants, to foreclose the same first mortgage mentioned in the complainant's bill; and this court having made an order that this case and the said other two cases be consolidated and proceeded in and heard together, these defendants refer to their answers in the said two other cases and adopt the same as their answer in this case; and having fully answered, they pray to be hence dismissed with their reasonable costs and allowances.

W'M G. JONES,
Sol. for Def'ts, &c.

Filed June 5th, 1877.

N. W. TRIMBLE, *Clerk.*

1411 *Answer of Morris Ketchum.*

United States circuit court, southern district of Alabama.

DORELLI ZEIGLER ET AL., ON BEHALF OF THE first-mortgage bondholders of the Mobile and Ohio Railroad Company,
versus
THE MOBILE AND OHIO RAILROAD COMPANY, W'm B. Duncan, Andrew F. Elliott, Morris Ketchum, Cha's Walsh, Alexander Jackson, George H. Young, Adrian Iselin, Richard T. Wilson, W'm D. Dunn, W'm Dickson, John Reid, j'r, Robert C. Crawford.

This defendant, Morris Ketchum, reserving all matters of exception

1412 to said bill of complaint, for answer thereto, or to so much and such parts thereof as he is advised it is material to answer, answering, says, that he submits his trust and trusteeship and rights thereunder to the court for its instructions, and for such orders as it may make in the premises, and prays the court that it may ascertain and direct him in the execution of his rights and duties in the premises.

(Signed) E. L. ANDREWS,
GEORGE HOADLEY,
Solicitors for Defendant Ketchum.

Filed June 5th, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1413 *Replication.*

In the circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

DORELLI ZIEGLER & ALS.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY & ALS.
On bill, &c.

The replication of Dorelli Ziegler & als., complainants, to the answers of the Mobile and Ohio Railroad Company and W'm Butler Duncan and A. F. Elliot, defendants, and of Morris Ketchum, defendant, and of W. D. Dunn, George H. Young, and William Dickson, and of W'm H. Hays, W'm S. Pierson, and T. H. Du Puy, defendants.

1414 These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(S'g'd) E. H. GRANDIN,
Sol'r for Compl'ts.

Filed June 5th, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1415 *Answer of M. & O. R. R. Co. to bill of D. Zeigler et als.*

In the circuit court of the United States for the fifth judicial circuit, southern district of Alabama. In equity.

To the honorable the judges presiding in said court:

The answer of the Mobile and Ohio Railroad Company to the bill of complaint of Dorelli Zeigler, Bernard de Waterville, Masson Chavanes, and Henry Jump, complainants in this court, filed against William B. Duncan, S. L. Barlow, A. Iselin, R. T. Wilson, Charles Walsh, George H. Young, William Dickson, Robert C. Crawford, John Reid, j'r, W'm D. Dunn, Alexander Jackson, and this defendant.

The Mobile and Ohio Railroad Company, defendant, saving all matter

of exception to the said bill, answering, says: That it is true that said company was organized to construct a railroad from Mobile, extending through the States of Alabama, Mississippi, Tennessee, and
1416 Kentucky to a point near the mouth of the Ohio River. That it was chartered by the State of Alabama, and acted also under laws of Mississippi, Tennessee, and Kentucky, and that it was empowered by law to borrow money and to execute bonds and mortgages, &c., to secure payment of the same.

It also admits that a grant of lands was made by Congress, lying in Alabama and Mississippi, to aid in the construction of said railroad.

The printed copies of the several acts referred to in said bill in Exhibit A & B, this defendant supposes to be copies of such acts as charged.

This defendant admits that it did borrow money, execute bonds, and a deed of trust and of mortgage to secure the payment of said bonds and interest, by which said Morris Ketchum, William R. Hallett, and John J. Palmer were constituted trustees, to whom the property was conveyed for the execution of said trusts. That the trusts were
1417 accepted, and the deed was recorded in the several States and counties through which the road passed. That the bonds were for the sum of two hundred and twenty-five pounds sterling each, money of Great Britain, and six thousand in number, and dated on (1st) first November, 1853, payable thirty years after date, with interest, payable semi-annually as set forth in the said deed of mortgage and trust. Also, that the said bonds were negotiated to raise money, and were put in circulation as occasion offered; the greater part of which are now outstanding in the hands of various holders unpaid; and this defendant admits that it was announced publicly that said Ketchum, Palmer, and Hallett were the trustees, named by said deed, with the powers thereby conferred, at the time of the issuance and date of said bonds and mortgage.

In answer to the allegations of the bill that the complainants
1418 are owners of one hundred and forty-six thousand dollars of said first-mortgage bonds, this defendant says that it does not know whether or not said complainants own any of said bonds or coupons, nor how many of them, and if material prays that said allegation be proved by the production of such bonds and coupons, as their said ownership is not admitted.

And as to their right to maintain the trusteeship and performance of the covenants of said mortgage, this defendant answers that if they are the holders and owners of any of said bonds this right is admitted, but if the complainants mean that the said Ketchum is to administer said right this defendant denies the allegation, because it says said Ketchum has long since ceased to be such trustee, long since ceased to act and claim to be such, has been lawfully removed from said office of trustee by the proper court, the chancery court of Mobile, Alabama, having jurisdiction to remove him from said office, and the only court having such powers and jurisdiction; which court did remove him
1419 for lawful and sufficient cause shewn, and did appoint successors in said trust, who entered upon the duties of the trust, and upon whose resignation respectively and according to the terms of the deed, two others, namely, said William Butler Duncan and Andrew Foster Elliot, were lawfully appointed as successors, and who did also enter upon the duties thereof and are now the acting trustees under said deed, and who are now under the order and decree of the circuit court of the United States at Mobile performing the said duties with the full con-

currence of this company and of a very large majority of the holders of the said first-mortgage bonds; and also of a large majority of the holders of all other mortgage bonds issued by said company and of all the creditors of the company.

This defendant admits that at the time of the execution of said bonds
and mortgage the railroad was only partially constructed, and
1420 that the lands granted by the United States did form a very large
portion of the property conveyed by the deed of mortgage; and
as to what powers the deed gave to said trustees in respect thereto this
defendant refers to the deed itself.

It denies the allegations of the bill to be true, wherein it is charged that this company did, in 1858 or at any other time, make various or any efforts to defeat the purpose of the trust or divert the proceeds of the lands from their proper application, but on the contrary says they did take action to stop the misapplication of said trustee Ketchum of funds of said trust to his own use, which had already occurred, and which practice he insisted in continuing, and other violations of duty as such trustee.

As to what were the proceedings of the Illinois Central Railroad and of said Ketchum in relation thereto, this defendant deems to be entirely immaterial for this court to enquire into, and therefore neither admits nor denies the same.

1421 This defendant, further answering, says that it has no knowl-
edge of the alleged correspondence of said Ketchum with his co-
trustees, nor with the president of the Bank of Mobile, nor with said J.
S. Morgan, of London, as set forth in the Exhibit C of complainant, nor
of any approval of any bondholders, nor of which of them, of the course
of said Ketchum towards the directors of this company as set forth in
the complainant's bill, and can neither admit or deny the same; and if
material, prays that proof thereof be made. They say, however, that
said matters are now wholly immaterial to the determination of this
cause, as they are advised.

This defendant further answers and says that it is true that in January,
1862, this defendant did cause to be filed in the chancery court of Mobile,
southern chancery division of Alabama, their bill of complaint against
the said Morris Ketchum, to remove him from his office of trustee
1422 under the said deed of mortgage and trust, for good, lawful, and
sufficient causes, of violation and non-performance of his duties
as such trustee, sufficient in law for his removal, which are in said bill
specified, and other causes. The said Ketchum had been duly informed
of the causes of dissatisfaction of this company by a letter to him directed by Milton Brown, the president of this company, a copy of which
is herewith filed as an exhibit to this answer, marked "No. 1;" that a
report was made to the auditor of this company by said Brown, a copy
of which is herewith also annexed as exhibit, marked "No. 2." This
was communicated to the board of directors of the company.

That by reason of the conduct of said Ketchum the company lost all
confidence in him, and all intercourse between them ceased; that in
1861 all intercourse ceased between the company and residents of
1423 New York by reason of the political disturbance between the two
sections of the country; that said Hallett and Palmer had died,
and the said Ketchum had become unable and incompetent to act; the
trust property by reason thereof remained without trustee and without
the means provided by the deed to supply successors to the trust; that
trustees were indispensable for the protection of the trust property in
which European bondholders were the principal beneficiaries, in addi-

tion to which the said Ketchum had expressed his desire to withdraw and be relieved from the position of trustee, and that others should be appointed; for all which causes the said board of directors, by its resolution adopted on the 5th of December, 1861, directed its counsel to file the said bill in the said chancery court for the removal of Ketchum and appointment of three trustees to execute the trust provided by said deeds, which was accordingly done. A copy of said resolution is
1424 herewith filed as an exhibit to this answer, marked "No. 3."

This defendant prays leave to refer to a full and complete transcript of said record of the chancery court of Mobile County, and insists that the proceedings had in said cause were had in precise conformity to the laws of the State and practice of the court; that the court had jurisdiction to the exclusion of all other tribunals to hear and determine the same; that the said Ketchum had full actual knowledge of the rendition of the final decree in said cause in the year 1865; that the laws of the State entitled him for years afterwards to proceedings to reexamine the said proceedings, to question and review the same by appeal and rehearing; but that said Ketchum, pursuing his desire apparently to retire from said trust, never elected to question its force and effect, and the same stand in full force and effect, not in any man-
1425 ner impeached, impaired, having been carried into full execution
from the time of the rendition thereof adversely to the claim of said Ketchum, to his knowledge, without any claim whatever or pretension of claim asserted from that time until the year 1876, after such acquiescence and after all claim was barred by the statute of limitations of Alabama of ten years.

Your respondent admits that default occurred as to the payment of coupons for interest on the first-mortgage bonds due on first May, 1875, and answers that a like default occurred on first May, 1874, and that no interest on said bonds was paid by the company on said last-mentioned day nor on any day since; the fund of the company proving inadequate for the payment thereof and of other demands. That it is true that the coupons for interest on said bonds, which were payable on the first of May, 1874, and on the first of November, 1874, were held
1426 and claimed by Alexander Duncan (uncancelled and unpaid, as
this defendant insists), but the holders of said coupons received the amount thereof to their satisfaction when due, and surrendered the same uncancelled. This was done by means of an arrangement made between said company and the mercantile firm of Duncan, Sherman & Company, by which, in consequence of the inability of the company to pay said coupons at maturity, it was agreed that Duncan, Duncan & Co. should take them up with their own moneys, and hold them for a short time, when it was expected the next winter's business of the company would enable it to pay them.

In this view and expectation, Duncan, Sherman & Co. did take them up and hold them as purchasers, and by substitution with all the rights of holders; and did transfer them to the said Alexander Duncan, who paid the amount thereof to Duncan, Sherman & Co., whereby he became the full and lawful holder of said coupons, and justly
1427 entitled to payment thereof, amounting to over $700,000, and
which coupons are still of full effect and unpaid. As to the allegation that the holders receiving payment of their interest on said coupons did not know that they were not paid by the company, this defendant says it is true that some of those coupon-holders have declared that they did not know it, but they were not paid as they had been before paid; there was no concealment as to who paid them. All those who

desired the information obtained it, and it was made known to all who wished to know how they were paid, and probably well known to the large holders, and to all those who took interest in the bond market.

As to the control which W'm B. Duncan and said Elliott had in the matter, the simple answer is, that the affairs of the company were governed by a board, and that from a deficiency of income and debts
1428 of long standing there were not sufficient funds to pay the inter-
est at command; and it is to be supposed the best was done which could be under the circumstances; and as to how the income of 1873 and 1874 was to be appropriated, that was a subject for the consideration and determination of the board of directors, and not of this court in this cause.

This defendant in answer to the allegations of the bill in respect to the appointment of William B. Duncan and Andrew F. Elliot, as trustees under said deed, deny the allegations of said bill and answer, and say that the trustees Jackson and Young resigned their office as trustees, and that under the terms of the deed, by the concurrent action of the board of directors of the company and of the remaining trustee, the vacancies were filled by the appointment of said Duncan and Elliot; and that afterwards the said Walsh resigned, so that said Dun-
1429 can and Elliot remained trustees with full power and authority
to act and carry into effect the trusts of said deed. That they were persons having full knowledge of the situation of the affairs of the company, and deemed particularly fit to manage the closing of the business, which had become very complicated and required a very arduous action to prevent loss and sacrifice, and to close its affairs in the best manner possible under the great difficulties in the way. That this appointment was with and has had the sanction of a great majority of the bondholders, and the management of said trustees has proved entirely satisfactory to said majority of the bondholders and of this company.

This defendant admits that the said Duncan and Elliot did enter into possession as trustees of all the property of this company, not as charged by the complainants in violation of the terms of the deed, but in strict accordance with it, by reason of the default of payment of the coupons in May, 1874, and not under the default of May, 1875.

1430 That the possession was surrendered of the road and of all the
property and assets on the 8th of May, 1875. That this claim of possession was proper and necessary for the performance of the trusts of the deed, and no such claim and no claim whatever had been made by said Ketchum to execute the said trusts since his removal; and (with others) the said Moran Brothers, who now appear as agents of the complainants in the prosecution of this bill, representing themselves then to be holders of $178,000 of first mortgage bonds and of $29,500 of interest bonds, addressed a communication at New York under date of May 4th, 1875, directed to "Mess'rs W'm B. Duncan and A. F. Elliot, trustees of the first mortgage bonds of M. & O. R. R. Co., of Alabama," as such holders of bonds with their request in the following words: "Hereby request that you take possession of said railroad and appurtenances, and take such other measures as may be necessary to protect the interest
1431 of the first mortgage bondholders in accordance with the terms
of the mortgage of which you are now the trustees." To the said action of said trustees there was no objection or opposition manifested at the time that this defendant knows of from any quarter, nor was any objection made from any quarter to the appointment or action of the trustees Walsh, Jackson and Young, while they were trustees.

This defendant says it is true that the said Duncan and Elliot did, on

11th May, 1875, file their bill in this honorable court as trustees for the carrying into effect the stipulations of said deed or mortgage for the payment of amounts due to the said bondholders of the first mortgage. This bill was filed by them as the lawful representatives of those bond and coupon holders for the enforcement of their rights; to said bill this company and trustees of other mortgage and bond creditors having liens on the property were made parties defendant, and auxiliary
1432 bills have also been filed in the circuit courts of the United States
at Jackson, Mississippi, Memphis, Tennessee, and at Louisville, Kentucky, for the close and settlement of all rights of all parties having liens on the property; that this court has taken jurisdiction of the said cause, and has made proper orders by which said trustees have been recognized as the proper representatives of the said trust property, in full possession thereof, and has by its decree clothed the said trustees with the power and authority of receivers, to hold the said property in all things subject to the order of this court, and to be distributed as the court may order, and as to which disposal, all parties having rights or interest therein could be heard. That orders were made in this court in said cause for all parties having claims to present them, that a special master was appointed in said cause to receive and audit all claims and to take an account of all property and indebtedness to be reported
1433 to the court, that time given and due publication made for all
parties to present their claims at times and places advertised, that said master did hold a sitting in New York, of which the said Moran Brothers, agents of the complainants, if such they were, or are, had due notice, that the time for presenting claims has expired, and the said master has made his report thereon, and said cause is nearly ready for a final decree to be rendered thereon.

That the bonds claimed by the complainants, as this defendant have been advised, were duly presented and proved before said Commissioner James Gillette, with those also of said Moran Brothers in August and September, 1876, and have been allowed to have their part and share in the distribution of funds to be made by this court, and have been reported to the court accordingly. To all which proceedings for the execution of said trust, this defendant begs leave to refer by the records as may be necessary.

As to the Tennessee bonds, a question does arise as to the lien
1434 of the same, which is to be decided by the court. As to the cou-
pons in the hands of Alexander Duncan, they never have been paid, and consequently are justly due.

In relation to the charge that trustees do not pay and have not paid the interest on the coupons, it is sufficient to observe that the income of the road is regularly reported to the court, and can be disposed of only, when and as the court shall order; that the road is being well managed, economically and faithfully, with diligence, good judgment and skill; the trustees have given good and satisfactory security as the court has required, that all the trust fund realized is, as this defendant is satisfied, placed in safe deposatories, ready to be produced for the disposal of the court, at any time when required.

This condition of safety of the funds and good management of the said trustees and receivers, the said Moran Brothers, the instigators of this suit, well know as is manifest by the declaration of bond-
1435 holders holding $1,140,900, bonds signed by them with the said
Moran Brothers at the head of the list, asserting that they held $254,500 of bonds as by which they made known their wishes at New York on the 1st of April, 1876, as follows:

"The undersigned holders of the first mortgage bonds of the Mobile and Ohio Railroad Company, having learned of the matters in controversy in these two causes, and of the application of Morris Ketchum to remove W'm B. Duncan and Andrew Foster Elliot as trustees and receivers under said first mortgage, approve the appointment of said Duncan and Elliot as trustees and receivers and protest against their removal and the substitution of any appointee of the said Morris Ketchum as such receiver, believing that such a change would be injurious to the interest of all classes of creditors of the Mobile and Ohio Railroad Company."

As to any false representations made to induce the making of the above or to the former recited declaration of said Moran Brothers
1436 this defendant says it is informed and therefore answers that the said allegation is wholly untrue.

Your respondent says it is true that said Morris Ketchum, did on the 14th March, 1876, file a bill in chancery in this court setting up the claim that he and he only is the real trustee entitled to execute the trusts of said deed.

To this bill this company and also the said Duncan and Elliot as trustees are made defendants, the latter as receivers. The bill prays for foreclosure of the mortgage, sale of the property, appointment of receivers, for account to be taken of the debts, &c., just as if the property was not already under administration by the court in another cause of which the court had, before the filing of said bill, taken full jurisdiction, and which prior cause was still pending and undetermined. It is true that a demurrer to said bill of Ketchum has been by this court overruled and also a plea reciting the decree of the Mobile chancery court. But it is also true that a motion for appointing receivers
1437 made by said Ketchum on his bill, was heard before this court, and denied, on the ground that said Ketchum was not such trustee as he claimed. The decree overruling the plea and the demurrer to the bill recited by the complainants are not yet final, an application for rehearing on those points is still pending and undisposed of in this court, and the bill of said Ketchum has been fully answered with denial that he has any cause of action whatever, and the case is still pending and undetermined.

Your respondent further shews, that in addition to the plainly apparent fact that the bill of Ketchum was filed for the administration of an estate, as to the settlement of which another bill was pending previously filed, and of which the court had taken jurisdiction was pending and undetermined with the property in the custody of the court for distribution, for which cause such a bill as that of said Ketchum could
1438 not be entertained, this defendant alleges the fact to be, that said bill of said Ketchum was fraudulently filed, not for the bona fide purpose of asserting the rights of the first bondholders, but by a collusive contrivance and combination between said Ketchum and his counsel, who filed said bill, one Edward L. Andrews, for purposes of private gain and motives of a personal nature, and brought by said Ketchum at the instigation and procurement of said Andrews as a part of a scheme gotten up by him, said Andrews, for the annoyance of the parties to the bill of the receivers as above set forth, and to obstruct by all means a speedy close and settlement of the estate.

In answer to the allegations that the complainants do not know who are the trustees charged with the management of said trust, this defendant says it cannot answer what actual personal knowledge the com-

plainants in Europe may have or not have, but that their said
1439 agents, the Moran Brothers, have such knowledge very clearly
appears by the two writings signed by them hereinbefore set
forth, and by the fact that they for themselves have made themselves
parties to the cause pending in this court above described, in which said
Duncan and Elliot are complainants, by the filing of the bonds claimed to
be held by themselves personally, and also of the bonds held by them
as agents for others, say in all, bonds to the amount of $421,500, to be
taken into the account in the distribution of the trust fund to be made
by the court in said cause. That their said claim has been allowed and
reported to the court. That in this claim the bonds now claimed for
the complainants are included as bonds held by them for others, and
consequently they have become parties litigant in said suit and will be
bound by its decree as this defendant is advised, and cannot therefore
maintain another suit for the consideration of the same subject.
1440 This defendant further answers that the charge that the management of the road and custody of the property under the di-
rection of the court are injurious to the interest of the bondholders, and
that the same should be settled under their bill, and that what is done
under the trustees, Duncan and Elliot, will be contested, shew the true
spirit under which the present bill was filed, and its true character as
presented by the agents of the complainants. This defendant does not
know, whether or not the complainants have any information of the
filing of this bill, nor whether they have authorized it, nor whether
they are the owners of the bonds represented, all which is certain is,
that it appears to be prosecuted by the said Moran Brothers as their
agents, and the ill-will of the said agents, the said Duncan and Elliot,
has been fully manifested. In this, however, the said Moran Brothers
can represent a very small minority of the interest of the first-mortgage
bondholders, as an overwhelming majority of the said bondhold-
1441 ers approve of the course of proceeding now in progress for the
settling of the affairs of the company, and unite with this de-
fendant in approbation of the conduct of the said trustees and of the
management of the road, and in condemnation of the after-thought
claim of Morris Ketchum.

Your respondent shews that the proceedings pending for the settlement of the trust estate instituted by the trustees were commenced and
carried on in good faith by the said Duncan and Elliot for the best interest of the first-mortgage bondholders; that questions of difficulty
have arisen; that it has been the purpose of the parties to do the best
with the property with just regard to the rights and interest of all parties concerned, and to prevent loss and sacrifice so far as possible in
the unfortunate state of the enterprise and disasters which have occurred; that the great mass of the bondholders have been satisfied with the
proper management of the property, with the fidelity of the trustees,
1442 and with the proceedings had before the court for the close and
final settlement of the trust, which, if not interrupted by contentious parties, would have been soon closed to the best advantage, but
that to prevent this proper result various obstructions have been interposed by vexatious and malicious proceedings, instituted as is believed
to obstruct the proceedings, delay the final result, create litigation, confusion and expense, so as to make a wreck of the railroad for motives of
speculation and private gains in the general confusion.

In the first place a petition in this court, in the suit of the trustees
Duncan and Elliot, in the name of Georgia Warnes, who claimed to be
the holder of ten bonds, was filed on the 4th of February, 1876, by the
said E. L. Andrews above named, as her counsel (who had before had

a legal controversy, in New York, with William B. Duncan), praying that she, the said Georgie Wernes be made a party complainant 1443 in said suit, that Duncan and Elliot should be removed from the positions of trustees and receivers, and that others be appointed in their place; that she might have leave to file a schedule of bondholders, who might desire to unite in her petition, and that the trustees and the company should be restrained from appointing other trustees of their choice, &c.

In this petition vituperative charges were made against said Duncan to affect his character, reciting allegations outside of the business of the trust.

The said petition was pressed with great zeal by the said Andrews. It was answered fully by said Duncan, and the result of that proceeding was that on the 8th of April, 1876, the petition was dismissed by this court, and the said attorney Andrews, who had filed it, was taxed with the costs incurred in the prosecution of it.

The said Andrews next filed the bill in this court in the name of Morris Ketchum, who he had applied to for leave to file it, saying to 1444 him that he had a proceeding pending to remove the trustees, and proposed that he be allowed to use the name of said Ketchum, who, since 1860, and until then, had set up no claim as trustee. The circumstances under which said bill was filed pretty well appear as far as the said Andrews and Ketchum, in collusion together, felt compelled to disclose them by an examination had in respect thereto of each of them on oath before a commissioner in New York, a copy of which examination is herewith filed as an exhibit to this answer, No. 4. By which the court will be informed of the bona fides of the contrivance of said parties.

In the said bill it was charged that said Duncan and Elliot had fraudulently intruded themselves in said cause as trustees, representing fraudulent claims against the company, &c., and prayed that they be removed, and he admitted as sole trustee under the deed.

1445 On this bill said Andrews moved the court that said trustees be removed, and pressed said motion with the utmost vehemence. The said Duncan and Elliot, however, resisted the motion, and introduced such evidences to the court in contradiction of the assertions made that the motion was refused, and it was declared that said Ketchum was not such trustee as he pretended. This decision was made on the   day of April, 1871.

The said Georgie Warnes, whose name was used by said Andrews, after she had been induced to make the petition above referred to, on obtaining information as to the truth of the charges made in her name and by her, through her said counsel, ordered her said petition to be dismissed, and addressed a letter to said Duncan withdrawing the charges made in her said petition, as will be seen in the exhibit herewith filed, marked "No. 5," explaining her action in regard thereto.

1446 And this defendant further shews that the next movement of said Andrews was a proceeding filed in the name of Louis Belloni, who claims ten bonds, as before stated, saying that the coupons of May 1, 1874, and of Nov. 1, 1874, were paid and extinguished, and that the right of Alexander Duncan to the same to the amount of $700,000 and more was false; that said coupons were no lien on the mortgage property and no claim against the property of the company itself. This proceeding, by way of objection to be tried, was filed before James Gillette, the master, in November, 1876, and on this allegation voluminous evidence was taken, and the investigation was only closed on the

20th April, 1877, the result being a very large volume of evidence, which it was demanded should be printed, and was printed, against the strenuous objection of this defendant, causing very great expense.

And this defendant prays leave to refer to the said evidence to
1447 show the character of said proceeding, by the introduction of a
mass of evidence entirely irrelevant to the subject and calculated to throw obloquy on the said Duncan and Elliot and on the company. The result was that the right of Alexander Duncan was fully proved.

At this time the said Andrews introduced a new party as his clients, with another objection taken before the master on reference. Said new party was Moran Brothers. As counsel for them, he introduced their objections to the proceedings, alleging that the bonds of the company given for the Tennessee loan had been discharged by payment to the State of Tennessee, and constituted no lien on the property of the company. The petition of said Moran Brothers was filed in November, 1876. When the master proceeded to examine said subject it appeared that the bonds which were denied to be valid claims were represented by certain trustees, who were indispensable parties
1448 necessary to be heard on the subject.

Said trustees were not parties to the cause, were not represented before the master, and it appeared the court had no jurisdiction as to them. Notwithstanding this insuperable objection, the said Andrews insisted on a voluminous introduction of evidence, long-protracted examinations, with extensions of time applied for, the evidence to be printed, and taking a wide range of irrelevant matter, claiming that it be all printed, at great expense, and which examination was continued until the twentieth April, 1877; all which can be of no avail, and which was carried on, as this defendant must conclude, for purposes of vexation, and merely to obstruct the proceedings and prevent a close of the business.

About the same time the said Moran Brothers again appeared in another proceeding to obstruct the action of the court and close of the business, in the shape of a petition in the said cause pending for
1449 settlement of the trust. This petition was also filed by said E.
S. Andrews in November, 1876, claiming that they owned $368,000 of first-mortgage bonds and $30,000 of first-mortgage interest bonds, and, after a long recital of matters of complaint, they finally pray that "they may have notice of all the proceedings had in this cause (the bill of Duncan and Elliot), and may have leave to adopt such proceedings as they may be advised in like manner and with the same force and effect as formal parties to the record herein, and for such further relief as may be equitable."

In the said petition a long recital of wrongs are set forth, and charges of fraud and malpractice are made against said Duncan and Elliot, and false accusations are made to the end that they may be removed.

The said petition is evidently malicious and vexatious, and is still pending in this court.

1450 The said Andrews on behalf of said Moran Brothers, in December, 1876, caused citation to be served on this defendant, to shew cause why they should not be made complainants in said suit of said Duncan and Elliot, and to file such pleadings and adopt such proceedings as they might be advised; and again, the said Andrews jointly with E. H. Grandin, esqr., gave a very short notice that on Monday, 19th of February, 1877, they would move on a petition filed for the appointment of new trustees. The said Andrews has also filed bills in chancery in the circuit court of the United States at Memphis, Tennessee, and at

Paducah, Kentucky, on behalf of said Morris Ketchum, claiming to be sole trustee, and has been prosecuting all such suits and proceedings in the name of said Ketchum until he has been enjoined by order of the Mobile chancery court from asserting any title of said Ketchum as said trustee. To all which proceedings this defendant begs leave to refer so often as may be needful.

1451 And your respondent shews that the present bill appears to be filed in the same spirit and motive, to keep up an irregular and multitudinous set of proceedings to embarrass, complicate, and involve the whole subject in litigation, and prevent a prompt and final close of the subject, for speculative purposes.

Further defending your respondent shows that the bondholders interested in the rescuing said property from spoliation, sacrifice, and wreck, have taken steps to compromise and settle all subjects of controversy by agreement and mutal concessions; that a plan has been proposed, discussed, and settled upon, by which the different interests may be harmonized, and said plan of settlement has been drawn up in the shape of an agreement and contract, a copy of which is herewith filed as Exhibit No. 6, as part of this answer.

By said agreement it will be seen that the bondholders agree that
1452 three trustees shall be appointed, namely, William H. Hayes, W'm S. Pierson, and T. Haskins DuPuy, to whom the bondholders participating in said agreement shall assign their bonds and coupons with full power to control the same in every respect, so as to carry out the terms of said agreement, and your respondent shows that said agreement has been carried into effect by the bondholders in a very large majority of each and every of the different classes of bondholders having become parties to said agreement, the amounts of whose bonds are shown by the exhibit filed herewith numbered 7, up to the present time. That the said trustees now hold by assignment and contract and are in possession of said majority of all the bonds outstanding, with full control of the same, and by contract signed are entitled to others not yet delivered.

Your respondents shew that the said agreement of compromise meets the full approbation of this defendant and of the said trustees
1453 Duncan and Elliot, being the act and will of the bondholders entitled to control the property, and that all said parties repudiate the claims of said Morris Ketchum, his advisers and supporters.

Your respondents respectfully show that no such relief as the complainants pray can be allowed in this court, as they are advised, as it is manifest that said complainants have failed to improve the opportunity of defending the bill of said Duncan and Elliot, by becoming parties defendants thereto, and therefore cannot now maintain an independent bill when one is already in progress on the same subject matter, and because the complainants' demands and allegations cannot be substantiated against the expressed will of a large majority of the bondholders as to the mode and management of the trust estate and fund; and because the said bill is not presented to the court in such form and manner as is required by law and the rules of the court, and does not
1454 show a case by which the complainants would be entitled to the decree of this court, nor to the relief prayed, nor to any relief in the premises; wherefore this defendant prays to be hence dismissed and allowed its costs in this behalf.

(S'gn'd) GEORGE N. STEWART,

Solicitor for the Mobile and Ohio Railroad Co., Defendant.

The foregoing is the answer of the Mobile and Ohio Railroad Company, defendant, to the above recited bill of Zorelli Zeigler and others, wherefore the said corporation defendant has caused this its answer to said bill to be sealed with the seal of said company, and signed by its secretary and vice-president, in the absence of the president, on this 29th day of April, in the year 1877.

[SEAL.] (S'gn'd) T. HASKINS DUPUY,
Vice Pres't & Pres't pro tem. Mobile & Ohio R. R. Co.

Attest:
A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

Filed June 5th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1455 EXHIBIT NO. 7.

Letter of Milton Brown, pres'd't M. & O. R. R. Co. to Morris Ketchum.

(Copy of letter.)

NEW YORK, *July* 20, 1860.

MORRIS KETCHUM, Esqr.:

DEAR SIR: After fully considering the construction you seem to put on our deed of mortgage, and the exercise of power you claim as surviving trustee under it, it becomes my duty to reply and state the conclusions of my mind on the subject.

The mortgage gives no power to the trustees to sell lands or control the proceeds of sales, unless the company make default in payment of interest or principal of the mortgage bonds, or be guilty of some fraud or misapplication of the funds. The mortgage provides that the trustees shall have power to make sales and direct the application of the proceeds as a sinking fund, and appoints agents to superintend the same. But this power is only conferred in case of forfeiture, for it is expressly provided that until default in payment, no sales of land can 1456 be made except by the consent of the company. When, therefore, sales take place before default, they must be made in accordance with the mutual consent and agreement of the company and trustees, acting together for the benefit of all parties interested in the fund. In giving this consent and making this agreement, as to the manner and terms on which sales are to be made, and the mode of investing proceeds are of course to be arranged.

This is the way in which it was done in the sales heretofore authorized, and it is the only way in which sales can be legally made. But now Mess'rs Palmer and Hallett being gone, and you being the sole surviving trustee, you propose to change the entire system, and claim a power which, if granted, would put an entire land fund under your control. You claim the power to appoint agents and conduct sales, and invest proceeds without consulting the company, or obtaining their approval as to the mode of doing it.

1457 You have already informed me that you desired to put M'r Wilson (if I don't mistake the name) in possession of the land department. Whether his seat of power is to be at Mobile or at New York you did not inform me, but I suppose at New York, as that seems to be the point at which you intend in future to transfer the management of our land fund.

In the lifetime of your co-trustee, Col. Hallett, you refused to allow him, or any one else, to make deeds in Mobile for lands sold, by which much trouble and unnecessary expense to the company might have been saved. Since I have been in this city, you were pleased to express great respect for my business capacity and integrity, and taking advantage of this seeming confidence, I requested you to authorize me to execute deeds, and offered to give, if desired, bonds in any amount you would name, that everything should be correctly done.

My object was to save the company unnecessary expense. But
1458 you declined this also, saying the deed must and should be executed in New York. Under instructions from the board of directors, I proposed the names of M'r Charles Walsh, the successor of Col. Hallett in the presidency of the Bank of Mobile, and M'r Parker (another gentleman distinguished for his business capacity and integrity) as trustees to fill the vacancies occasioned by the deaths of Col. Hallett and M'r Palmer.

You made no objection to the fitness of either of them for the faithful execution of the trust, but enquired what compensation or salary would be paid to them and you, in the event that you consented to their appointment.

I replied that no such question had been raised, but that whatever might be paid to either of them would of course be paid to you. That certainly no such question ought to be raised as a condition on which you would give your consent to their appointment. You seemed not to be satisfied with this, and took time to consider the matter until next day.

1459 At our meeting next day you informed me that you had come
to the conclusion to send a communication to the board of directors, ratifying the nomination of either M'r Walsh or M'r Parker, but leaving the other out, and nominating myself in his place.

To this I interposed candid and earnest objections, but you overruled my objections and said I need feel no delicacy about it, because the movement was your own, and would be most satisfactory to the bondholders. At last, at your apparent earnest solicitations, and in my extreme desire to put an end to further conflict, I consented that you might nominate me as one of the trustees. In giving this consent, I feel sure that Mess'rs Walsh and Parker, and all others who knew me, would appreciate my object, and acquit me of all selfish motives.

As soon as I had distinctly given my consent, you said you would
then address the board of directors, making the nominations
1460 and proposing the terms on which they were to be confirmed. I
promptly inquired what "terms" you alluded to? You replied that you thought it must be proper that you and the board should arrange the matter between yourselves, and that the board should dispose of it in my absence and without my knowledge until after it was closed. I replied that this seemed proper enough, but that if any "terms" as a condition of my appointment were to be imposed, it was proper that I should know what these terms were. You then disclosed to me that the "terms" to which you referred were, the compensation to be given to the trustees should be first settled. I replied that, for myself, I intended to accept no compensation, and could not allow my name presented to the board with any such terms or conditions annexed.

You then declined nominating me, and also declined to confirm the nominations of Mess'rs Walsh and Parker, unless your compensation was fixed in advance.

1461 I then appealed to you to consent that the company might sell lands for bonds, the bonds to be cancelled and immediately delivered up, as this measure was of great importance, as well to the landholders as to the company; but you declined giving your consent, and our conference closed.

I deeply regret this condition of things; but I have done my whole duty, and can do no more.

To allow a trustee under a mortgage, every time a measure is proposed necessary for the success of our enterprise, to *to* append, before he will give his consent, a condition for his personal benefit, would put us on "the road to ruin" which so many American enterprizes by similar means have gone.

As to the question of compensation, the trustees have done nothing but sign the mortgage-bonds and two or three papers authorizing the sale of lands.

For years the company have appealed to you to give your assent
1462 to measures of the greatest importance to our success, but no
response has been given, and we have been left to struggle on
with no "aid" or "comfort" from you.

During the last three years, if not longer, there is not to be found, and you cannot exhibit, a single act of the trustees in connection with the affairs of the company or its land fund.

The mortgage requires annual reports by you to the company, and you never have made one. Regular reports of our sales have been made to you and you have never acknowledged the receipt of one. It was your duty to make deeds, but not one has been made. By this our sales have been retarded, because purchasers feared they could get no titles.

Purchasers of lands previously sold refused to make payments until deeds were ready for delivery, and we were thereby deprived of the use of money in times of our greatest need. Fifty thousand dollars would not compensate our company for the damage by this neglect.

1463 The trustees saw proper to retain in their hands eighteen thousand dollars of our bonds, with back coupons to the amount of several thousand dollars, making in all some twenty two or three thousand dollars. This is far, very far, beyond any reasonable compensation for the services performed and hereafter to be performed, to say nothing of the positive damage inflicted on us by a total neglect of duty to which I have referred. To buy peace and avoid an open rupture, I have proposed to give this up and let it be retained, provided no further claim for services is set up now or hereafter. But this seems not to be satisfactory. You claim the right to decide on the value of your own services and to fix your own compensation.

You further declare you will appoint your own agents, and of course
fix their salaries and have them responsible to you alone. You further
declare that the land-fund must pass through your hands and
1464 through the hands of agents appointed by you and responsible
to no one but you.

These facts and this extraordinary claim of power brings us to a crisis.

To have an open rupture with our only surviving trustee is bad enough, for he has the power to do us harm and force us to make an appeal to the courts of the country for protection and relief. But to submit to this astonishing claim of power would be worse. It would transfer our entire land fund from the control of our company and put it in hands having no interest in the enterprise beyond the fees and emoluments to be extracted from it. The trustee would fix his own compensation from

time to time and the company must pay it. He would appoint his own agents without limit as to number and fix their compensation, and the company must foot the bills. The expenses of our land system
465 would be run up to ten times what it is now. The seat of power and responsibility would be transferred from Mobile to New York, and the assets of the company would be put beyond the jurisdiction of the courts of the States in which the trust was created and through which the road runs.

But I have extended this communication beyond my original design.

In conclusion, I desire you to reconsider the position you have taken. I think there is not a bondholder in Europe or America who will not, when rightly informed of the facts, say that all we have requested you to do is rasonable and to their interests.

Respectfully, yours,
(S'gn'd) MILTON BROWN,
Pres't M. & O. R. R. Co.

(Endorsed:) Filed June 5th, 1877. (S'gn'd) N. W. Trimble, clerk.

Filed with the answer of the Mobile and Ohio Railroad Company in the circuit court of the United States, at Mobile, in the case of Dorelli Zeigler et al. vs. said company and others, as Exhibit No. 1, and part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol. for Def't.

1466

EXHIBIT No. 2.

Report of Milton Brown, pres't, to Beers.

NEW YORK, *July 21st*, 1860.

M'r BEERS:

DEAR SIR: Your dispatch met me on my arrival here on the 18th, but the papers referred to have not yet arrived, but M'r Ketchum has read me his copy, and we have had two long interviews on the subject, besides dining together at his house.

His first effort was an appeal to my fears as to the consequences, if I did not agree forthwith to fix his salary and pay up from the signing of the mortgage until now.

This failed. He then changed his attack by making it an appeal to my vanity. He praised my firmness, my ability, and my great success. He said that from the time of my election, he knew the enterprise would succeed; and that no man had built up such a reputation as I had, and concluded by inviting me to dine with him, saying he had no doubt we could arrange all our differences satisfactorily.

I ate his dinner and drank his wine, and with a warm and con-
1467 fiding shake of the hand we parted to meet next day.

We met accordingly, and he began to hope that by his appeals to my stomach through his dinner and wine, and to my vanity by his speeches, he had me in a good condition, and if he could also get my avarice enlisted by the hope of a salary as trustee, that he and I, acting together, "could make a good thing of it," as the Yankees say when they are about to do a smart thing by cheating somebody. The result of our interview, and the facts relating to the whole affair, are carefully stated in my written reply, a copy of which I herewith enclose.

It presents a case of corrupt motive and dishonest purpose never before surpassed.

His character is worse than I supposed. No one who knows him has
the least confidence in his integrity. In a conversation with M'r Os-
borne, president of the Illinois Central, the death of Col. Hallett was
referred to, and I remarked that it left M'r Ketchum the sole
1468 trustee under our mortgage. He replied, "Then you are in a hell
of a fix." He went on to tell me that he was one of the trustees
under their mortgage, and also a director in the road. That he man-
aged first to get a fixed salary of fifteen hundred dollars a year. Then, not
content with that, taking advantage of his position, he carried his frauds
so far that the other two trustees had to take the trust into their own
hands, and the board of directors refused to consult with him.

In the face of all this, he had the impudence to appear at a meeting of the board. On his entering the room he (Osborn) rose and said to him, "How dare you show your face at a meeting of this board?" He inquired if the *the* board allowed the president to use such language towards him, and no reply was given. He then retired. But he still holds on to his office as trustee. The two other trustees perform the duties and he draws his salary.

Osborn thinks that he never will consent to fill the vacancies ex-
cept upon conditions that will put the company in his power, or
1469 unless at least one of those to be appointed is under his influence,
and will unite with him in his frauds. But I think he will soon
find himself powerless, and if he can get no funds in his hands, as he
certainly cannot, beyond what he has, he will probably resign. Of
course we can agree to no appointment except such as are in Mobile, or
on the line of the road, and are beyond his fraudulent influences.

He is very uneasy about the danger of his paying costs in the bill filed against him and the company at Mobile, and in any other cases that may be commenced.

Tell our counsel to see to the question of costs and make him pay them, and if necessary take proof as to his conduct.

Tell M'r Hamilton to examine the facts contained in the copy of my
letter to Ketchum, and other facts of the case, and write me to
1470 Jackson, Tennessee, 1st, as to the power of the Alabama courts to
remove him; 2nd, how we shall reach him for damage already
done; 3rd, how we can enforce the appointment of trustees to fill the
vacancies, and such other suggestions as may occur to him.

File the copy I send you for the inspection of our board and counsel, and any that may desire to see it.

Yours, truly,
(S'gn'd) MILTON BROWN,
Pres't M. & O. R. R. Co.

Filed in the circuit court of the United States at Mobile, in the case of Zorelli Zeigler et al. vs. The Mobile and Ohio Railroad Co. and others, with the answer of said company, as Exhibit No. 2, and part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol'r for D'f't.

Filed June 5th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*
Rec. 879—25

1471

EXHIBIT No. 3.

Resolution of board of directors of M. & O. R. R. Co.

(Copy.)

Whereas W'm R. Hallett and J. J. Palmer, two of the trustees under our first mortgage, executed to secure our sterling bonds, have departed this life; and whereas Morris Ketchum, the surviving trustee, has attempted, and so far as in his power, practised gross frauds on this company and the bondholders; and whereas said Ketchum is a citizen of the State of New York, and an alien enemy, and in all respects disqualified and unfit to act as trustee:

Therefore, resolved, That our counsel be instructed to apply to the chancery court, or such court as may be most suitable, to have three trustees appointed to act under said mortgage, with power to order sales of land, directing, if they deem it best, the taking of sterling bonds in payment, and to make deeds for lands already sold, and to be hereafter sold, and to do all and everything necessary and proper to be done in due execution of said trust.

1472 And be it further resolved, That we recommend the appointment of Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, said trustees under said mortgage.

I certify the foregoing to be a true copy of a resolution passed by the board of M. & O. R. R. Co. at a meeting of said board on the 5th December, 1861.

[SEAL OF CO.] (S'gn'd) J. P. RUTLAND, *Sec'y.*
JANUARY 6*th*, 1862.

Filed in the circuit court of the United States, at Mobile, with the answer of the Mobile and Ohio Railroad Co. in the case of Dorelli Zeigler et al. vs. said company and others, as Exhibit No. 3, and a part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol'r of def't.

Filed June 5th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1473

EXHIBIT No 5.

E. L. Andrews, counsel of Miss Georgie Warnes, having taken proceedings against Duncan and Elliot, was subsequently required to withdraw the same, as will appear by the following correspondence:

(Copy.)

3 APRIL 1876.

E. L. ANDREWS:

DEAR SIR: I am advised that I have made a mistake by signing a petition for the removal of W. B. Duncan and and M'r Elliot from the receivership of the Mobile and Ohio Railroad, and if they are removed and M'r Ketchum substituted, the interests of that railroad will suffer by the change. I have lost much by investing in the bonds of that railroad, and cannot afford to run the risk of losing more by such a change.

I therefore wish to withdraw that petition for the removal of
1474 Mess'rs Duncan and Elliot, and hereby request and authorize you to do so.

(S'gn'd) GEORGIE WARNES.

(Copy.)

NEW YORK, *3rd April*, 1876.

Mess'rs DUNCAN and ELLIOT:

GENTLEMEN: Your friends say that I have made a great mistake in signing a petition for your removal from the receivership of the Mobile and Ohio Railroad, and that if you are removed you will thereby be deeply wronged, and that I can avert that wrong by withdrawing that petition for your removal.

As my object in signing that petition was not to injure you, but simply to protect my rights as a bondholder, and as I am now advised that you can and will protect those rights, I have sent a note, of which the enclosed is a duplicate, to M'r E. L. Andrews, requesting and authorizing him to withdraw that petition. Trusting that you will prove worthy of the trust your friends repose in you,

Yours, very respectfully,

(S'gn'd) GEORGIE WARNES.

1475 Filed with the answer of the Mobile and Ohio Railroad Company, in the circuit court of the United States, at Mobile, in the case of Dorelli Zeigler et als. vs. said company and others, as Exhibit No. 5, and part of said answer.

(S'gn'd) GEORGE N. STEWART, *Sol. for Def't.*

Filed June 5th, 1877.

(S'gn'd) N. W. TRIMBLE, *Clerk.*

1476 EXHIBIT No. 6.

Memorandum of agreement and transfer made the first day of October, 1876, by and between the Mobile & Ohio Railroad Company, a corporation by that name existing under the laws of Alabama, and operating also under the laws of the States of Mississippi, Tennessee, and Kentucky, respectively, party of the first part, and the various other parties whose names are subscribed hereto, being creditors of said company, some holding security as hereinafter specified, and others unsecured, each subscriber for himself and neither for the other, parties of the second part, and William H. Hays, of the city of New York, William S. Pierson, of Windsor, in the State of Connecticut, and T. Haskins Du Puy, of Philadelphia, in the State of Pennsylvania, parties of the third part.

Whereas the said railroad company, originally incorporated by the State of Alabama, and operating under the laws of that State, has, by the legislation of the several States of Mississippi, Tennessee, and Kentucky, respectively, obtained valuable corporate rights and privileges, as well as important exemptions, in those respective States;

And whereas, owing to a succession of misfortunes, the said corporation has fallen into arrear in the payment of its bonded and other indebtedness, to such an extent that proceedings for the foreclosure of mortgages executed by it are now pending, which proceedings have gone to an advanced stage and are still being pushed, and, in addition, the day of payment named in some of its mortgages is near at hand;

And whereas differences and disputes have arisen between the different classes of holders of the securities and evidences of debt issued by said company, which differences and disputes, if persisted in, are likely to lead to protracted litigation, and to the sacrifice or deterioration of the property of the said company, and to great delay in the resumption of regular and legitimate operations on its roads; and it is therefore deemed expedient that a scheme should be devised, to be assented to by the various classes of claimants upon the said company, for the harmonizing and compromising their respective claims, without ending the corporate existence or corporate powers of said company, and without putting an end to or limit upon its corporate privileges;

And whereas the secured indebtedness of the said company now exists in the form of bonds and coupons secured by mortgage liens, as specified in the schedule hereto annexed, and as appears by the books of the company, exclusive of interest on said coupons;

And whereas, in addition to said mortgage indebtedness, judgments have been recovered against said company, which are claimed to constitute liens upon some of its property, subject to its mortgage indebtedness, but a large part of which judgment indebtedness is presumed by lapse of time and otherwise to have been in fact satisfied; and in addition thereto, the said company owes a considerable amount of floating or unsecured indebtedness; and the undersigned, holders of claims of the various classes against said company, as well those specified in the said schedule hereto annexed, as judgment creditors and unsecured creditors, have agreed to compromise and compound with said company upon the said company's issuing new securities for all the said indebtedness in the manner hereinafter agreed upon, to the end that, if practicable, said foreclosure suits may be discontinued, and the property affected thereby restored to the custody and control of the said company under the conditions of this agreement, and the stipulations accompanying the same;

But whereas it is understood by said creditors that if such scheme shall be found to be impracticable because not assented to by a sufficient number of creditors, or for other reasons, that then the said foreclosure proceedings shall be prosecuted to either a sale or a strict foreclosure, and a purchase or acquisition of the property of the said company consummated for the benefit of the subscribers hereto, who are such creditors as aforesaid, and that a new corporation or corporations shall be created, and new securities issued for the benefit of such creditors;

1477 Now this memorandum witnesseth that the said parties hereto have covenanted, agreed, and transferred, and do hereby covenant, agree, and transfer, to and with each other in the manner and form following, that is to say:

First. The said William H. Hays, William S. Pierson, and T. Haskins Du Puy are hereby constituted assignees in trust, agents, managers, and attorneys of the said parties hereto, who are creditors of the Mobile & Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing, and controlling the same, for the purposes, in the manner, and with the powers hereinafter specified.

Second. Each of the parties hereto being a creditor of the said Mobile & Ohio Railroad Company at the time of the execution of this instrument, assigns, transfers, delivers, and makes over to the said William

H. Hays, William S. Pierson, and T. Haskins Du Puy all the evidences of debt issued by said company, and claims against said company, now held by such subscriber hereto, whether in the shape of bond, coupon, note, judgment, open account, unliquidated demand, unpaid voucher, or otherwise, to be held by the said Hays, Pierson, and Du Puy, as such assignees, agents, managers, and attorneys, in the manner and for the purposes and upon the trust so hereinafter declared concerning the same. Upon this instrument being subscribed by all the creditors of said corporation, holders of evidence of debt issued by said corporation, or of other claims against the same, the said assignees, agents, and attorneys shall have and hold the claims and evidences of debt of such creditors, with full power and authority to cancel, surrender, release, and discharge all such evidences of debt, claims, and demands so transferred to them, upon receiving from said Mobile & Ohio Railroad Company new evidences of debt and securities to the extent and in the manner hereinafter provided.

Third. Upon the request of the said Hays, Pierson, and Du Puy, or their successors, the said corporation hereby agrees to execute and deliver, or cause to be executed and delivered, to the said William H. Hays, William S. Pierson, and T. Haskins Du Puy, or their successors or appointees, new bonds and obligations or acknowledgments of indebtedness secured respectively by a new mortgage and trust deed to be made by said corporation as hereinafter provided, and containing such stipulations and clauses for the security of the creditors of said company as the said assignees and attorneys shall advise and require, not in conflict with the provisions of this agreement.

Fourth. The said new mortgage shall be called the first mortgage, and shall constitute a first and primary lien on all of the main line of the said Mobile & Ohio Railroad, lying at and between the city of Mobile and the city of Columbus, in the State of Kentucky (exclusive, however, of the several branches now possessed or to be acquired or constructed, those now possessed being known as Aberdeen branch, Columbus branch, Starkville branch, and the Gainesville branch), covering all and singular the chartered rights, railways, sidings, turnouts, and all connected therewith, bridges, fences, warehouses, depot and office buildings, machine-shops, tools, iron, timber, and all materials necessary in the repair of the road, rolling stock, or machinery, and all wood and coal and other materials necessary in running said road, and all fixtures, privileges, rights, real estate, and all other property owned and which may be hereafter owned by said company, and which shall be necessary to the business of said company, or for the purpose of carrying freight and passengers upon said main line; but not including any lands granted to said company by any State, or by the United States, nor lands which may be situated apart from the line of the road, and not actually required for the use or running of the road. The said trust deed shall be in the form and shall have the effect and operation of a conveyance in trust to trustees of the lands granted to said company by any State or the United States, as well as all lands belonging to the company and not necessary for the operation of the railroad of said company, and also so much of the net income of said company as shall remain after payment of current expenses, cost of maintenance, improvement and repairs, and interest on said new first mortgage, and on the debentures, as hereafter more particularly specified.

Fifth. The first mortgage mentioned in the last preceding paragraph shall be made for the security of the holders of the present outstanding issue of first mortgage bonds of said corporation, and of the coupons issued with said first-mortgage bonds, whether such coupons are now detached from such bonds or are now attached thereto, and for the benefit and security of the holders of the issues known as the sterling arrearage-interest bonds, the funded arrearage-interest bonds, and the coupons detached from or attached to such bonds, matured and unpaid, and also for the benefit and security of the holders of the issue known as the Tennessee substitution bonds, and coupons detached therefrom or attached thereto, matured and unpaid, all upon an equal footing as to grade of new security (provided such holders become parties to this agreement and transfer the securities held by them respectively pursuant hereto), and for the purpose of providing funds for necessary expenses and outlay under this agreement. The total amount of principal money secured by bonds issued under the new first mortgage is to be seven millions of dollars, payable in the city of New York, in gold coin of the United States, on the first day of December, in the year 1927, bearing interest payable in lawful money of the United States, in the following manner: Two per cent. on the first day of December, 1877; two per cent. on the first day of June, 1878; three per cent. on each first day of December and June thereafter; and the bonds to be issued under said first mortgage may be in sums of either $1,000, $500, $300, or $100 each, and shall have negotiable interest warrants or coupons attached thereto, payable in New York. But the holders of the present first mortgage securities are to be interested in the new securities issued under the new first mortgage, as next hereafter stated; that is to say:

Sixth. Each subscriber hereto, who shall have transferred to the said assignees, agents, and attorneys a first-mortgage bond of said company, shall be entitled to receive an amount equal to four hundred and forty dollars for each one thousand dollars, or each £225, of the principal sum payable upon such bond so transferred in a bond or bonds to be issued under the said new first mortgage hereinbefore provided for, to be taken at par; and every subscriber hereto who shall have so transferred first-mortgage coupons of said company heretofore issued (provided the due date originally mentioned therein shall not have been later than the first day of November, 1877), shall receive an amount equal to the value of such coupons, as below estimated, in a bond or bonds, to be issued under the said new first mortgage hereinabove provided for, each such coupon to be estimated for this purpose as being worth, and as securing the payment of, thirty-six dollars, except coupons maturing November 1, 1877, which shall each be estimated as worth only six dollars: and each holder of sterling interest bonds who shall have become a subscriber to this agreement, and shall have transferred his bonds in pursuance hereof, shall be entitled, in lieu of each bond so transferred, to a bond or bonds for the principal sum of four hundred and forty dollars each, to be issued under said new first mortgage for each £200 of the principal amount of the bonds so transferred by him under this agreement; and each holder of coupons heretofore issued with any such sterling interest bond (provided the original due date named in such coupon shall not be later than the first day of November, 1877), shall be entitled in lieu thereof to a bond or bonds to be issued under such new first mortgage for the amount of the coupons so transferred, valuing each such coupon at the sum of thirty-six dollars, except coupons maturing November 1, 1877, which shall be valued at only six dollars; and each holder of bonds generally known as arrearage-interest bonds who shall have become a subscriber to this instrument, and shall have transferred his bonds pursuant to the terms hereof, shall be entitled to

a bond or bonds to be issued under said new first mortgage for the principal sum of three hundred and ten dollars for each $1,000 of the principal amount of the bonds so transferred, and each holder of coupons heretofore issued with such arrearage-interest bonds (provided the original due date of such coupons shall not have been later than the first day of November, 1877), shall be entitled to new first-mortgage bonds for the amount of the coupons so transferred, valuing each such coupon at thirty-six dollars, except that coupons of which the original due date was the first day of November, 1877, shall be valued at six dollars each; each holder of bonds known as Tennessee substitution bonds who shall have become a subscriber to this agreement, and who shall have transferred his bonds as aforesaid to said assignees and attorneys, shall receive in lieu of the bonds so transferred a bond or bonds to be issued under said new first mortgage for the par amount of $626 for each bond so transferred, and each holder of coupons heretofore issued with any such Tennessee substitution bonds (provided the original due date of such coupons was not later than July 1st, 1877), who shall have become a subscriber to this agreement and who shall have transferred his coupons to said assignees and attorneys, shall be entitled in lieu
1479 thereof to receive a new first-mortgage bond or bonds for the
amount of his coupons so transferred, estimating each such coupon at thirty-six dollars, except the coupons maturing July 1, 1877, which shall be valued at only thirty dollars each.

Seventh. The trust deed hereinabove provided for shall be in part for the security of the same class of present creditors who, as above agreed, are entitled to be secured by the said new first mortgage, to the extent of the difference, as below stated, between the amount of new bonds to be issued to them or for their benefit, as above provided, and the principal amounts of the bonds now outstanding and transferred by them respectively, and also for the benefit of the remaining creditors of said company who shall become parties to this agreement and become entitled to the benefit thereof; and to that end it is now provided—

Eighth. Each bond now held by any such present first mortgage creditor as last aforesaid for the principal sum of one thousand dollars gold or lawful money, or for the principal sum of £225, £205, or £200, shall, for the purpose of ascertaining such difference, be estimated as worth one thousand dollars; and each bond payable in dollars, gold or lawful money, for a less sum of $1,000, shall be estimated at its face, without interest, and each bond payable in sterling money for less than £200 shall be estimated at the rate of five dollars for each pound sterling of principal money payable by the terms of such bond. And after charging to each subscriber hereto who shall have transferred bonds as above agreed, the principal amount of the bonds to be issued to him as above provided in the sixth paragraph, not taking into account any bonds issued in lieu of coupons transferred under said sixth paragraph, he shall be entitled to a preferred income and sinking fund debenture or debentures, of the first series to be issued under said trust deed, as hereinafter provided, for the difference between the principal sum of the new first mortgage bonds so charged to him and the principal sum of the bonds so transferred, valued as above provided.

Ninth. The preferred income and sinking fund debentures issued under said trust deed may be in sums of $1,000, $500, $300, or $100 each, and shall not have any interest coupons attached thereto, and shall not be payable absolutely, but only out of the sinking fund hereinafter provided; and shall be registered and shall be transferable only on the books of the company, at the office of the company, in the city

of New York, and shall not otherwise be transferable, and shall be issued in successive series, the first series to be known as first preferred income and sinking fund debentures, the second series to be known as second preferred income and sinking fund debentures, the third series to be known as third preferred income and sinking fund debentures, and the fourth series to be known as fourth preferred income and sinking fund debentures, and such debentures shall be so expressed as that interest at a rate not exceeding seven per cent. per annum shall be payable thereon yearly, that is, on the first day of February in each year after the year 1878, upon the conditions herein specified, that is: on or before the first day of December, in the year 1878, and each year thereafter, said company shall ascertain as closely as practicable the net earnings of such company remaining after paying the expenses of the corporation, cost of maintenance and proper repair, and the interest on the new first mortgage bonds, up to the first day of September next preceding, that being the end of the fiscal year; and in case there shall remain on such first day of December a residue of earnings for the year ending on the first day of September next previous, and if it shall then be ascertained that up to the first day of September next preceding that first day of December, the earnings of said company, after making provision for such expenses, interest, and the proper maintenance of the property in good order, leave any sum applicable to the payment of interest on such debentures, then such net earnings shall be applied to the payment of interest on said first preferred income and sinking fund debentures, not exceeding seven per cent. in lawful money of the United States, and such application and payment shall be made on or before the first day of February in the next succeeding year; and after payment of interest at the rate of seven per cent. per annum on said debentures of the first series, what remains of said net earnings shall be applied to the payment of interest on said debentures of the second series, at a rate not exceeding seven per cent. per annum; and after payment of interest at that rate on said debentures of the second series, what remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the
1480 third series; and what then remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the fourth series; but in case the earnings of any one of such years shall not be adequate to the payment of seven per cent. interest for that year on all or either series of said debentures, then the deficiency shall not have any claim upon the net earnings of any succeeding year. And the net earnings shall only be applicable to the payment of interest on either series of debentures in case such earnings shall amount to at least one per cent. or a multiple of one per cent. on the total amount of the debentures belonging to such series, so that fractions of net earnings exceeding such one per cent. or a multiple of one per cent., need not be included in the payment of interest for that year, but shall be carried to the credit of the earnings for the succeeding year.

Tenth. The aforesaid second preferred income and sinking fund debentures shall be issued for the benefit and security of that class of the present creditors of said corporation, who are known as second mortgage bondholders, all to be upon the same footing with each other as to security and priority. Each second mortgage bond of said company, and each coupon thereof now outstanding shall be considered as of the par value represented on its face in currency, provided the due date originally specified therein shall not have been later than the first day of March, 1878, except coupons maturing March 1, 1878, which when for $80 on their face shall each be estimated as worth only twenty dollars, or in that proportion for any coupon of any smaller amount than $80. Each holder of a present outstanding second mortgage bond or coupon of said company, who shall have become a subscriber to this agreement, and shall have transferred his bond or coupon pursuant to the terms hereof, shall be entitled to receive dollar for dollar for the principal of his bond and coupon so transferred as aforesaid, in a second preferred income and sinking fund debenture.

Eleventh. The said debentures of the third series shall be for the benefit and security of the holders of the present outstanding bonds of said corporation, known as convertible bonds, and shall be for an aggregate amount sufficient to represent the aggregate amount of now outstanding convertible bonds, and the interest thereon up to the first day of June, 1877. Each holder of a convertible bond who shall have become a subscriber to this agreement, and shall have transferred his bond as and in the manner aforesaid, shall be entitled in lieu thereof to a debenture of the third series, for the par amount of the bonds so transferred, estimating the same at its face value in currency, and the accrued interest on such convertible bond, to be computed up to the first day of June, 1877, shall be replaced by a debenture of the third series for the actual amount of such interest up to that date.

Twelfth. The said debentures of the fourth series shall be for such amount as said assignees and attorneys shall determine to be necessary for the purpose of satisfying such judgment and unsecured indebtedness of the said company as they shall deem to be morally obligatory, in their discretion, so far as the same shall be held by subscribers to this instrument who shall have transferred their claims to the said assignees and attorneys, subject to adjustment by said assigns and attorneys, but the same shall not exceed the sum of the face value of such judgments or indebtedness, and no unsecured or judgment creditor shall be admitted as a subscriber to this instrument, nor entitled to the benefit thereof, for any amount exceeding that which may be adjusted and allowed to him by said assignees and attorneys; and each such judgment and unsecured creditor who shall so become a party hereto, shall be entitled to a debenture of the fourth series for such sum as said assignees and attorneys may adjudge to be justly due to him.

Thirteenth. In case all the holders of the unsecured or judgment indebtedness of said corporation shall not have become parties hereto, or shall not have assented to the adjustment of their claims by the said assignees and attorneys, and the reduction thereof to the amount which said assignees and attorneys shall deem to be justly and equitably due thereon, then said assignees and attorneys, instead of cancelling and surrendering all of said mortgage bonds now outstanding, transferred to them under this agreement, shall hold said mortgage bonds or so much thereof as may in their discretion be necessary for the security of the new securities against said unsecured and judgment indebtedness, except that the new mortgage and trust deed issued by said corporation shall have
1481 priority over such old mortgage bonds; but such original mortgage bonds shall be held by the trustees in the new first mortgage, in trust for the benefit of the holders of the new securities of the said corporation, according to their order and priority, prior to and to the exclusion of the unsecured and judgment creditors who shall not have assented to this agreement. And each of said present mortgage bonds transferred under this agreement, and held by said trustees, as before stated, shall be stamped by the assignees and attorneys with the follow-

ing words: "In pursuance of the terms of agreement made between the Mobile & Ohio Railroad Company and its creditors, bearing date October 1, 1876, this bond is not negotiable, being held subject to the provisions and for the purposes mentioned in said agreement."

Fourteenth. The said assignees and attorneys shall not be authorized to cancel or surrender any of the existing obligations or evidences of debt of the said corporation, transferred to them under this agreement, unless all the present holders of the mortgage securities of said company shall have become parties to this instrument, and transferred the securities held by them on or before the first day of March, 1877, or at or before such time as the said assignees and attorneys shall have fixed, as in their discretion they may, by successive extensions of not more than sixty days each; nor until said corporation, or its stockholders, through legal and proper action of its stockholders, if such action be necessary, or otherwise according to law, shall have entered into an adequate and sufficient arrangement or agreement with said assignees and attorneys, and with the holders of said debentures, enabling the holders of such debentures or the trustees under said trust deed to vote at elections for directors of the said company, and irrevocably represent such stock or a majority thereof, at all stockholders' meetings until such debentures shall be extinguished; and upon that privilege of representation being acquired by and vested in or secured to the trustees in said trust deed, or to the holders of the said debentures, by the proper and legal action of such corporation or its stockholders, and upon all the new mortgages and securities above called for being issued, then such cancellation and surrender may be fully completed and consummated (except in the contingency provided in paragraph 13 of this agreement), and the property and management of the corporation may be restored to it, and said foreclosure suits may be discontinued.

Fifteenth. Any surplus of new securities created under this agreement, not required for the satisfaction of the claims of existing creditors, may be applied and appropriated by said assignees and attorneys to the payment of the expenses of making this agreement and carrying the same into effect, as well as the expenses of said foreclosure suits; and the said assignees and attorneys, as transferees and assignees of the subscribers to this instrument, shall have the same rights and relations to the foreclosure suits now pending, and to the complainants in said foreclosure suits, and to the receivers in said suits, and to the funds in their hands, which the subscribers to this agreement now have or would have if they continued to be holders of the bonds and claims subscribed hereto, and shall be entitled to the same share of the proceeds of the present management of the property of said company, and to the same share of the proceeds of the sale of such property which their assignors would have upon a discontinuance of said foreclosure suits, or upon an accounting, or upon a sale or distribution of the proceeds; their several assignors to be considered, in relation to such proceeds, as being upon the same grade of priority and security, as between and among each other, upon which the provisions of this agreement would place them in relation to the new securities to be issued by said company.

Sixteenth. In case a sufficient number of subscribers shall not be obtained to this agreement on or before the time prescribed herein, to put it within the power of said assignees and attorneys to carry into effect the foregoing clauses and stipulations of this agreement, then this agreement shall be binding upon the subscribers thereto, provided it shall have been subscribed by holders of at least a majority in amount of the existing first mortgage indebtedness and Tennessee substitution bonds of said company, as recited in the schedules hereto annexed; and thereupon said assignees and attorneys shall have power and authority to appropriate the bonds, coupons, moneys (if any), and evidences of debt which shall have come into their possession, under the provision of this agreement, towards the purchase of the property of said railroad corporation, under such decree or decrees of foreclosure as shall be obtained in said pending suits, and shall have power and authority, and it shall be the duty to aid their complainants in said suits in speeding said suits 1482 to their conclusion by decrees of foreclosure and sale, or of strict foreclosure, in the interest and for the benefit of the subscribers to this agreement, and they shall have power to turn the securities, received by them under this agreement, into court in payment for said property, upon the purchase thereof by them upon the foreclosure; and in the event of its becoming necessary for the protection of the interest of the parties subscribing thereto, that any cash or other payment than the securities in their possession should be made into court, said assignees and attorneys shall have the power to make such payment for the account of and at the risk of the parties subscribing hereto, or by obtaining the amount thereof upon the security of the bonds and coupons in their hands; and shall likewise have power to apply for and receive dividends upon the bonds and coupons received by them under this agreement from the funds in court in the hands of the receivers, or of any master or marshal or clerk or otherwise to the same extent as the original holders of the bonds and coupons retained and held by them would have been; and while no authority is given to them to make any subscribers hereto personally responsible for the payment of any debt incurred by them, they are authorized with the assent of the trustees of the present first mortgages, or a majority of them, to pledge the bonds and coupons in their possession for the purpose so far as necessary of obtaining means to expedite and bring to a conclusion this compromise or said foreclosure suits.

Seventeenth. The parties subscribing hereto and transferring any evidence of debt or claim according to the terms of this instrument, shall be entitled to certificates, specifying their contributions respectively and their interests respectively to and in this agreement and the benefits thereof; and each certificate shall be transferable and deliverable to bearer without a transfer being required to be made in any book or in writing, and shall represent on its face the securities deposited therefor.

Eighteenth. Upon the purchase of the property of said company by said assignees and attorneys at any sale or sales under decree of sale or strict foreclosure, it shall be their duty to avail themselves of any existing law in either of the States of Alabama, Tennessee, Mississippi, or Kentucky, or to procure legislation, so far as may be necessary, for the purpose of creating a new corporation or new corporations, to which it shall be their duty to transfer the property so purchased by them as early as practicable upon receiving from such new corporation the new bonds, debentures, mortgage and trust deed hereinabove specified for the same amount which would be required to carry the above proposed compromise into effect, such mortgage and trust deed to be made to one or more trustees in each case to be selected by said assignees and attorneys, and to be properly framed for the security of the several classes of creditors to be benefited thereby; and so far as the evidences of debt to be issued under such new mortgage or trust deed, whether by said Mobile & Ohio Railroad Company or by a new corporation, shall not be required to be issued or delivered in exchange for securities which

shall have come into and remained in the hands of such assignees and attorneys under this agreement, such surplus securities shall be sold, or so much thereof as in their judgment shall be necessary for the purposes hereinafter named; and the proceeds thereof, and also any sums received by them in cash from the receivers, or from any officer of the court, shall be applied, in the first place, in repaying any sums advanced, or procured to be advanced, by said assignees and attorneys for the purpose of meeting the expenses of said foreclosure suits and of carrying this agreement into effect, and the expense of making such purchase and reorganization; and then the surplus, if any, remaining from such disposition of such new securities, as well as any new securities which may remain unsold or undisposed of, and any sums realized by said assignees and attorneys from the receivers or managers of said property in said foreclosure suits, or from the management or running of the road, shall be accounted for by said assignees and attorneys to said new corporation, which said new corporation is to consist of and be created by the subscribers to this agreement, so far as they are entitled to the benefit of the same; and said new corporation, or said existing corporation, in case the compromise above specified shall be carried into effect, shall be considered as subrogated to all the rights of the subscribers to this agreement for the purpose of calling the said assignees and attorneys to account. The said assignees and attorneys shall be allowed out of the fund, for compensation for their services and responsibility, such amounts as shall be reasonably just according to the character of such services and responsibility; but there is no personal responsibility on the part of any
1483 subscriber hereto for any part of such compensation; and said
assignees and attorneys, and their necessary clerks, bookkeepers and their employees of any grade or description, shall be entitled to a lien upon the new securities and upon the cash received by said assignees and attorneys, and the cash proceeds of such of the same as they are authorized to dispose of, for their compensation, liabilities, and disbursements, whether absolute or contingent, until their account shall have been duly and properly settled with such organization; and such existing corporation, or such new corporation or corporations, as the case may require, shall, before payment of interest on any of the new securities, assume and pay any excess of such compensation, liabilities, and disbursements above the amount realized by said assignees and attorneys from funds in their hands.

Nineteenth. The subscribers hereto, who shall respectively have transferred to said assignees and attorneys their several claims, provided such claims shall remain under the control of such assignees and attorneys and available for the purpose of purchasing the property now mortgaged in said foreclosure suits, shall be interested in the property after such purchase and so long as the title thereto remains in said assignees and attorneys, as beneficiaries and cestui que trust, in the same proportions, and shall have the same relative rights and interests, as against each other, as in the new securities to be created under this agreement.

Twentieth. The trust deed hereinabove provided for, whether executed in pursuance of the compromise agreed upon or by a new corporation or corporations to be created after a foreclosure, shall contain provision for the creation of a sinking fund for the benefit of the holders of said debentures in the order in which the interest on such debentures is as above specified payable.

Such sinking fund is to consist of the proceeds of all land owned, and which may hereafter be owned, by said company, with the exception of such as are covered by the above-mentioned first mortgage, and with the

exception of the railway, rails, bridges, fences, warehouse, and other fixtures, rights, privileges, and real estate belonging to the above-mentioned branches, but including all lands not so covered but conveyed to the Mobile & Ohio Railroad Company by any State or by the United States. The trustees under said trust deed are to have power of sale over said lands from time to time, and said trust deed shall contain clauses properly framed conveying to the trustees under such deed the same powers of sale in respect to the lands conveyed thereby as are possessed by the trustees under the now existing first mortgage; and the first mortgage to be created under this agreement is not to apply to or cover such lands, and the proceeds of sales of said lands are to be free from the lien of said new first mortgage, and are to constitute a fund for the exclusive benefit of the holders of said debentures. But such new trust deed shall also contain a provision by way of covenant, declaration, grant, or otherwise, as said assignees and attorneys may direct, in substance and effect that the amount of principal and interest payable upon said debentures shall constitute a lien upon the railway property of said existing corporation, or of said new corporation or corporations, as the case may require, to such an extent that in case of a foreclosure of said new first mortgage and a sale thereunder, the trustees in said trust deed, for the benefit of holders of said debentures according to their order and priority, shall be entitled to the surplus proceeds of such sale next after payment of said new first mortgage, to the amount of the aggregate principal sum due on such debentures, and so that in case any lien upon said railway property, or any part thereof, shall arise, subsequent to the making of said trust deed, by the act or sufferance of such existing or new corporation, and such subsequent lien shall be enforced to the extent of depriving said existing or new corporation of the possession of such railway property, or any part thereof, then the trustees in said trust deed may enter into possession of such part of said railway property, and sell the same, clear of all subsequent liens, for the benefit of holders of said debentures according to their order and priority, or may exact redemption and payment in full of the principal amount of such debentures before surrendering such property to such subsequent lienors; and said trust deed shall also contain proper covenants and securities, for the ascertainment and application of the income of the property of said existing or new corporation and its successors, as the case may require, according to the provisions of this agreement; and there shall also be paid into the sinking fund all the interest accruing on debentures bought for the sinking fund, until all the debentures shall have been bought, satisfied, or extinguished; and there shall also be paid into the sinking fund a further amount equal to the dividend which
1434 may hereafter be declared upon the capital stock, now existing or
hereafter to be created, of such company, which dividend shall not be declared or paid except an amount equal thereto is also paid in at the same time out of the net revenue into the sinking fund.

The trustees making sales of said lands are to deposit the proceeds thereof in the Bank of the State of New York, in the city of New York; or such other depository as the trustees in said trust deed may select in the said city of New York; and each six months, that is, on the first days of May and November, the trustees shall advertise in the cities of Mobile and New York, stating the amount so deposited and at the disposition of the sinking fund, and asking for tenders thereof in the first series of said debentures then outstanding, awarding the amount so deposited to the holders of debentures, tendered at the lowest grades of price, in succession. In default of any bids or tenders therefor at less than par, the trustees shall thereupon draw by lot a sufficient number of debentures of the first series, then outstanding, to absorb such deposits, and shall apply such deposits to the purchase of the debentures so drawn by lot at par. After purchase of the said debentures of the first series, the said sinking fund shall be applied in like manner, and by the same means, to the purchase of each other of the said several series of debentures in succession.

Twenty-first. In case a prosecution of said foreclosure suits to a sale or to a strict foreclosure is found to be necessary, and it shall also be found necessary to create a new corporation or corporations, then the capital stock of such new corporation or corporations shall be fixed at not exceeding the sum of ten million dollars, to be divided into shares of one hundred dollars each, and shall be in the first instance issued to said assignees and attorneys as a part of the funds in their hands for the purposes of this agreement; and they shall so place a majority of such stock as to secure to the holders of said debentures directly or through the trustees in said trust deed the control of the management of the corporation and any surplus of such new stock remaining after that disposition of it, and after the trust under said trust deed shall be fully executed, shall be treated in like manner with any surplus bonds or other securities, to be issued by the Mobile & Ohio Railroad Company, or by a new corporation or corporations, under the provisions of this agreement.

Twenty-second. Bonds, securities, claims, and evidences of debt, transferred to said assignees and attorneys under the provisions of this agreement, shall be deposited at the option of the parties transferring the same, either in the Farmers' Loan & Trust Co. in the city of New York, or in the Bank of Mobile, at Mobile, in the State of Alabama, or with C. M. Lampson & Co., in the city of London, or at the Frankfurter Bank Verein, in the city of Frankfurt, or with Lombard, Odier & Co., in the city of Geneva, who shall respectively be authorized to give therefor the certificates above provided for, or their receipts exchangeable for said certificates; and the securities so deposited shall remain in the several depositories subject to the order of said assignees and attorneys until the same shall be required for cancellation, surrender, exchange, or delivery into court by said assignees and attorneys, or for other purposes of this agreement, in which case the same shall be transmitted from the depositories thereof to such attorneys and assignees, either at the Farmers' Loan & Trust Co., in the city of New York, or at the Bank of Mobile, in the city of Mobile, as said assignees and attorneys may direct, from which depositories the same may be taken by said assignees and attorneys when required for any or either of the purposes aforesaid; and securities and cash funds received by said assignees and attorneys, under the provisions of this agreement, shall be deposited by them, either in the Farmers' Loan & Trust Co., in the city of New York, or in the Bank of Mobile, in the city of Mobile.

Twenty-third. In case of a vacancy in the office of assignee or attorney under this agreement, arising from the death or resignation of either of the parties, or from his incompetency to act, the vacancy may be filled by the unanimous agreement of the trustees acting under the existing first mortgage of said corporation, and the remaining assignees and attorneys under this agreement.

Twenty-fourth. The said assignees and attorneys shall have an office in the city of New York, and shall keep regular accounts and books of account, showing their transactions, which shall be open to the inspection of certificate-holders at reasonable times during business hours,

and a majority of said assignees and attorneys shall be competent
1485 to transact business at any meeting of which all three of the assignees and attorneys shall have been notified, and any substituted assignee or attorney, duly appointed pursuant to the provisions of this agreement, shall have the same power, authority, and control which his predecessor had; and all the provisions of this agreement, and all the powers conferred thereby, shall apply to and be vested in such assignee and attorney so far as his predecessor had such power, or was subject to such provisions; but so far as any discretionary power is conferred by this agreement, no such discretion shall be or can be used without the consent of all the attorneys and assignees acting at the time under this agreement, and each assignee and attorney shall be responsible only for his own acts and not for the acts of others; and neither assignee or attorney shall be responsible for any error of judgment nor for any error or negligence of any subordinate officer or agent unless such officer or agent shall be employed or continued in employment negligently by such assignees and attorneys.

Twenty-fifth. The new securities to be issued by said Mobile & Ohio Railroad Company, or by a new corporation or corporations to be created under the terms of this agreement, shall be in the first instance delivered by the said company to said assignees and attorneys, or their successors, who shall deposit the same in the said The Farmers' Loan & Trust Co., or in the said Bank of Mobile, and no subscriber hereto or his successor in interest shall be entitled to any portion of such new securities except upon a return or surrender to said assignees and attorneys at one or other of the said places of deposit of the certificate or certificates held by such subscriber. In case, in the original distribution of the new securities to be issued in pursuance of this agreement, any party shall become entitled to a fractional part, less than $100, of a bond or debenture, a certificate therefor may be issued, which, when united with other fractional certificates, so as to make an entire bond or debenture, for either one of the even amounts in which said bonds or debentures are above authorized to be issued, may be funded in such bonds or debentures of even amounts, as the case may require.

Twenty-sixth. The assignees and attorneys acting under this instrument are hereby invested with full power and authority to execute the provisions of this plan; to supply any and every defect, in any and every case which is unprovided for in its terms, and to do anything and everything that is proper in their judgment to carry out its provisions.

Twenty-seventh. The said assignees and attorneys may, in the transaction of business, call themselves "The Committee of Reorganization of the Mobile & Ohio Railroad Company," and, when acting in that name, shall be considered as acting as attorneys, agents, managers, and assignees under this agreement. In the a'justment of their accounts they shall be allowed such payments and expenditures as shall have been made by them in good faith, in the belief of the necessity of making such payments and expenditures for the benefit of the subscribers hereto and for the purpose of carrying this agreement into effect.

Twenty-eighth. All bonds, securities, and evidences of debt, &c., transferred under this agreement, shall be in the first instance deposited for the purposes of this agreement in one or the other of the depositories herein named, or in others selected as authorized by this agreement; and all new securities to be issued by the present corporation, or by a new corporation, shall, in like manner, be deposited with one or the other of said depositories, to be by such depository distributed to the parties entitled thereto, under the order and with the assent and approval of the assignees and attorneys; and in the transmission of either the present or future securities in fulfillment of this agreement, the assignees, attorneys, and depositories, using due diligence, may, in their discretion, insure or otherwise protect such securities at the expense of the fund, and in case of loss shall be relieved from liability.

Twenty-ninth. Any duplicate or other copy of this agreement which shall be subscribed by any holder of the said bonds, securities, liens, claims, judgments or stock, and delivered to and accepted by said assignees and attorneys, shall have like effect as if such signatures were herewith subscribed.

1486 In witness whereof the parties hereto have hereunto set their hands and seals, or otherwise attested the same as the case may require:

Name and address.	Class of bonds, &c.	Amount.

1487 *Schedule annexed.*

FIRST-MORTGAGE BONDS.

1. Sterling bonds, £225 each (by deed of trust stated as "each of said bonds being the same as $1,000"), issued 1853, due 1883.

2. Arrearage interest bonds, B & C, £200 or £100 each, issued 1867, due 1883.

3. Interest bonds, O P Q, $1,000, $500, $200 each, issued in 1866, due 1876.

4. Arrearage interest bonds, F, F$_1$, F 1, F 2, F 3, F 4, $1,000, $500, $300, $100 each, issued 1868, due 1883.

5. Sinking fund gold bonds (Tennessee substitution), £205 or $1,000, issued 1871, due 1901.

6. The interest coupons on the above first-mortgage issues appear by the books of the company to have been paid up to and including those which matured January 1, 1874, leaving outstanding and unpaid all the coupons on the above issues which matured on or after May 1, 1874.

The foregoing principal and interest to be exchanged for first-mortgage bonds and first-preferred income and sinking-fund debentures, as provided by the scheme of reorganization.

SECOND-MORTGAGE BONDS.

Several issues, L, R, S, T, Rr, Ss, Uu, $1,000, $500, $300, $100, and irregular amounts, issued in 1867, 1871, 1872, 1873.

The interest coupons on the above second-mortgage bonds appear, by the books of the company, to have been paid up to and including those which matured March 1st, 1874, leaving outstanding coupons on above second-mortgage bonds from and including those which matured March 1st, 1875. The principal and interest of these to be exchanged for 2nd-preferred income and sinking-fund debentures, as provided by the scheme of reorganization.

CONVERTIBLE BONDS.

Secured next after the above-mentioned first and second mortgages by a mortgage known as the consolidated mortgage; also by a deposit of the stock of the M. & O. R. R., 4 shares for each $100, in trust. Of these bonds, there were issued in irregular amounts $977,550, but of this issue there remain unused by the company $471,000. The interest upon these bonds appears by the books of the company to have been paid up to and including that which matured December 1st, 1874, leaving outstanding, unpaid, the interest from that date. The principal and interest of these convertible bonds to be exchanged for 3d-preferred income and sinking-fund debentures, as provided by the scheme of reorganization.

CONSOLIDATED MORTGAGE.

These bonds have been issued only to a very limited amount, as security to previously unsecured creditors, to give to them, as far as lay in the power of the company, a lien upon the property of the company, after the lien of the first-mortgage, Tennessee substitution, second-mortgage, & convertible bonds above enumerated; the original issue was contemplated to be $15,000,000, for the purpose of consolidating all the previous issues, but none were issued beyond the above amount, and the amount so issued was intended to cover all the floating and otherwise unsecured indebtedness, except judgments against the company.

In the scheme of reorganization they are not recognized.

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FLOATING DEBT AND JUDGMENTS.

The total amount of judgments outstanding appears by the records of the several counties through which the railroad runs to be about $170,000, but from various considerations it is inferred that many of them have been settled, or for other causes are no longer a claim against the company. The receivers are now engaged in examining into this matter. The total amount of floating debt outstanding, exclusive of interest, appears by the books of the company to amount to $538,702.78 (August 1st, 1876).

This may be increased by other unsettled claims, or reduced by realization of securities pledged. The principal and interest of judgments and floating debts is to be exchanged for fourth preferred income and sinking fund debentures, as provided by the scheme of reorganization.

Form of certificate.—Mobile & Ohio Railroad.

CERTIFICATE OF DEPOSIT UNDER AGREEMENT, DATED OCT. 1ST, 1876

This certifies that   , of   , ha   under and pursuant to the terms of agreement between the creditors of the Mobile & Ohio Railroad Company and said company, bearing date the first day of October, 1876, deposited with   , of   , and thereby transferred to W'm H. Hays, W'm S. Pierson, and T. Haskins Du Puy, as provided for by said agreement the following claims against the Mobile & Ohio Railroad Company, viz:

DESCRIPTION OF CLAIMS WITH COUPONS.

Title.	No.	Amount.	Each coupon.	Total No. of coupons.	No. of coupons to be funded under agreement.

Convertible bonds (registered,) &c., &c.	No.	Interest from	Amount.

The said claims so deposited and transferred are held by said depository, subject to the order of said W'm H. Hays, W'm S. Pierson, and T. Haskins Du Puy, and their successors, under and subject to the terms and trusts, and for the purposes and with the rights, powers, and duties expressed in said agreement; and upon the new securities specified in said agreement, being created for distribution in the proportions hereinbelow stated, the bearer hereof, upon presentation and surrender hereof at the depository in Mobile or New York, as required by said agreement, will receive said new securities in exchange for those deposited and transferred hereby:

1485 1. For the principal amount of each sterling first-mortgage bond of £225 each	$440 in new first-mortgage bonds.
And for each coupon thereof up to May 1st, 1877	36 “ “ “
And for coupons maturing November 1st, 1877	6 “ “ “
And also	560 in first preferred income and sinking fund debentures.
2. For the principal amount of each sterling interest arrearage bond B, of £200 each	$440 in new first-mortgage bonds.
And for each coupon thereof up to May 1st, 1877....	36 “ “ “
And for coupons maturing November 1st, 1877.......	6 “ “ “
Also	560 in first preferred income and sinking fund debentures.

Sterling interest arrearage bonds C, of £100 each, and coupons thereof will receive one-half the above, respectively.

3. For each $1,000 of the principal amount of the interest arrearage bonds of O, P, Q, F to F 4	$310 in new first-mortgage bonds.
And for six months' interest coupons on each such principal amount of $1,000 up to May 1st, 1877.........	36 “ “ “
And for such coupons maturing November 1st, 1877..	6 “ “ “
And also for each such principal of $1,000..........	690 in first preferred income and sinking fund debentures.

For small amounts in proportion.

4. For the principal amount of each sinking fund gold bond (Tennessee substitution of $1,000 or £205 each	$626 in new first-mortgage bonds
And for coupons thereof up to January 1st, 1877......	36 “ “ “
And for coupons maturing July 1st, 1877	30 “ “ “
And also	374 in first preferred income and sinking fund debentures.

5. **For the principal amount of each second-mortgage bond L, R, S, T, Rr, Ss, Uu, and the interest coupons thereof up to the 1st day of June, 1877, dollar for dollar, in the second preferred income and sinking fund debentures.**
6. **For the principal amount of each convertible bond, and the interest thereon up to the 1st day of June, 1877, dollar for dollar, in the third preferred income and sinking fund debentures.**
7. **Judgments and floating debts will be settled, as per terms of the agreement in fourth preferred income and sinking fund debentures.**

This certificate is transferable from hand to hand by delivery, without writing at the option of the holder, but the holder may, by endorsement, limit the transferability thereof.

In witness whereof, have hereunto subscribed their names this day of 187 .

Filed with the answer of the Mobile and Ohio Railroad Company in the circuit court of the United States at Mobile, in the case of Dorelli Zeigler et als. vs., said company and others as Exhibit No. 6, and part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol. for D'f't.

Filed June 5th, 1877.

(S'gn'd) N. W. TRIMBLE, *Clerk.*

1490 EXHIBIT NO. 7.

List of the holders of the securities of the Mobile & Ohio Railroad Company who have transferred, assigned to, and deposited with, W. H. Hays, W. S. Pierson, and T. Haskins Dupuy, the committee of reorganization under the agreement, &c., dated October 1, 1876, the several bonds and securities set opposite their names respectively.

N. B.—Bonds of £225, £205, and £200, are estimated at $1,000 each. The principal only is included in this statement. The bonds have attached to them the coupons past due and including the coupons which matured May 1st, 1875, on the sterling and interest arrearage bonds; July 1st, 1875, on the Tennessee substitution bonds; March 1st, 1875, on the 2d mortgage and convertible bonds.

In addition thereto, all past due and unpaid coupons on the total amount of the above issues detached therefrom, and which matured May and November, 1874, and July, 1874, and January, 1875, have been transferred, assigned to, and deposited with the committee.

Total principal amount outstanding.	$5 609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible.
Allen, M'r's A. K	$2,000		$2,000		$425	
Acker, Joel M			3,000		1,500	$650
Billups, J. M	32,000		11,600			
Duncan, Alexander	75,000					
Frankfurter Bankverein	82,000		1,800	$196,000	28,800	
Hays, W'm H	72,000		28,900		132,068	78,000
Plock & Co	172,000		11,400	40,000	166,100	7,525
Plant, H. B., trustee	155,000		110,200			
Rossiter, A., trustee			21,200		45,800	
Sistare, Geo. K			13,600		4,200	1,175

EXHIBIT No. 7—Continued.

Total principal amount outstanding.	$5,609,000	$763,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	**Sterling.**	**Sterling interest.**	**Arrearage interest.**	**Tenn. subt.**	**Second mortgage.**	**Convertible.**
Utley, David	33,000		79,000		20,000	21,175
Wilson & Co., R. T	33,000		3,000		41,300	
Wilson, R. T	24,000					
Shipman, W. D., assignee	6,000		1,000		53,300	78,925
Mason, Alfred	5,000		5,900		6,000	
Iselin & Co., A	51,000		17,900	52,000	50,000	30,000
Lombard, Odier & Co	32,000			1,145,000	5,000	
Baldwin, T. B., trustee	10,000		10,000			
Bond, Geo. W	1,000					750
Birkner, Hy	17,000		8,800			
Birkner, J	8,000				6,000	
Bartlett, Jno. E	23,000	11,040				
Choteau, Cha's P	6,000		3,000		12,025	
Cropsey, H. E	18,000		1,000			625
Crawshay, Robert T	615,000	260,640				
Cartwright, Benj'n			5,000		5,000	
City National Bank, Cairo, Ill			5,000			25,000
Clarke, W'm M					7,000	24,450
Cox, E. A	1,000		8,000			
Campbell, Duncan G	2,000				200	
Cromwell, Caroline L	4,000		2,500			
Do an e, D. G	2,000					1,250
Di on Joshua	15,000	4,800				
Dudley, J. A	3,000		3,500			1,250
Dickerman, M. E			3,000			275
Denio, Israel			2,500			250
Deaton, Ja's C	5,000		2,300			
Morgan, J. S	24,000	13,920				
1491 Drexel, Morgan & Co., for J. S. M			200		3,650	
Crisman, Geo					1,100	
Dow, R. K					4,841	8,000
Field, Marg't	3,000		2,000			1,900
Frazer, Hesse	1,000		4,200			
Trabur, Geo. W	10,000		3,000		3,260	2,500
Gallatin National Bank	31,000		40,000		42,000	
Griffith, Jno. R	2,000		5,700			
Gannett, Alfred			11,500		1,000	
Garnett, E. S			5,500			
Hunziker & Co	4,000				7,000	250
Harbeck, W'm H	67,000		31,000			
Harbeck, Jno. H	24,000		15,000			
Henderson, S. E	2,000		1,000			
Hardy, H. C	11,000		8,000			
Hamilton, Thomas A	4,000		1,100		1,200	
Hamilton, M'r's Peter	3,000		2,000			
Hamilton, Miss A. H	1,000		1,000			
Hays, Jacob					750	10,000
Hildreth, D. M					3,100	
Hildreth, D. M., trustee						
Hopkins, E. W	10,000		1,400			
Isbell, S. A	3,000		500		2,000	
Irwin, L. F	2,000		400			
Jenkins, M'r's S. M	4,000		1,000			
Jenkins, M'r's S. M., ex'r'x	92,000		4,000			
Kinney, G. W. G	2,000		200		700	500
Kettlewell, Rev. Samuel	9,000		5,500			
Krouse, T. J	3,000		1,000			
Ketchum, W'm H	3,000					250
Littlejohn, James	5,000		4,000			
Lynch, George H	7,000		3,000			
Lay, M'r's H. C	11,000		1,000			
Lull, M'r's F. V. A	9,000		3,300			
Lake Bros	2,000		4,000			
Levy, M'r's B. E	3,000		3,000			
Levy, M'r's Sarah	13,000		4,600			
Lyons, Jacob C	24,000		8,500			
Marsh, Hester	18,000 2,000		2,500			1,875
Marsh, Hester, ex'r'x						
Mather, F. E	4,000		2,000			
Maynard, Joseph	17,000	19,200				
Mason, Jac , Betsey C. & Mary C	2,000		1,300			
Maffit, Julia	6,000		2,500		12,100	

Exhibit No. 7—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,267	$476,000
Assignor.	**Sterling.**	**Sterling interest.**	**Arrearage interest.**	**Tenn. subt.**	**Second mortgage.**	**Convertible.**
Moon, Edward	15,000	4,800				
Merrill, D. F	6,000		4,200		2,000	1,375
Murray, est. Donald	8,000		5,300			
Marié, P			25,900		5,000	
McDearman, J. C			500		9,950	
Murdock, A., trustee					3,013	
Merian, A., in trust					4,100	
Morss, D. F	11,000		18,000			
Moore, M'r's L. D			5,000			
Murdock, M'r's Grace A	7,000		4,100		800	125
Nock, Thomas G	2,000		14,000			900
Oelrichs & Co	11,000		6,000			
Peabody, est. of Geo	49,000	18,240				
Phelps, S. F	6,000		3,000		15,000	3,875
Phelps S. F., j'r	1,000		1,000		2,000	
Phelps, S. F., in trust M'r's Lyman						
Pidgeon, Miss H	2,000	960				
Peterson, M'r's Janet	9,000		3,900			
Prior, M'r's Sarah	2,000		400			
Petrie, C			1,500			
Powers, L. H			1,500			
Phipps, P					900	700
Phillippe, A	9,000		2,500			
Parker, Mary A	1,000		500			
Reid, C. C	1,000		1,000			
Reynolds, Jno	6,000					
Robinson, Tho's	110,000	15,840				
Richardson, L. M			5,000		5,500	
Randall, F			4,000		3,200	
Rogers, Tho's					2,000	
Rosengarten, Geo. D	12,000		6,500			
Soule, L. H	3,000		2,000			
Shepard, S	51,000		88,100			
Sprague, D. J	3,000		3,000			
Stutzer, F					5,250	
1492 Stutzer, Herman	15,000				5,000	
Stables, Ja's	21,000		13,000			
Sims, W'm H	2,000				1,000	
Smith, Caroline T			3,500			
Tevrill, Geo	7,000		4,300			
Scott, M'r's Ann G	3,000		500			
Sewall, M'r's J. W			19,000		1,000	
Sherman, M'r's S. M. G					4,800	
Searles, R. R					1,000	1,250
Murdock, A., trustee	2,000		3,100		200	
Tilney & Co., Jno. S					3,425	2,500
Utley, H. G	13,000		6,300		1,250	
Van Dresar, Francis	1,000					875
Van Dresar, Steward	1,000				300	250
Van Dresar, Ezekiel	7,000		7,000			1,250
Van Vranken, M. F	6,000		3,000			
Vedder, estate of N. F			5,000		7,516	
Von Hoffman & Co., L	10,000			2,000	3,300	12,500
Van Dresar, Ezra					2,500	
Wardwell, A. M	10,000		2,000		1,000	3,000
West, M. C	2,000				1,000	500
Westfeldt, Mary E., executrix	2,000		700			
Westfeldt, Mary E	2,000		700			
Wardwell, Cha's H			2,000			625
Wardwell, Samuel			2,000			625
Wardwell, W. W			1,000			1,250
Weiler, Haas & Kraus					691	250
Walker, H. H	2,000		4,000		5,000	
Wesson, S. L	1,000		1,000			
Carter, Jessie	1,000		500			
Howland, M'r's A. W	4,000		1,000			
Samuel, John	5,000		400			
Holmes, L. W	8,000		3,000			150
Winston, A. A	6,000		400			
Martin, G. W					2,200	
Bartlett, Levi			3,000			
Judd, H			1,100		1,000	
Hayes, F. T			500		500	
Whitfield, Gaius			7,000			125
Lyall, Cha's	3,000	4,800				

EXHIBIT No. 7—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible.
Citizens' Insurance Company			500		4,082	
Crawford, A. G			700		1,865	
Crawford, J. L			2,400			
Crawford, estate Jane			3,500			
Monroe, Hugh	19,000		6,500		3,100	
Merrill, D. L	4,000		1,400			
Clemens, Cha's H	4,000		1,000			
Healey, E. W., executrix	8,000		5,500			
Railway Debenture Trust Co	24,000	48,000				
Sheldon, Israel			8,000			
Rossiter, A			900		4,600	
Barton, J. B			14,000			
Southwick, A. B			9,500			
Hays, M. V. E	4,000		7,000			
Tompkins, Mary C	17,000		5,000		26,000	
Brokaw, J. E. K					1,000	
Rawson, Hy	51,000					
Lampson, Sir C. M	75,000	184,320				
Lampson, by C. H. Clark, agent		28,800				
Lampson & Co., by C. H. Clark, agent	5,000	62,400				
Lampson & Co		11,040				
Adrian, M'r's Eliza	1,000					
Anderson, Miss Kate	1,000					
Allen, West & Co					1,000	
Bisschoffscheim, F. R				50,000		
Bisschoffscheim, Fred				25,000		
Bingaman, Levi					500	
Brooks, Leslie E						2,500
Bligh, Milton D	6,000					
Brainard, M'r's M. J	20,000					
Brown, James			6,000			
Boynton, Edward C			5,000			
Birdseye, J			4,000			
Boyd, A. M					1,025	
Brown, W'm Smith					900	
Bronson, Henry	1,000					
Bartlett H. E			1,000			
Cropsey, James, trustee	2,000					
Cochrane & Co	3,000					
Cochrane, Helen	1,000					
Calvert, William W. (N)	1,000					
1493 Campbell, Ella C	1,000					
Closson & Hays						2,500
Closson & Hays, attorneys						2,500
Corish, Ellen					400	
Drummond, D. G	2,000					
Dwight, M'r's C. S	3,000					
Dillaway, George W	4,000					
Duncan, W. B. D., in trust	10,000					
Day, Addison			4,000			
Donnell, Lawson & Co			1,000			
De Rham & Co				1,000		
Davis, James M	1,000					
Cunliffe, E. G						12,500
Eads, Creswell	6,000					
Ellis, A. G						50
Gillespie, A. J						1,250
Gamble, Miss Mary	5,000					
Goodwin, M'r's Caroline	6,000					
Gage, A. S			1,000			
Gurlick, Alexander	1,000					
Havens, E. B	5,000					
Hale, W. B., ex-president	4,000					
Harris, M'r's Mary	5,000					
Hunt, Jacob			1,000			
Howe, W. E			500			
Horton, T. S						550
Henshaw, Jane			8,000			
Hays, Miss Ella			1,000			
Hays, E. St. John					100	
Hays, William H. and Jacob						5,000
Huntington, R. H						875
Hildreth, D. M., trustee	5,000					
Judkins, Charles H. E	8,000					

EXHIBIT No. 7—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible.
Irwin, Mary E	1,000					
Jansen, Gersh					7,000	
Jacob, Angel H	15,000					
Kerr, J. Hutcheson	13,000					
Keegan, Peter	17,000					
Keegan, James	4,000					
King, W. D	5,000					
Kissam, Isabella C			2,000			
Lemon, Archibald D	10,000					
Lee, M'r's S. L	1,000					
Lucas, Sarah A			600			
Lombard, Rev. J. K					1,000	
Mitchell, C. LeRoy			1,000			
Marsh, Hester, executrix						1,875
Moulton, Stephen	5,000					
Marie, P. & Jno. Steward, trustees	11,000					
Meeker, Benjamin	5,000					
Milford, Henry	7,000					
Murray, May E	2,000					
Maxwell, D'r P. J	4,000					
Merritt, James B			200			
Waring, Moses			1,000			
Mack, Jacob W				3,000		
Mason, H. W				2,000		
Marshall, M'r's Ann					2,000	
Murdock, William, executor					1,675	
Mobile Savings Bank					4,000	
McChesney, E. M						775
Merrill, Elizabeth J						250
Mauran, P. B	3,000					
Marmaduke, Leslie	22,000					
Merwin, S. J. M						
Marshall, O. H	17,000					
Nicholson, William			2,000			
Noble, M'r's L. S			500			
Ogden, Hannah M					600	
Overall, G. Y	1,000					
Oliver, Elijah					200	
Oothout, William	10,000					
O'Conor, Charles	15,000					
Orr, James	7,000					
Powell, Alfred H., guardian	1,000					
Perry, Mary H	2,000					
Pfizer & Co., Charles	10,000					
Ravenstedt & Co., Charles	5,000					
Parnell, Delia T. S			3,000			
Pearl, E. G					100	
3494 Phillipe, A., executor						600
Russell, W. T	1,000					
Rowland, Alice J	1,000					
Rogers, P. V	2,000					
Robinson, Joseph	4,000					
Raymer, Henrietta			1,000			
Roberts, E. M			3,000			550
Reynolds, Mary E						
Richmond, Benjamin	1,000					
Forster, J. B., & D. Benson, trustees	7,000					
Whitehead, James	5,000					
Sotolongo, M. E. de	2,000					
Simpson, A			1,000			
Somarindyke, A			10,000			
Spencer, H. D			3,000			
Searles, Ja's H						750
Smith, Sam'l, S. T						1,250
Smith, Chas. S						1,250
Saunders, C. A	20,000					
Sykes, A. J	1,000					
Smith, E. R	1,000					
Stein, Lewis	10,000					
Stoutz Bros						250
Schunemann, Geo. F	1,000					
Shepherd, Geo. W	7,000					
Thomas, Geo			2,000			
Torry, M'r's Lucy			1,000			

EXHIBIT No. 7—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible.
Terry, Curtis B						250
Utley, Squire	5,000					
Utley & Wardwell			1,000			
Wait, N. E						625
Williams, W. T			1,000			
White, Elizabeth H.			2,000			
White, H. L. & Ja's Brown			2,000			
Ware, Eliza					800	
Wood, Ja's D						2,500
Williams, Ja's F						250
Wetmore, Geo. Peabody						6,250
Willett, E. D	3,000					
Walker, Cha's	2,000					
Winder, J. E	2,000					
Winthrop, Jno			2,000			
Quilter, W'm	5,000					
Herrick, J. H	1,000					
Herrick, J. H., trustee	1,000					
Hall, David F	5,000					
King's Sons, Ja's G	10,000					
Shipman, W. D., assignee, W. W. S						300
Scears, Jno	10,000					
Cookson, Joseph	8,000					
Clegg, Francis	3,000					
Coleman, Wiley	10,000					
Crawford, Andrew	2,000					
Crawford, M'r's G. B						1,012
Jones, Eliza	1,000					
Hicks, W'm			3,000			
Kellogg, Mary B			500			
Bienville Lodge No. 348					310	
Garnett, W'm A						775
McMillan, Tho's						275
Perryman, E. S						350
Bromberg, F						250
Crawford, Sallie G			7,600			
Crawford, Marg't L			800			
Goodier, John	6,000					
Gates, W'm						500
Solomonson, Ed	3,000					
Lawson, Jno	1,000					
Lever, Ja's	3,000					
Roberts, Everett						225
Payne, W'm H	1,000					
Whitaker, Rob't	2,000					
Bradshaw, Jonas J	1,000					
Hoyle, W'm, executor	8,000					
Fry, Anna S	1,000					
Morton, Tho's H						300
Morrison, Cha's		72,000				
Pease, E. R	5,000					
Bickham, W'm	5,000					
Scott, Gertrude			600			
Stein, Rob't					1,800	
1495 Phelps S. F., in trust			3,000			
Phelps, S. F., in trust, Mrs. Lyman			5,000			
Cooper, Adele S			5,600			
Thomas, F. H						625
Green, Lewis, 's						100
Bonner & Co., G. T	24,000					39,275
Bonner & Co., Geo. T						
Bonner & Co., G. W. S						2,500
Bonner & Co., Geraldine M					300	
Bonner & Co., D. T., trustee					100	
M. J. Boys					1,500	
Boyd, Mary J			600		2,700	
LeClere, L., by W. B. D., in trust			1,000			
Iselin & Co., for Banque Commescial	3,000			4,000	20,400	3,625
" Lombard, O. & Co.	90,000			7,000		
" Asso. Financiere	50,000					
" Evesque & Co					10,600	

EXHIBIT No. 7—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible.
Iselin & Co., P. au Thalhof				1,000	1,000	
" Victer Jadob, executor	12,000		500			
" A. B. Heussler	6,000					
" P. Massa	9,000					
" M. Handschein	1,000			1,000		
" E. Saladin				8,000		
" A. Rusch	3,000		12,500			
" A. Richard			33,300			
" Rob't Ernst				5,000		
" M'r's A. Iselin				6,000		
" Rod. M				1,000		
" Bory & Holland	10,000					
" B. La Roche	1,000			3,000	5,900	
" Hoirs Slg. Marcel	2,000					
Kennedy & Co., J. S	213,000					
Delafield, L. L., trustee	11,000					
Cutting & Co., R. L., jr						12,500
Campbell, Patrick	8,000	4,320				
Darling, A. B	6,000		1,500			
Evans, M'r's Jno. W	1,000		1,000			
&llen, West & Co			1,000			
Burt, A. P	11,000					
Berry, W. W	12,000					
Barry, M'r's A. R			1,000			
Baldwin, J. G	2,000					
Bestor, Daniel P	5,000					
Brown, John	10,000					
Belmont, August	5,000					
Brown, Jämes M., treasurer	1,000					
Brown' W. H	2,000		4,200			
Bowen, John	5,000					
Billington, John					200	
Brown, N. H	6,000					
Carrigan, James	6,000					
Chears, C. W					100	
Clarke, J. F	1,000					
Clarke, Freeman	9,000		500		2,300	
Curtis, Judson	1,000					
Camack, James	6,000		1,100			
English, J. G	1,000		500			
Elliott, George A			600			
Eldridgz, Oliver					800	
Gibson, Antoinette J	17,000					
Holt, M'r's J. A	3,000					
Hoard, C. B	5,000					
Harbeck, Jno. H., jr	8,000					
Hall, Joshua G., administrator	1,006					
Hays, W. H., for J. B. C. & Co.						5,600
Heineman, M'r's Mildred F	20,000					
Hazard, Ja's B., trustee	2,000		800		200	
Hopkins, E. M						2,500
Humphries, W. D			14,500			
Jacquiemyus, G. Robin				6,000		
Knox, J. C	20,000		0,500		10,000	5,0000
Lussier, Miss Appoline	4,000					
McClellan, Geo. C	10,000					
March, P. S	30,009					
McKay, C. F	2,000		4,300			
Mott, W. F	1,000					
Muldon, Miss Ellen	4,000		1,000		360	2,375
Muldon, Miss Rebecca A	4,000				1,300	2,375
McNeil, Dan'l, executor						25
Murdock, A., by Peoples' Saving C'k	1,030		2,200		1,500	
Myers, Rutherford & Co						5,000
Marks, A. B	5,000		5,000			
1496 Marks, Henry			12,000			
Gtto, W. T., examiner	10,000					
Owen, Miss Eliza	1,000					
Pratt, W. H						200
Quinn, Barney					2,756	550
Reese, M'r's Margaret	4,000		1,000			
Randall, J. K	1,000		200			
Setchwell, Jos					2,105	
Scudder, S. O	6,000		44,300			

EXHIBIT No. 7—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	**Sterling.**	**Sterling interest.**	**Arrearage interest.**	**Tnnn. subt.**	**Second mortgage.**	**Convertible.**
Sinclair, T. M			1,000			
Southern Mutual Ins. Co	10,000		2,900			
Schroeder, H. A	6,000		1,000			
Seybert, Henry, by S. C. Knox						19,000
Seguin, M'r's Anne			6,100			
Thorne, Thomas W			1,000			
Webb, John	3,000					
Whiteemore, & Co	1,000					
Wnitney & Sons					24,200	
Walsh, Miss Kate						250
Walsh, Miss Fannie M						250
McKenzie, A			2,500			
A. Iseliu A Co., for Ed. Koechlin	4,000					
	$3,816,000	$765,120	$1,181,600	$1,558,000	$910,690	$469,925
Cha's L. Young	20,000					
A. Iselin & Co			3,000			
W. Greir	3,000					
J. A. C. Gardner	5,000					
D. & W. Ca.michaell	10,000				2,300	
Titsin Carmichaell	1,000					
D. Carmichaell	1,000		200			
A. Oakman	7,000					
D. Cunningham	6,000					
A. Porteous	2,000					
J. J. Montgomery	4,000					
J. Monroe					10.000	
E' Albbin	2,000					
F. Greer	6,000					
W. Aickin					14,000	
J. Lee					10,000	
H. Greer					6,000	
A. J. A. Lepper	20,000					5,000
W'm Thompson	7,000					
J. S. Hayleton	2,000	8,000				
P. Adderson						
	$3,931,000	$765,13	$1,192,800	$1,558,000	$961,990	$474,925

1497 Filed with the answer of Mobile and Ohio Railroad Company in the circuit court of the United States at Mobile, in the case of Dorelli Zeigler et als. vs. said company and others, as Exhibit No. 7, and part of said answer.

(S'gn'd) GEORGE N. STEWART,
Sol. for D'f't.

Filed June 5th, 1877.

(S'gn'd) N. W. TRIMBLE, *Clerk.*

1498 *Decree as to Iselin and Wilson.*

At a stated term of the circuit court of the United States for the southern district of Alabama, held at the court-house in the city of Mobile, Alabama, on the 6th day of June, 1877.

Present, Hon. Joseph P. Bradley, associate justice, and Hon. William B. Woods, circuit judge.

D'ORELLI ZEIGLER ET AL.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als. } In equity.

Richard T. Wilson and Adrian Iselin, as trustees for the Tennessee substitution mortgage bondholders, so called, come into court, and by their counsel Robert H. Smith, move for leave to withdraw the appearance heretofore entered for them, and to vacate as against them
1499 the order and process to appear, plead, answer, or demur; and that they may be stricken from the bill in this cause, as parties defendants, on the ground that the circuit court of the United States for the western district of the State of Tennessee had, before the filing of this bill, taken jurisdiction of the foreclosure of said Tennessee substitution mortgage, and still has jurisdiction thereof, and on the ground that being citizens of the State of New York, and the property covered by said mortgage being exclusively within the State of Tennessee, this court has no jurisdiction to foreclose said mortgage, or to require said Wilson and Iselin to appear in this cause.

And thereupon all the other parties, by their respective solicitors and counsel, appearing and consenting in open court, it is ordered that the said motion be, and the same is hereby, granted.

(S'g'd)
1500 (Signed) JOSEPH P. BRADLEY,
Circuit Justice.
W. B. WOODS,
Circuit Judge.

Filed June 6th, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1501 U. S. circuit court.

W'M BUTLER DUNCAN ET AL.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als. } No. 90.

MORRIS KETCHUM
vs.
MOBILE & OHIO RAILROAD COMPANY ET ALS. } No. 97.

D'ORELLI ZEIGLER ET ALS.
vs.
MOBILE & OHIO RAILROAD COMPANY ET AL. } No. 102.

The undersigned parties who have proved their claims under the order made by this court in the first above-entitled cause on March 6th, 1876, namely:

STIPULATION—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible.
Sims, W'm H	2,000				1,000	
Smith, Caroline T			3,500			
Tevrill, Geo	7,000		4,300			
Scott, M'r's Ann G.	3,000		500			
Sewall, M'r's J. W.			19,000		1,000	
Sherman, M'r's S. M. G					4,800	
Searles, R. R					1,000	1,250
Murdock, A., trustee	2,000		3,100		200	
Tilney & Co., Jno. S.					3,425	2,500
Utley, H. G	13,000		6,300		1,250	
Van Dresar, Francis	1,000					875
Van Dresar, Steward	1,000				300	250
Van Dresar, Ezekiel	7,000		7,000			1,250
Van Vranken, M. F	6,000		3,000			
Vedder, estate of N. F			5,000		7,516	
Von Hoffman & Co., L	10,000			2,000	3,300	12,500
Van Dresar, Ezra					2,500	
Wardwell, A. M	10,000		2,000		1,000	3,000
West, M. C	2,000				1,000	500
Westfeldt, Mary E., executrix	2,000		700			
Westfeldt, Mary E	2,000		700			
Wardwell, Cha's H.			2,000			625
Wardwell, Samuel.			2,000			625
Wardwell, W. W			1,000			1,250
Weiler, Haas & Kraus					691	250
Walker, H. H	2,000		4,000		5,000	
Wesson, S. L	1,000		1,000			
Carter, Jessie	1,000		500			
Howland, M'r's A. W.	4,000		1,000			
Samuel, John	5,000		400			
Holmes, L. W.	8,000		3,000			150
Winston, A. A.	6,000		400			
Martin, G. W					2,200	
Bartlett, Levi			3,000			
Judd, H			1,100		1,000	
Hayes, F. T			500		500	
Whitfield, Gaius			7,000			125
Lyall, Cha's	3,000	4,800				
Citizens' Insurance Company.			500		4,082	
Crawford, A. G			700		1,965	
Crawford, J. L			2,400			
Crawford, estate Jane			3,500			
Monroe, Hugh	19,000		6,500		3,100	
Merrill, D L.	4,000		1,400			
Clemins, Cha's H	4,000		1,000			
Healey, E. W., executrix	8,000		5,500			
Railway Debenture Trust Co	24,000	48,000				
Sheldon, Israel			8,000			
Rossiter, A			900		4,600	
Barton, J. B			14,000			
Southwick, A. B.			9,500			
Hays, M. V. E.	4,000		7,000			
Tompkins, Mary C.	17,000		5,000		26,000	
Brokaw, J. E. K					1,000	
Rawson, H'y.	51,000					
Lampson, Sir C. M.	75,000	184,320				
Lampson, by C. H. Clark, agent		28,800				
Lampson & Co., by C. H. Clark, agent	5,000	62,400				
Lampson & Co		11,040				
Adrian, M'r's Eliza	1,000					
Anderson, Miss Kate	1,000					
Allen, West & Co					1,000	
Bisschoffscheim, F. R				50,000		
Bisschoffscheim, Fred				25,000		
Bingaman, Levi					500	
Brooks, Leslie E						2,500
Bligh, Milton D	6,000					
Brainard, M'r's M. J	20,000					
Brown, James			6,000			
Boynton, Edward C			5,000			
Birdseye, J			4,000			
Boyd, A. M					1,025	
Brown, W'm Smith					900	

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible.
Bronson, Henry	1,000					
Bartlett, H. E			1,000			
Cropsey, James, trustee	2,000					
Cochrane & Co	3,000					
Cochrane, Helen	1,000					
Calvert, William W. (N)	1,000					
1505 Campbell, Ella C	1,000					
Closson & Hays						2,500
Closson & Hays, attorneys						2,500
Corish, Ellen					400	
Drummond, D. G	2,000					
Dwight, M'r's C. S	3,000					
Dillaway, George W	4,000					
Duncan, W. B. D., in trust	10,000					
Day, Addison			4,000			
Donnell, Lawson & Co			1,000			
De Rham & Co				1,000		
Davis, James M	1,000					
Cunliffe, E. G						12,500
Eads, Creswell	6,000					
Ellis, A. G						50
Gillespie, A. J						1,250
Gamble, Miss Mary	5,000					
Goodwin, M'r's Caroline	6,000					
Gage, A. S			1,000			
Gurlick Alexander	1,000					
Havens, E. B	5,000					
Hale, W. B., ex-president	4,000					
Harris, M'r's Mary	5,000					
Hunt, Jacob			1,000			
Howe, W. E			500			
Horton, T. S						550
Henshaw, Jane			8,000			
Hays, Miss Ella			1,000			
Hays, E. St. John					100	
Hays, William H. and Jacob						5,000
Huntington, R. H						875
Hildreth, D. M., trustee	5,000					
Judkins, Charles H. E	8,000					
Irwin, Mary E	1,000					
Jansen, Gersh					7,000	
Jacob, Angel H	15,000					
Kerr, J. Hutcheson	13,000					
Keegan, Peter	17,000					
Keegan, James	4,000					
King, W. D	5,000					
Kissam, Isabella C			2,000			
Lemon, Archibald D	10,000					
Lee, M'r's S. L	1,000					
Lucas, Sarah A			600			
Lombard, Rev. J. K					1,000	
Mitchell, C. Le Roy			1,000			
Marsh, Hester, executrix						1,875
Moulton, Stephen	5,000					
Marie, P. & Jno. Steward, trustees	11,000					
Meeker, Benjamin	5,000					
Milford, Henry	7,000					
Murray, May E	2,000					
Maxwell, D'r P. J	4,000					
Meritt, James B			200			
Waring, Moses			1,000			
Mack, Jacob W				3,000		
Mason, H. W				2,000		
Marshall, M'r's Ann					2,000	
Murdock, William, executor					1,675	
Mobile Savings Bank					4,000	
McChesney, E. M						775
Merrill, Elizabeth J						250
Mauran, P. B	3,000					
Marmaduke, Leslie	22,000					
Merwin, S. J. M						
Marshall, O. H	17,000					
Nicholson, William			2,000			
Noble, M'r's L. S			500			

STIPULATION—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible
Ogden, Hannah M					600	
Overall, G. Y	1,000					
Oliver, Elijah					200	
Oothout, William	10,000					
O'Conor, Charles	15,000					
Orr, James	7,000					
Powell, Alfred H., guardian	1,000					
Perry, Mary H	2,000					
Pfizer & Co., Charles	10,000					
Ravenstedt & Co., Charles	5,000					
Parnell, Delia T. S			3,000			
Pearl, E. G					100	
1506 Phillipe A., executor						600
Russell, W. T	1,000					
Rowland, Alice J	1,000					
Rogers, P. V	2,000					
Robinson, Joseph	4,000					
Raymer, Henrietta			1,000			
Roberts, E. M			3,000			550
Reynolds, Mary E						
Richmond, Benjamin	1,000					
Forster, J. B., & D. Benson, trustees	7,000					
Whitehead, James	5,000					
Sotolongo, M. E. de	2,000					
Simpson, A.			1,000			
Somarindyke, A			10,000			
Spencer, H. D			3,009			
Searles, Ja's H						750
Smith, Sam'l S. T						1,250
Smith, Cha's S						125
Saunders, C. A	20,000					
Sykes, A. J	1,000					
Smith, E. R	1,000					
Stein, Lewis	10,000					
Stoutz Bros						250
Schunemann, Geo. F	1,000					
Shepherd, Geo. W	7,000					
Thomas, Geo			2,000			
Torry, M'r's Lucy			1,000			
Terry, Curtis B						250
Utley, Squire	5,000					
Utley & Wardwell			1,000			
Wait, N. E						625
Williams, W. T			1,000			
White, Elizabeth H			2,000			
White, H. L., & Ja's Brown			2,000			
Ware, Eliza					800	
Wood, Ja's D						2,500
Williams, Ja's F						250
Wetmore, Geo. Peabody						6,250
Willett, E. D	3,000					
Walker, Cha's	2,000					
Winder, J. E	2,000					
Winthrop, Jno			2,000			
Quilter, W'm	5,000					
Herrick, J. H	1,000					
Herrick, J. H., trustee	1,000					
Hall, David F	5,000					
King's Sons, Ja's G	10,000					
Shipman, W. D., assignee, W. W. S					300	
Scears, Jno	10,000					
Cookson, Joseph	8,000					
Clegg, Francis	3,000					
Coleman, Wiley	10,000					
Crawford, Andrew	2,000					
Crawford, M'r's G. B					1,012	
Jones, Eliza	1,000					
Hicks, W'm			3,000			
Kellogg, Mary B			500			
Bienville Lodge No. 348					310	
Carnet, W'm A						775
McMillan, Tho's						275
Perryman, E. S						350
Bromberg, F						250
Crawford, Sallie G			7,600			

STIPULATION—Continued.

Total principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$176,000
Assignors.	Sterling.	Sterling interest.	Arrearege interest.	Tenn. subt.	Second mortgage.	Convertible.
Crawford, Marg't L			800			
Goodier, John	6,000					
Gates, W'm						500
Solomonson, Ed	3,000					
Lawson, Jno	1,000					
Lever, Ja's	3,000					
Roberts, Everett						225
Payne, W'm H	1,000					
Whitaker, Rob't	2,000					
Bradshaw, Jonas J	1,000					
Hoyle, W'm, executor	8,000					
Fry, Anna S	1,000					
Morton, Tho's H						300
Morrison, Cha's		72,000				
Pease, E. R	5,000					
Bickham, W'm	5,000					
Scott, Gertrude			600			
Stein, Rob't					1,800	
1507 Phelps, S. F., in trust			3,000			
Phelps, S. F., in trust, M'r's Lyman			5,000			
Cooper, Adele S			5,600			
Thomas, F. H						625
Green, Lewis, s'r						100
Bonner & Co., G. T	24,000					39,275
Bonner & Co.; Geo. T						2,500
Bonner & Co., G. W. S					300	
Bonner & Co., Geraldine M					100	
Bonner & Co., G. T., trustee M. J. Boys					1,500	
Boyd, Mary J			600		2,700	
LeClerc, L., by W. B. D., in trust			1,000			
Iselin & Co., for Banque Commerciale	3,000			4,000	20,400	3,625
" Lombard, O. & Co	90,000			7,000		
" Asso. Financiere	50,000					
" Evesque & Co					10,000	
" P. au Thalhof				1,000	1,000	
" Victor Jacob, executor	12,000		500			
" A. B. Heussler	6,000					
" P. Massa	9,000					
" M. Handschein	1,000			1,000		
" E. Saladin				8,000		
" A. Rusch	3,000		12,500			
" A. Richard			33,300			
" Rob't Ernst				5,000		
" M'r's A. Iselin				6,000		
" Rod, M				1,000		
" Bory & Holland	10,000					
" B. La Roche	1,000			3,000	5,000	
" Hoirs Sig. Marcel	2,000					
Kennedy & Co., J. S	219,000					
Delafield, L. L., trustee	11,000					
Cutting & Co., R. L., j'r						12,500
Campbell, Patrick	8,000	4,320				
Darling, A. B	6,000		1,500			
Evans, M'r's Jno. W	1,000		1,000			
Allen, West & Co			1,000			
Burt, A. P	11,000					
Berry, W. W	12,000					
Barry, M'r's A. R			1,000			
Baldwin, J. G	2,000					
Bestor, Daniel P	5,000					
Brown, John	10,000					
Belmont, August	5,000					
Brown, James M., treasurer	1,000					
Brown, W. H	2,000		4,200			
Bowen, John	5,000					
Billington, John					200	
Brown, N. H	6,000					
Carrigan, James	6,000					
Chears, C. W					100	
Clarke, J. F	1,000					

STIPULATION—Continued.

Totel principal amount outstanding.	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. subt.	Second mortgage.	Convertible.
Clarke, Freeman	9,000		500		2,200	
Curtis, Judson	1,000					
Camack, James	6,000		1,100			
English, J. G	1,000		500			
Elliott, George A			600			
Eldridge, Oliver					800	
Gibson, Antoinette J	17,000					
Holt, M'r's J. A	3,000					
Hoard, C. B	5,000					
Harbeck, Jno. H., j'r	8,000					
Hall, Joshua G., administrator.	1,000					
Hays, W. H., for J. B. C. & Co						5,000
Heineman, M'r's Mildred F	20,000					
Hazard, Ja's B., trustee	2,000		800		200	
Hopkins, E. M.						2,500
Humphries, W. D.			14,500			
Jacquiemyus, G. Robin				6,000		
Knox, J. C	20,000		9,500		10,000	5,000
Lussier, Miss Appoline	4,000					
McClellan, Geo. B	10,000					
March, P. S	30,000					
McKay, C. F	2,000		4,300			
Mott, W. F	1,000					
Muldon, Miss Ellen	4,000		1,600		300	2,375
Muldon, Miss Rebecca A	4,000				1,300	2,375
McNeil, Dan'l, executor						25
Murdock, A., by Peoples' Saving B'k	1,000		2,200		1,500	
Myers, Rutherford & Co						5,000
Marks, A. B	5,000		5,000			
Marks, Henry			12,000			
Otto, W. T., examiner	10,000					
Owen, Miss Eliza	1,000					
Pratt, W. H						200
Quinn, Barney					2,756	550
Reese, M'r's Margaret	4,000		1,000			
Randall, J. K	1,000		200			
Setchwell, Jos					2,195	
Scudder, S. O	6,000		44,500			
Sinclair, T. M			1,000			
Southern Mutual Ins. Co	10,000		2,900			
Schroeder, H. A	6,000		1,000			
Seybert, Henry, by J. C. Knox						10,000
Seguin, M'r's Anne			6,100			
Thorne, Thomas W			1,600			
Webb, John	3,000					
Whittemore & Co	1,000					
Whitney & Sons					24,200	
Walsh, Miss Kate						250
Walsh, Miss Fannie M						250
McKenzie, A			2,500			
A. Iselin & Co., for Ed. Koechlin	4,000					
	$3,816,000	$765,120	$1,181,600	$1,558,000	$919,690	$469,925
Cha's L. Young	20,000					
A. Iselin & Co			3,000			
W. Grier	3,000					
J. & C. Gardner	5,000					
D. & W. Carmichaell	10,000				2,300	
Titsin Carmichaell	1,000					
D. Carmichaell	1,000		200			
A. Oakman	7,000					
D. Cunningham	6,000					
G. Porteous	2,000					
J. J. Montgomery	4,000					
J. Monroe					10,000	
E. Gibbin	2,000					
F. Greer	6,000					
W. Aickin					14,000	
J. Lee					10,000	
H. Greer					6,000	
A. J. A. Lepper	20,000					5,000
W'm Thompson	7,000					
J. S. Hazleton	2,000		8,000			
P. Anderson						
	3,931,000	765,120	1,192,800	1,558,000	961,990	474,925

1509 **UNITED STATES OF AMERICA,**
Southern District of New York, to wit:

William H. Hayes, William S. Pierson, and T. Haskins DuPuy, being severally sworn, do depose and say and each for himself says that the foregoing schedule is a correct and accurate list of the securities issued *issued* by the Mobile and Ohio Railroad Company, transferred to these deponents as a committee of reorganization under an agreement dated October 1st, 1876, a copy of which is hereto attached; said list containing the names of the assignors, and the par value or amount of the several securities transferred to these deponents by said assignors respectively.

(S'gn'd) W. H. HAYS.
" W'M S. PIERSON.
" T. HASKINS DUPUY.

Subscribed and sworn to before me this 23rd day of May, 1877.
(S'gn'd) JOSEPH GUTMAN, J'R,
United States Commissioner, Southern District New York.

Do hereby place on file the waiver of their objections to the allowance of the coupons of 1874 as a part of the first-mortgage debt, and their consent that such coupons may be paid with interest out of the proceeds of sale prior to any other claim secured by said mortgage, and we adopt and approve the acts and doings of Duncan and Elliot as trustees.

Dated Mobile, June 5th, 1877.
(S'gn'd) F. N. BANGS,
Solicitor & of Counsel for said parties.

1510 Filed June 5th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1511 United States circuit court, southern district of Alabama.

W. BUTLER DUNCAN AND A. FOSTER ELLIOT, trustees,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al.

MORRIS KETCHUM, SURVIVING TRUSTEE,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al.

D'ORELLI ZEIGLER ET AL.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al.

BRADLEY, J. In the case of the Mobile and Ohio Railroad Company, in which the various suits were consolidated, we have given the subject discussed a good deal of consideration, and have prepared the following opinion:

The consolidation of these cases by agreement of the parties has relieved us from the necessity of deciding between the conflicting claims of the two sets of trustees. Both being before the court, as well as the parties beneficially interested, we can make a decree by which a sale of the mortgaged property will be valid, and confer a good title. We are also relieved from making any adjudication in reference to the claim of priority of the Tennessee substitution bonds, which, by like agreement of the parties, is submitted to the consideration of another court.

The only question of importance remaining in the causes as now consolidated is, whether the interest coupons which became due in May
and November, 1874, on the first-mortgage bonds, are valid and
1512 outstanding securities, entitled to payment out of the proceeds of
the mortgaged premises pari passu with the bonds from which they were severed, or even prior to said bonds, or whether they are to be deemed to have been paid and satisfied. The holder of these coupons (they not having been cancelled) contends that they were purchased from the original holders thereof, and were not paid, and that by virtue of such purchase he is entitled to the full benefit of the mortgage security, and even to priority of payment over the coupons subsequently maturing, and over the principal of the bonds; and if not entitled as purchaser, that he is at least entitled to be subrogated to the rights of the original holders, as if the coupons had never been paid.

The coupons in question were regularly presented for payment at the proper places appointed for that purpose, at or soon after the time when they became due; but the money due thereon was not received by the parties holding the same in the usual manner, at the place of presentment; but after being examined they were enclosed in a sealed envelope and endorsed with a memorandum of the number and amount, and returned to the holder or his agent, with directions to present them at some neighboring banking-house, where they would get the money. It is claimed that they were not paid by the railroad company, but that Duncan, Sherman & Co. advanced the money on them with intent to hold them as subsisting securities, and that the holders consented thus to dispose of them. Parties contesting the validity of the coupons as an outstanding claim insist that they were in fact paid by the company, or with funds procured by it for the purpose, and that the holders did not consent to a sale of them, and that Duncan, Sherman & Co. at all events are estopped from setting up a claim to them as purchasers.

The right of the contestants to appear and oppose the claim of the present holders of these coupons is questioned. It is said that having come before the master and proved their own bonds without making objection to the coupons which were also presented and proved before the master, they are now precluded from raising objections to them. The statement is not precisely accurate. One of the contestant bond-
holders at least did present objections before the master (which
1513 objections were adopted and presented by the complainants as
trustees of the mortgage), and others have since been permitted to appear as defendants in the cause, and file an answer, which they have done, raising the very issue. In addition to this, the trustees of the second mortgage filed an answer disputing the validity of the coupons. We think, therefore, that the issue has been distinctly and properly raised.

In the administration by a court of equity of a common fund subjected to the equal benefit of many creditors, if one creditor objects to the claims of another creditor and succeeds in showing it to be invalid, such claim does not stand good as against other creditors who interpose no objection to it. The opposition of one enures to the benefit of all. It questions the right to participate in the common fund. If the other creditors, not opposing the claim, expressly waive all objections to it as to themselves, and consent that it shall participate, such waiver and consent can only affect the proportion of the fund to which they would be entitled if the disputed claim were excluded. It comes in for a portion of their share by equal participation with themselves. This proposition is so obvious that it needs no argument to support it. Waiver of objections to a claim is no proof of its validity except as against those who make the waiver. The waiver filed in this case, therefore, cannot have the effect of proof that the coupons in question were purchased by Duncan, Sherman & Co., except by way of estoppel as against those who filed it. The questions raised by the contestants, therefore, are properly raised, and must be met; and in considering these questions, it is necessary to inquire into the precise position which Duncan, Sherman & Co. occupied towards the company.

It appears from the evidence that they had for some time previous to May, 1874, been the general financial agents of the Mobile and Ohio Railroad Company, and were interested in its capital stock and its various classes of securities, to wit, first-mortgage bonds, second-mortgage and other bonds, and also in its floating debt. They made the arrangements for the current funds necessary to meet its various liabilities from time to time, and in short may be said to have carried the concern for a
1514 considerable period. W'm B. Duncan, the head of the firm, was for several years a director of the company, and in April, 1874, he became its president, and was invested with the most plenary control of all its financial affairs. By resolutions of the directors, adopted in April, 1874, after Mr. Duncan was elected president, he, as such, was in vested with full discretion over the available securities held and owned by the company, in consolidated bonds, convertible bonds, first and second mortgage bonds and stock, and was authorized to sell or hypothecate the same; and the net earnings of the company were pledged for repayment of advances made by him for the purpose of meeting the May interest; and the consolidated bonds were pledged as a security for the floating debt. The truth is, the whole financial operations of the company were under the control and passed through the hands of Duncan, Sherman & Co., both in 1873 and 1874, and up to the time of its open suspension in May, 1875.

The resources which thus came into their hands were derived from the earnings of the road, the disposable securities and stock of the company, and the temporary loans that were made from time to time. It appears from the annual report of the company for the year 1874 (the year in question) that its net earnings for that year were $708,000, and the sales of bonds (mostly convertible) amounted to $94,000, making a total of $802,000. The contestants in this case contend that these sums were sufficient to have kept down and paid the interest of the first mortgage bonds and most of the other outstanding bonds of the company. This is true. The annual interest of the first mortgage bonds (including the Tennessee substitution bonds) was about $730,000, and of all the bonds together about $880,000.

But there was a large floating debt, which, at the close of 1873, amounted, according to the annual report for that year, to the sum of $1,451,147.77, of which Duncan, Sherman & Co. held about $191,000. They had during the year loaned to the company on its notes $150,000, which had not been reimbursed, and the balance due them on general account at the close of the year was over $41,000. This loan was made to enable the company to keep up the payment of its interest and to meet its current obligations. The floating debt was kept along 1515 by renewals and by pledging various securities of the company as collateral. During the year 1874 it was reduced about $282,000, and as a part of this reduction Duncan, Sherman & Co. reduced their own debt $174,000, bringing it down to about $17,000. That is, they reimbursed themselves their temporary loan, with interest, amounting to $160,000, and about $14,000 on their general account.

The contestants complain that this reduction ought not to have been made, especially so much of it as applied to the debt due to Duncan, Sherman & Co. They say that by the resolution of April, 1874, the earnings of the road were pledged for the May interest (which is the interest represented by one-half of the coupons in question), and that at all events this interest should have been paid. They also insist that the same considerations apply to the November interest. They contend that this was a specific appropriation of these funds, and that Duncan, Sherman & Co., occupying the fiduciary relations towards the company which they did, were bound in equity to carry it out, and had no right to assume the role of purchasers of those coupons. This position will presently be considered.

Besides reducing the principal of the floating debt, as before mentioned, the sum of $118,346 was absorbed in paying interest thereon, for the purpose of extending it and preventing the sacrifice of collaterals; the sum of $139,296 was used to pay over-due coupons of the previous year, and $128,000 to pay interest on convertible and other bonds; besides which, some of the assets were uncollected, amounting, in excess of what was realized from those of 1873, to $47,726; and the sum of $45,000 was paid on the Oktibbeha branch. These items together amount to $478,368; and with the amount paid on the principal of the floating debt, made an aggregate of $763,000. Various other claims in judgment, and otherwise, absorbed the balance. It is not pretended that any portion of the bonded interest accruing in 1874 (except as above stated) was paid by the company, unless the payment hereafter mentioned is to be regarded in that light. The only resources which the company had were actually disposed of as above stated.

1516 In this state of affairs it was evident that the company was in a failing condition. Its net income from the road (which was its only real resource) was insufficient to pay the interest on its funded debt, to say nothing of its floating debt. The great mass of its property was primarily liable to its first mortgage bondholders. If subjected to an indiscriminate scramble of judgment creditors, the rolling-stock and outside property would be sacrificed and scattered, and the whole security would be ruined. What was to be done? The first mortgage bonds were not due, and if the earnings were applied to the payment of the interest accruing on them, the bondholders could not take possession of the property, nor bring a suit for foreclosure. At the same time, other creditors were clamorous for every cent which could be realized. Duncan, Sherman & Co. conceived the idea of purchasing the coupons with their own funds, or funds provided by them for the purpose, perhaps in the hope of preserving the credit of the company until a change for the better should enable it to avoid ultimate bankruptcy. It is evident, moreover, that this would place it in their power, if the resources of the company should continue inadequate to redeem the coupons, to take proceedings for administering on the property for the protection of the bondholders, and of putting the company into a course of liquidation.

The mode of carrying out the plan of purchasing the coupons was this: Funds were furnished, or provided for, by Duncan, Sherman & Co. in some bank near the usual place of payment for the purpose of taking up the coupons on their account. When presented for payment by the holders the course pursued is stated by the master in his report, as follows:

"As to the mode and manner the evidence is very complete. For instance, the coupon holders who presented them for payment at the company's office in Mobile, were handed back their coupons after they had been verified or counted by the treasurer or his assistant, and placed in envelopes endorsed with memoranda of the number and amounts, and the holders were told to take them to the Bank of Mobile, where they would be paid. On presentation at said bank to the teller, the coupons
were retained by the bank officer and the bank's cheques or mon-
1517 ey were given for them. The mode and manner of payment in
London and New York was not the usual mode. In London the coupons for May, 1874, were taken up on instructions from Duncan, Sherman & Co., by the Union Bank, and for November by the Credit Foncier. In New York the evidence is that they were not paid in the usual manner, and that the holders were informed that they were being purchased and held uncancelled.

* * * * * * *

"Evidence was adduced to show that a portion of the original owners did not know that the company was not paying. It appears that some did not know and did not inquire. Others did and were fully informed. Payment was not made at the treasurer's counter as usual. It appears that all who inquired were informed of the nature of the payment. There was evidence to show that a written notice was posted up in view of the treasurer's office. The evidence is full that the purchasing agencies and the officers of the company fully understood the transaction. Evidence offered to show that the matter was kept secret, failed."

The master further finds as follows:

"The proof is full as to the intent of Duncan, Sherman & Co., and their agents, the Bank of Mobile, Credit Foncier, &c., with the assent of the company, not to pay or satisfy said coupons so as to extinguish them, but, on the contrary, their plainly expressed intention was that they should be purchased and remain uncancelled with all the rights that purchasers would have. Their taking up the coupons without extinguishment was with the consent of the company, by the express agreement with its officers that they were to be purchased with all lien rights as existing mortgage security preserved and held until the company could pay them."

These findings of fact have been excepted to by the contestants; but after a careful examination of the evidence we think they are substantially correct.

Now upon this state of facts several questions arise.

First. Were Duncan, Sherman & Co. precluded from purchasing the
coupons by the relation in which they stood to the company?
1518 We do not see that this can be successfully maintained. As
financial agents of the company and general managers of its pecuniary concerns (William B. Duncan being the chief executive officer), it is undoubtedly true that they were bound to observe entire good faith. Had they been furnished by the company with the requisite means to pay the coupons, it would have been acting in bad faith towards it to have purchased the coupons in this manner, without the company's consent; and, under such circumstances, even to have purchased them with its consent, and kept them on foot, for the purpose of getting possession of the company's property, would have been a fraud upon other parties interested in that property. But the requisite funds

were not furnished by the company. Money enough was furnished, it is true, to have paid these particular coupons, by leaving everything else unpaid. But the company was overwhelmed with floating debt, and creditors were pressing to be paid. Securities to a large amount had to be pledged as collateral to prevent instant prosecution; and debts had to be extended by payment of interest to prevent the sacrifice of the securities. Duncan, Sherman & Co. cannot justly be condemned for paying these pressing obligations as far as the money in their hands would go. Immediate bankruptcy would have resulted from a contrary course. It is true the resolution of April pledged the earnings of the road for the advances obtained by the president for the purpose of meeting the May interest; but this pledge was only made for his security, and did not prevent him from paying other debts with such earnings if he found it expedient and for the company's interest to do so. And even if the company could have insisted on such an appropriation, it did not, but assented to his purchasing the coupons instead of paying them.

As to Duncan, Sherman & Co. paying their own temporary loan to the company, it does not appear but that they had claims of the highest equity to be paid. They had made this loan to enable the company to pay its interest. It was a confidential debt for a loan made to relieve the company from its pressing embarrassments.

Secondly. Was the transaction, as it actually occurred, a pur-
1519 chase of the coupons? It is insisted by the claimant that his
possession of the coupons uncancelled is prima facie evidence of his title to them, with all the rights of a purchaser. So it would be if the evidence did not disclose the exact nature of the transaction. Whilst he has possession we know how he got that possession, or, rather, we know how Duncan, Sherman & Co. got it; and it is conceded that the present holder, having obtained them after maturity, is affected by the consequences that attach to the transaction. If they were paid, he cannot hold them as unpaid. He has the same title to them which Duncan, Sherman & Co. acquired, and no greater.

Then was it a purchase? We are clearly of opinion that there was no purchase, unless there was an intent on the part of the original holder to sell. This is almost a self-evident proposition. And where, as in this case, a sale as compared with payment is prejudicial to the holder's interest by continuing the burden of the coupons upon the common security, and lessening its value in reference to the balance of the debt, the intent to sell should be clearly proved. Such an intent may be inferred, however, when the holder has actual notice that purchase, and not payment, is being made, and when, having such notice, he consents to take his money. So the same result will follow if the holder acquiesces in the transaction, on being subsequently informed that payment was not made by the debtor company, but was made by a third party intending to purchase the coupons and keep them, subsisting and uncancelled. In such case the holder would undoubtedly have a right to repudiate the transaction, and demand possession of his coupons by returning the money received for them. But not doing this he will be presumed to acquiesce in their transfer.

In the present case many of the parties had actual notice of the nature of the transaction; and all who inquired, were informed in relation to it. The circumstances of the payment were calculated to excite inquiry. The coupons were not paid in the usual manner, by the officers or agents of the company, at the place designated for payment; but, after examination, were sealed up in an envelope and the holder was

directed to go elsewhere to get his money. At the place to which he was directed to go he received it, and delivered up his coupons.
1520 They were not delivered up to the company. This was an indication that they were not to be cancelled. The great advantage to the holder of payment by the company would have been the cancellation of the coupons, so as to diminish the burden on the mortgage security. But he delivered his coupons to a third party, who furnished him the money for them. He ought to have known that that party, whether the bank itself, or some person by whom it was employed, and furnished with funds, would at least keep the coupons for its security until the company could pay them.

We think that this was notice to the holder, at least sufficient notice to put him upon inquiry. It may not have been, and we think it was not, sufficient notice to bind him absolutely to a contract of sale. He might still have repudiated the transaction by returning his money. But it was certainly sufficient to put him upon inquiry; and his subsequent acquiescence confirmed the title of Duncan, Sherman & Co., whose money he received. Had any other parties than Duncan, Sherman & Co. placed themselves in the gap, as they did, and taken up the coupons with their own funds, hardly a doubt would have been raised as to their title to keep the coupons until they were reimbursed.

In our judgment, therefore, Alexander Duncan, who obtained the coupons from Duncan, Sherman & Co., is justly entitled to hold them as subsisting demands against the mortgage security.

But the claim put forward, that these coupons are entitled to priority over the principal and over coupons subsequently maturing, we regard as utterly untenable. This would be giving to coupons a far greater sanctity than justly belongs to them. They are created as a mere matter of convenience for collecting the interest. According to them, the additional quality of being severed from the bond and of being passed from hand to hand, does not clothe them with any additional privileges prejudicial to the bond itself. They have no preference or priority over it, any more than unpaid installments of interest would have if there were no coupons to represent it. They all stand, as to the security, on the same platform of equality with the principal, un-
1521 less the mortgage or deed of trust contains some provision to the contrary, which is not the case here. (Dunham vs. Railway Co., 1 Wall., 254.) And this is so whether the principal is due or not. It is suggested that the holder of the coupons may cause the mortgage to be foreclosed and the property to be sold to obtain payment. But he cannot do this to the prejudice of the principal. He must bring in the bondholders, who are equally entitled to the benefit of the common fund. The latter are not obliged to stand by and see the entire security taken from them at the instance of the owner of the coupons. Where a common fund is equally liable as a security for various claims, it can only be administered for the benefit of all; and this, whether they have all matured or not. It is true the bondholders themselves, when they have not parted with their coupons, or when an installment of interest or principal not represented by coupons is due, may foreclose and sell the whole security for the satisfaction of the amount due, and thus deprive themselves of security for the residue of the debt. But that is because the matter is all in their own discretion, and no other person is injured by their acts. But it does not follow that the holder of separated coupons can do likewise. Equity will not allow him to pursue the entire security, or any part thereof, to the prejudice of other parties equally interested in it.

The conclusion to which we have come as to the right of Duncan, Sherman & Co. to hold the coupons by purchase, renders it unnecessary to discuss the question of subrogation, so ably argued by counsel. Whilst we are inclined to think that, as holders of junior securities, Duncan, Sherman & Co. would have been entitled to pay the coupons and hold them by way of subrogation, we are not prepared to concede that this would have placed them on equality with the bondholders. No one can deprive the creditor of his security or any part of it, without his consent, until his whole debt is satisfied. Sureties and others entitled to the privilege of subrogation, paying only part of the debt, must be postponed to the creditor until they are in a position to demand all his securities.

We observe that many exceptions have been taken to the report of
the master and to his rulings in the course of the examination
1522 before him, which we have not yet mentioned. We have examined these exceptions, however, but from the view of the case which we have taken, we do not consider them to be material.

A decree should be rendered in the cause in conformity with the views expressed in this opinion, that is to say, that Alexander Duncan is entitled to come in on an equal footing with the first-mortgage bondholders for the amount of the first-mortgage coupons held by him, including in the term "first-mortgage bonds" all bonds which are ranked by the master in his report as belonging to the category of first-mortgage bonds, such as ten year interest bonds, &c., so far as they represent coupons actually unpaid, excepting, however, the Tennessee substitution bonds, which are not passed upon by us, and are not to be affected by the decree, but which are to take their rank of priority according to the decision of the court which has cognizance of the controversy relating to said bonds; also, that the mortgaged premises should be sold as an entirety to pay and satisfy, first, the said first-mortgage bonds and coupons, and then the other securities of the company in the order reported by the master, saving and excepting the rights of the holders of the Tennessee substitution bonds as before provided. Also, that masters should be appointed to make the said sale and to execute the decree; and that the sale should be duly advertised by them and fixed to take place on the   day of   next; and that upon such sale being made, first-mortgage bonds and first-mortgage coupons should be received in payment in place of cash when tendered for that purpose, except the sum of   dollars to pay the costs and expenses of the various litigations, and the expenses and compensation of the commissioners, reserving for further order the status of the said Tennessee substitution bonds in respect to said sale.

Provision should also be made in the decree for executing all proper deeds and conveyances necessary to perfect the title; and all further equities and directions necessary to be made between the parties, or with regard to the mortgage fund, are to be reserved at the foot of the decree.

The counsel of the complainants in the original suit will prepare
a draft of the decree, and submit it to the opposite counsel,
1523 before presenting it to the court, in order that if the terms be
not agreed upon they may be then determined.

Woods, circuit judge, concurring.

For complainants, in case of Duncan and Elliot vs. The Mobile and Ohio Railroad Company et als., John A. Campbell, Peter Hamilton, F. N. Bangs, and J. A. Garfield.

For Mobile and Ohio Railroad Company, George N. Stewart.

For other defendants, W. G. Jones, Geo. Hoadly, E. H. Grandin, and E. L. Andrews.

1524 *Decree.*

Circuit court of the United States, fifth judicial circuit, southern district of Alabama.

W. BUTLER DUNCAN AND A. FOSTER ELLIOT
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL.

MORRIS KETCHUM
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL.

D'ORRELLI ZEIGLER ET AL.
vs.
MOBILE AND OHIO RAILROAD COMPANY AND others.

Decree made June 15, 1877.

These causes having been consolidated and set down for a hearing at the same time, under the order of this court, to be disposed of by the same decree, came on to be heard upon the pleadings, exhibits, orders, reports, exceptions, and the testimony taken in the cause as taken before the master, and were argued by counsel, and thereupon the court, upon consideration of the premises, declares, orders, and decrees—

1. That the reports submitted by the master under the orders and directions to him are confirmed, and all the exceptions to the same are overruled.

2. The court declares and decrees the deed of trust described in the bill executed by the Mobile and Ohio Railroad Company, dated the first of November, 1852, and appointing John J. Palmer, W'm R. Hallett and Morris Ketchum, the survivors and successors of them, as trustees, is a valid conveyance of the railroad of the said corporation and of all the property therein mentioned for the security of the
1525 uniform series of first-mortgage bonds and the interest to accrue thereon therein set forth, and that the said bonds and coupons, including the coupons which became due on the first of May and November, 1874, represented as owned by Alexander Duncan, are secured equally and to be ratably paid from the proceeds of the property without priority or preference among them.

3. The court declares and decrees there was a default on the part of the corporation aforesaid in the payment of the installments of interest promised to be paid in May, 1874, also in November, 1874, and successively in May and November since that date, and that a title accrued to the trustees under the same deed therefrom, to enter into possession of the property and to obtain a decree for the sale of the property therein described, to be enforced unless the said corporation shall pay the debt which has been ascertained to be due on the said deed of trust by the master's report in this cause.

4. The court orders and decrees that the defendants to this cause, to wit, the trustees in the second and the other deeds of mortgage of a date subsequent to that of the mortgage described in the bill as the first

mortgage, pay into the registry of this court, on or before the first day of August next, the amount of the debt ascertained to be due on the deed of trust by the master and reported to the court, and in case of any default on their part, that their equity of redemption shall be henceforth barred and foreclosed.

5. The court orders and decrees that the Mobile and Ohio Railroad Company be authorized to pay into court the amount ascertained to be due upon the reports of the master on or before the first day of August next, together with all costs in the cause, and in case of a compliance with this order, that further proceedings on this decree shall be suspended.

6. In case of a failure to make the payment as provided in this decree at the time appointed, to wit, the first day of August next, the court orders James Gillette, the master heretofore appointed in this cause, and Thomas H. Herndon, who is hereby appointed special master
for the purpose, to advertise the property described in the said
1526 deed of trust of the date of the first day of November, A. D. 1853,
as aforesaid, and all property and franchises and rights comprehended in its terms for sale, at public auction, in bulk and as an entirety, for cash, to the highest bidder, on some day to be designated by them in the advertisement of sale; the sale will be made in front of the custom-house, in the city of Mobile, between the hours of noon and 3 o'clock p. m. They will advertise the sale in a daily paper published in Mobile, and in two daily papers published in the city of New York, for eight weeks prior to the day of sale. They will appoint a cryer before the sale, whose fee shall not exceed one hundred dollars. The master will attend the sale in person and take care that it be fairly and regularly conducted, and with proper regards to the rights of all persons. The master shall exact from any bidder, before making an adjudication to him, a deposit of the sum of fifty thousand dollars in money, to defray the costs, expenses, and charges incident to the trust, and a further deposit of one hundred thousand dollars in money or of the bonds or coupons described in the said deed of trust and master's report as a part of the debt secured by the said deed, and in case of his refusal, the masters may reject the bid thus made, and proceed with the sale as if the bid had not been made; in case of any failure of a bidder to comply with the terms of sale, and the masters shall find that the bidder will not or cannot comply, they may make a resale on the day of the sale at the same place, or they may give notice that on the day following, between the same hours of 12 noon and 3 p. m., they will make a sale also at the same place under the decree according to its conditions; and they shall have power to adjourn the sale for thirty days, to be made at the same place, by adding a note to the advertisements for that purpose, should they deem that course advisable, and by causing publication of said advertisements to be continued in the same papers until the day of sale.

7. The court orders and decrees that the masters may receive in payment, from the highest and last bidder, bonds and coupons which form a part of the first-mortgage debt ascertained to be due or owing by the master in his report, and sustained by the opinion of this court; provided, however, that a sum sufficient to pay the costs, charges,
1527 and expenses of the trust as above mentioned, whether exceeding the said cash deposit or not, and also to provide for the payment of the pro rata dividend which shall be due or owing to the owners of other bonds and coupons secured under the deed of trust, must be paid in money, and provided also that if the said mortgage property shall be bid off, directly or indirectly, by, for, or in behalf of the bond-

holders and creditors who have or shall have entered into and subscribed the agreement for the readjustment of the securities of said company, dated October 1, 1876, commonly called the agreement of reorganization, then and in that case all and every bondholder and creditor of said company not having already entered into and subscribed said agreement, who shall, on or before the first day of September next, enter into and subscribe the same and deposit their securities with the Farmers' Loan and Trust Company, in the city of New York, or with the Bank of Mobile, in the city of Mobile, as provided by said agreement, shall be, and they are hereby, allowed to participate in said bid and purchase on the same terms and on an equal footing in all respects, according to the character of their claims respectively, with the said bondholders and creditors who have heretofore entered into and signed said agreement.

8. The court orders and decrees that the masters shall make their report of the sale and proceedings connected with the same, and of the performance of the contract by the purchaser, and shall report a draft of a deed of sale under this decree, to be executed by themselves, and shall file the same with the report and their signature thereto, all of which shall be subject to the final order of confirmation. The masters, in addition to the deed to be executed by them, shall prepare a deed of confirmation of the sale and of the conveyance executed by them, and a release of all claim on the property as trustees, or otherwise, with certificates of acknowledgment, fitting it for registration in the States of Alabama, Mississippi, Tennessee, and Kentucky, which deed of confirmation and release shall be executed and acknowledged by W'm B. Duncan, A. Foster Elliot, and Morris Ketchum, as well as by the Mobile and Ohio Railroad Company, within thirty days from the day of sale, and be reported to the court for confirmation.

1528 9. The court orders and decrees, that it appearing to the court that there is a clause in the deed of trust or mortgage described in the bill, saving and reserving the rights and liens that may attach to the roadway and construction thereon, in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that State, in the event of said State aiding in the construction of the railroad of the Mobile and Ohio Railroad Company in that State, being a distance of one hundred and eighteen miles (118); and it appearing that there was such aid, and a claim for a prior lien under the statutes in Tennessee is the subject of controversy in the circuit court of the United States for the western district of Tennessee, and the parties asserting such prior lien are not before this court and this claim cannot be settled here, the court orders that the sale to be made under the orders of this decree be subject to the rights and liens which exist, if any, under the statutes of the State of Tennessee, in favor of the State of Tennessee, or its grantees or assigns or the parties asserting such prior liens, in so far as the railroad and property affected by that lien are concerned.

10. The court further orders and decrees that the sale of the Gainesville Branch Road shall be without prejudice to a prior mortgage existing on that branch railroad, as represented in the report of the master upon that subject, in the reference to him in favor of W'm D. Dunn, John Reid, j'r, Robert C. Crawford, trustees.

11. The court orders and decrees that all the equities among the parties to the suit, all questions of costs and for allowances, and all other questions not disposed of nor specially reserved in the foregoing decree,

but properly arising under the same, are continued and reserved until after the sale and report by the masters of their proceedings thereupon.

(Signed) **JOSEPH P. BRADLEY,**
Circuit Justice.

(Signed) W. B. WOODS,
Circuit Judge.

JUNE 15TH, 1877.

1529 *Prayer for appeal.*

In the above causes consolidated, Morris Ketchum, Dorelli Zeigler, Bernard De Watteville, Masson Chavannes, and Henry Jump, the complainants in two of the above causes consolidated, and Rodolph Merrian, Eugene Renevier, Charles Carrard, Cephise Chuffard, the defendants, on behalf of the first mortgage bondholders in one of the said causes, pray an appeal from the decree in the above cause, consolidated, rendered herein on the 15th day of June, 1877, to the Supreme Court of the United States, and likewise pray that the said appeal may have the effect of a supersedeas of the said decree and all proceedings thereunder, and that the supersedeas bond may be approved in the sum of ten thousand dollars with sureties resident in the city of New York.

1530 BRADLEY, J.:

An appeal being granted and allowed in these cases from the decree rendered therein on the 15th day of June, 1877, the question is raised as to the amount of the appeal bond to be given by the appellants, they being the plaintiffs in the second and third suits and defendants in the first.

The decree appealed from sustained the claim of Alexander Duncan, as holder of certain first mortgage coupons to the amount of over $500,000 to come in pari passu with the first mortgage bondholders, and directs a foreclosure of the first mortgage and a sale of the mortgaged property to pay the bonds secured thereby, and also certain other bonds given for interest, amounting in the aggregate to about ten millions of dollars. Purchasers are by the decree allowed to pay the purchase money in bonds and coupons to the extent of their proportionate interest as bondholders in the whole amount of first mortgage bonds. About four-fifths of the bondholders have agreed to and subscribed a scheme for reorganizing the company and purchasing the road.

The court has allowed the remaining bondholders until the 1st of September to join in said scheme.

A portion of the bondholders, holding less than one-tenth of the entire mortgage interest, are dissatisfied with the decree, and promote the appeal.

The property being in the hands of a receiver, and not producing much, if any, more than the expenses and necessary repairs of the road, the bondholders to whom the property or its proceeds really belongs will be kept out of possession for two or three years by the intervention of the appeal.

This delay in obtaining possession of the property or its proceeds we regard as calculated greatly to injure them.

By having immediate possession they could make the necessary improvements and connections required for making the property much more remunerative, and could manage it much more to their advantage generally than a receiver can do.

Or, if the property were immediately sold, they would be in possession of the interest of the purchase money, of which they will now be deprived for two or three years by the appeal.

In our judgment, therefore, an appeal bond for one hundred thousand dollars is very moderate in amount.

The appellants contend that on the principles of the decision of the Supreme Court in the case of Jerome vs. McCarter (21 Wall.), and of , decided at the last term of said court, a bond for 1531 one hundred thousand dollars is greatly in excess of what should be required.

They insist that in contemplation of law, possession by a receiver is equally beneficial to those who are interested in the property, as possession by the parties themselves.

Whilst this may be the case with regard to dead property or even real estate generally, we think it is not so where the property, like a railroad, is perishable in its character, and has to be managed, worked, repaired, and taken care of, in order to preserve it.

We think that the owner is a better manager than a trustee or receiver, who is hampered and restrained in his management, and cannot take advantage of all those means and opportunities which the owner could do for rendering the property most profitable and productive.

On these grounds we think that the damage sustained by the delay will be much more than the mere cost and expenses of the suit, and that the actual loss and injury to the owner, or in this case the bondholders, may be taken into consideration by the court in find the amount of the bond; and that loss and damage, we think, will not be 1532 less than the amount we have required.

The most forcible difficulty which presents itself to our minds is the measure of damages which would be applicable in a suit on the bond.

Would it be admissable for the plaintiffs to show a loss to the bondholders by reason of advantages lost for the cause above referred to? Of this there may be a question. But our opinion is, on the whole, that such a damage would be the subject of a recovery.

If damages are really sustained, there seems no good reason why they should not be recovered.

Woods, circuit judge, concurring.

Order allowing appeal.

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1533 SATURDAY MORNING, *June 16th, A. D.* 1877.

Court met pursuant to adjournment. Present, the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States and the honorable William B. Woods, judge of the circuit courts of the United States for the fifth circuit and southern district of Alabama.

W. B. DUNCAN ET AL.
vs.
THE MOBILE AND OHIO RAILROAD CO. ET AL. } No. 90.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al. } No. 97.

DORELLI ZIEGLER
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al. } No. 102.

In the above causes consolidated, the appeal to the Supreme Court of the United States heretofore prayed is hereby granted and allowed.

1534 The supersedeas bond is hereby fixed at one hundred thousand dollars with sureties resident in the southern district of Alabama, or in the city of New York, who may unite in said bond in any proportionate sums. The said bond shall stay execution if approved and filed at any time within sixty days from the date of this order.

1535 *Supersedeas bond.*

Know all men by these presents, that we, Charles Moran, resident of the city and State of New York, and Henry Amy, Theodore T. Moran, and Isaac R. Cornell, residents of the same place, are severally and respectively held and firmly bound unto William B. Duncan, of the city and State of New York, and Andrew F. Elliot of the city of New Orleans in the State of Louisiana, in the respective sums following, to wit, the said Charles Moran, Henry Amy, Theodore T. Moran, and Isaac R. Cornell in the sum of twenty-five thousand dollars each, to be paid to the said William B. Duncan and A. F. Elliot, their executors, administrators, and successors; for which several payments well and truly to be made each of them doth hereby bind himself, his heirs, executors, and administrators, severally and respectively by these presents. Sealed with our seals and dated this third day of July, in the year of our Lord
1536 one thousand eight hundred and seventy-seven.

Whereas lately, at a regular term of the circuit court of the United States in and for the southern district of Alabama, held at the city of Mobile, three certain suits brought therein for a common purpose were by order of said court consolidated into a single cause;

And whereas in one of said suits William B. Duncan and Andrew F. Elliot, as trustees, are complainants, and Rodolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard are defendants on behalf of first-mortgage bondholders of the Mobile and Ohio Railroad Company; and in another of said suits Morris Ketchum is the complainant, as trustee, and W. B. Duncan and A. F. Elliot above named are defendants; and in another of said suits Dorelli Zeigler, Bernard
1537 de Watteville, Masson Chavannes and Henry Jump are complainants on behalf of first-mortgage bondholders of the Mobile and Ohio Railroad Company, and W. B. Duncan and A. F. Elliot are defendants;

And whereas a decree was rendered in the said consolidated cause;

And whereas an appeal from the said decree to the Supreme Court of the United States was prayed in open court on behalf of Morris Ketchum, Dorelli Zeigler, Bernard de Watteville, Masson Chavannes, Henry Jump, Rodolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard, which appeal was granted and the order granting the same was filed with the clerk of said circuit court and a citation directed to the said W. B. Duncan and A. F. Elliot, citing and admonishing them to be appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

1538 Now the condition of the above obligation is such that if the said Morris Ketchum, Dorelli Zeigler, Bernard de Watteville, Masson Chavannes, Henry Jump, Rodolph Merian, Eugene Renevier, Charles Carrard, and Cephese Chuffard shall prosecute the said plea to effect and answer all damages and costs if they fail to make the said appeal good, then the above obligation to be void; else to remain in full force and virtue.

(S'gn'd) CH'S MORAN. [SEAL.]
(S'gn'd) H. AMY. [SEAL.]

Witness, taken and acknowledged before me as to Charles Moran, H Amy, and Theo. T. Moran.

(S'gn'd) EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. New York.

(S'gn'd) ISAAC R. CORNELL. [SEAL.]
Witness: L. J. MORRISON.
" JAS. P. DOCKRAY.
(S'gn'd) THEO. T. MORAN. [SEAL.]
Witness:
CECIL A. MARKS.

1539 UNITED STATES OF AMERICA,
Southern District of New York, *ss:*

Before me, this 3rd day of July, 1877, personally appeared Charles Moran, who, being duly sworn, deposes and says: That he is one of the above-named bondsmen in the foregoing bond; that he is worth in property subject to execution and not exempt by law more than fifty thousand dollars over and above all his debts and liabilities.

(S'gn'd) CH'S MORAN.

Subscribed and sworn to before me this 3rd day of July, 1877.

[SEAL.] (S'gn'd) EDWARD L. OWEN,
U. S. Commissioner, Southern Dist. New York.

UNITED STATES OF AMERICA,
Southern District of New York, *ss:*

Before me this 3rd day of July, 1877, personally appeared Henry Amy, who, being duly sworn, deposes and says that he is one of the above-named bondsmen in the foregoing bond; that he is worth
1540 in property subject to execution and not exempt by law more than fifty thousand dollars over and above all his debts and liabilities.

(S'gn'd) H. AMY.

Subscribed and sworn to before me this the 3rd day of July, 1877.

[SEAL.] (S'gn'd) EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA,
District of Rhode Island, *ss:*

Be it remembered that on this 5th day of July, 1877, personally appeared before me Isaac R. Cornell, who, being duly sworn, deposes and says that he is one of the parties to the foregoing bond; that he is worth in property subject to execution and not exempt by law more than fifty thousand dollars over and above his debts and liabilities.

(S'gn'd) **ISAAC R. CORNELL.**

(S'gn'd) JAMES P. DOCKRAY,
Notary Public, Washington Co., R. I.

1541 UNITED STATES OF AMERICA,
Southern District of New York, ss :

Be it remembered that on this 7th day of July, 1877, personally appeared before me Theodore T. Moran, who, being duly sworn, deposes and says that he is one of the parties to the foregoing bond; that he is worth in property subject to execution and not exempt by law, more than fifty thousand dollars over and above his debts and liabilities.

(S'gn'd) THEO. T. MORAN.

Sworn to before me this 7th July, 1877.

(S'gn'd) EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. New York.

I approve the foregoing bond, Washington, July 9th, 1877.

(S'gn'd) JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. S.

1542 Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

I, Nathaniel W. Trimble, clerk of the above-mentioned court, hereby certify that the foregoing is a true copy of the records in the cause, and which are necessary to a hearing in the Supreme Court according to the request of the solicitors for the appellants in this cause.

In testimony whereof I hereunto subscribe my name and affix the seal of the said circuit court this 4th day of October, A. D. 1877.

[SEAL.] NATHANIEL W. TRIMBLE, *Clerk.*

1543 THE UNITED STATES OF AMERICA, *greeting :*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an allowances of appeal filed in the clerk's office of the circuit court of the United States in and for the southern district of Alabama, wherein Morris Ketchum, Dorelli Ziegler, Bernard de Watteville, Masson Chavannes, Henry Jump, Rodolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffart, are appellants, and you are respondents, to show cause, if any there be, why the said decree rendered against the said appellants as in the said order of allowance is mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Joseph P. Bradley of the Supreme Court of the United States, this 9th day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. S.

To W. B. DUNCAN, A. F. ELLIOTT.

1543½ (Indorsed :) Mobile and Ohio Railroad Company. Consolidated cause. Citation on appeal to United States Supreme Court. Filed July 13th, 1877. N. W. Trimble, clerk.

1544 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Lewis J. Morrison, being duly sworn, deposes and says that on this 10th day of July, 1877, in the city of New York, he served a copy of the citation on appeal to the Supreme Court of the United States, in the consolidated cause pending in the United States circuit court for the southern district of Alabama, for the foreclosure of the first mortgage of the Mobile & Ohio Railroad Company; that he served said citation on William B. Duncan, named therein, and known to him to be the person therein described, by exhibiting to him the original citation, signed by M'r Justice Bradley of the Supreme Court of the United States, and by delivering to and leaving with the said Duncan a true copy thereof; that deponent is more than twenty-one years of age.

L. J. MORRISON.

Sworn to before me this 10th day of July, 1877.

ALFRED LYONS,
Notary Publ. acting as U. S. Commissioner, N. Y. Co. No. 2.

1544½ (Indorsed:) Mobile & Ohio Railroad Company. Consolidated cause. Affidavit of service of citations on W'm B. Duncan. Filed July 13th, 1877. N. W. Trimble, clerk.

1545 UNITED STATES OF AMERICA,
Southern District of Alabama, ss:

Frank Y. Anderson, being duly sworn, deposes and says that on this 13th day of July, 1877, in the city of Mobile, he served a copy of the citation on appeal to the Supreme Court of the United States in the consolidated cause pending in the United States circuit court for the southern district of Alabama, for the foreclosure of the first mortgage of the Mobile and Ohio Railroad Company; that he served said citation on Peter Hamilton, one of the solicitors of record of William B. Duncan and A. F. Elliott, by exhibiting to him the original citation signed by M'r Justice Bradley, of the Supreme Court of the United States, and by delivering to and leaving with the said Peter Hamilton a true copy thereof; that deponent is more than twenty years of age.

F. Y. ANDERSON.

Subscribed and sworn to before me this 13th day of July, A. D. 1877.

HENRY S. SKAATS,
U. S. Commissioner, So. Dist. Ala.

Filed July 13th, 1877.

N. W. TRIMBLE,
Clerk.

1546 UNITED STATES OF AMERICA,
District of Louisiana, ss:

Leon L. Labatt, being duly sworn, deposes and says that on the 14th day of July, 1877, in the city of New Orleans, he served on Andrew F. Elliot a copy of the citation of appeal to the Supreme Court of the United States in the consolidated cause pending in the United States circuit court for the southern district of Alabama for the foreclosure of the first mortage of the Mobile & Ohio Railroad Company; that he served said citation on said Elliot by delivering the same to Charlotte Taylor, at the domicile of said Elliot, situated at No. Carondelet st., in the city of New Orleans, & leaving the same with her, said Charlotte

Taylor living in the domicile of said Elliot and being apparently above the age of 14 years, said Elliot being absent from the city of New Orleans at the time of said service, which facts I learned by interrogating said Charlotte Taylor; that he, deponent, is more than twenty-one years of age.

Sworn to before me this 16 day of July, 1877.

[SEAL.] ROBERT J. KER,

United States Commissioner for the District of Louisiana.

1546½ (Indorsed:) U. S. circuit court, S. D. Alabama. Mobile & Ohio R. R. Co. vs. Consolidated cause. Affidavit of service of citation on appeal on Elliott. Filed July 17th, 1877. N. W. Trimble, cle'k.

(Indorsement on cover:) No. 879. Morris Ketchum, D'Orelli Zeigler, Bernard de Watteville, Masson Chavannes, Henry Jump, Rodolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard, appellants, vs. W'm Butler Duncan and Andrew Foster Elliott et al. S. Alabama, C. C. U. S. Filed 12th October, 1877.

1547 U. S. circuit court, southern district Ala.

W'M BUTLER DUNCAN AND A. FOSTER ELLIOT, trustees, &c.,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.

D'ORELLI ZIEGLER et als.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.

Consolidated cause.

Appeal of William H. Hays, William S. Pierson, T. Haskins DuPuy, and Alexander Duncan.

1548 By the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States.

To Morris Ketchum, Louis Belloni, j'r, D'Orelli Ziegler, Henry Jump, Masson Chavannes, Bernard de Watteville, Rudolph Merian, Eugene Renevier, Alfred Renevier, Charles Carrard, and Cephise Chuffard, William Butler Duncan, and Andrew F. Elliott:

Whereas William H. Hays, Willam S. Pierson, T. Haskins Dupuy, and Alexander Duncan have appealed to the Supreme Court of the United States from a certain decree of the circuit court of the United States for the southern district of Alabama, made on the fifteenth day of June, eighteen hundred and seventy-seven, in a consolidated cause then pending in the said court, in which William Butler Duncan and others were complainants, and The Mobile & Ohio Railroad Company

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD COMPANY
et al.

D'ORELLI ZIEGLER & AL.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
et al.

To the honorable the Supreme Court of the United States:

1574 The appeal of William H. Hays, William S. Pierson, T. Haskins Du Puy, and Alexander Duncan respectfully shows as follows:

The complainants in the several causes above entitled, prior to the year 1877 filed their respective bills of complaint in the circuit court of the United States for the southern district of Alabama for the avowed purpose of obtaining satisfaction of an indebtedness incurred by the Mobile & Ohio Railroad Company and secured as to the payment thereof by a mortgage or deed of trust made by said company in the year 1853; the said William Buttler, Duncan and Andrew Foster Elliot claiming to be trustees under said mortgage, and claiming that said company had made default in the payment of coupons for interest on said indebtedness which became due May 1, and had made default also in the payment of coupons for interest on said indebtedness which became due on November 1, 1874; the said Morris Ketchum claiming to be sole trustee under said mort-
1575 gage and claiming that said Duncan and Elliot were not trustees
under said mortgage, and claiming that said company had not made default in the payment of any of said coupons, and that said coupons did not continue to constitute any part of the indebtedness secured by said mortgage; and said D'Orelli Ziegler and his co-complainants claiming that said company had not made default in the payment of any of said coupons, and that said coupons did not continue to constitute any part of the indebtedness secured by said mortgage, and claiming to be entitled to maintain their action as holders of part of the indebtedness secured by said mortgage and that said Duncan and Elliot were not trustees under said mortgage; and said Ketchum and said Ziegler and his associates claiming to be entitled to restrain and enjoin said Duncan and Elliot from proceeding to enforce the payment or promote the collection of any part of said indebtedness.

1576 In said action of said Duncan and Elliot, your petitioners, as successive holders of the said coupons, intervened as parties for the protection of their own interests, and afterwards the said court, by its order made on or about the 9th day of June, 1877, in substance directed all said causes to be consolidated and to proceed together to a hearing and to a decree; and thereupon your petitioners before said hearing was had became and were parties to said causes as consolidated, and were, on said hearing, heard by counsel as such parties.

The said court, by its decree or order, bearing date the 15th day of June, 1877, after such hearing, adjudged and decreed in substance that said coupons did continue to constitute a portion of said indebtedness, but refused to adjudge or decree that the funds in the hands of the receivers appointed in said cause and causes (which funds consisted of the net income of the mortaged property) should be applied in the first instance to the payment of the instalments of interest which be-
1577 came due on the principal of said indebtedness in the order in

The foregoing appeal allowed, bond approved, and citation signed this 20th day of August, 1877.

(Sign'd) **JOSEPH P. BRADLEY,**
Associate Justice of Supreme Court U. S.

UNITED STATES OF AMERICA,
Southern District of New York, *ss:*

Samuel Davis, being duly sworn, deposes and says that on 22nd day of August, 1877, he served the within appeal on William Butler Duncan by delivering a copy thereof to said Duncan in person at the city of New York, and on E. L. Andrews, esq'r, solicitor for Rudolph Merian & others, by delivering a copy thereof to said Andrews in person, in the city of New York; and that on the 23 day of August, 1877, he served the said appeal on Charles Moran, esq'r, attorney in fact for D'Orelli Ziegler and others, by delivering a copy thereof to said Moran in
1572 person, at the city of New York.

(S'gn'd) **SAMUEL DAVIS.**

Sworn to before me this 24th day of August, 1877.

[SEAL.] (S'gn'd) **W'M S. BAINTON,**
(139) *Notary Public, N. Y. Co.*

UNITED STATES OF AMERICA,
Southern District of New York, *ss:*

Thomas W. Fitzgerald, being duly sworn, deposes and says that on 23rd day of August, 1877, at Westport, in the State of Connecticut, he served the foregoing appeal on Morris Ketchum by delivering a copy thereof to said Morris Ketchum in person.

(S'gn'd) **THO'S W. FITZGERALD.**

Sworn to before me this 24th August, 1877.

(S'gn'd) **W'M S. BAINTON,**
(139) *Notary Public N. Y. Co.*

Notice of foregoing received August 27th, 1877.

(S'gn'd) **GEORGE N. STEWART,**
Sol'r for Mobile & Ohio R. R. Co.

Notice of foregoing accepted by Peter & Tho's A. Hamilton,
1573 August 27, 1877. See acceptance hereto attached.

(Endorsed:) To be filed. S'gn'd) J. P. Bradly, justice.

Filed August 27th, 1877.

(S'gn'd) **N. W. TRIMBLE,** *Clerk.*

In the circuit court of the United States for the southern district of Alabama:

Consolidated causes.

WILLIAM BUTLER, DUNCAN & ANDREW,
Foster Elliot, trustees, &c.,
vs.
THE MOBILE & OHIO RAILROAD COMPANY
et al.

their own interests, and afterwards the said court, by its order made on or about the 9th day of June, 1877, in substance, directed all said causes to be consolidated, and to proceed together to a hearing and to a decree; and thereupon your petitioners, before said hearing was had, became and were parties to said causes as consolidated,
1568 and were, on said hearing, heard by counsel as such parties.

The said court, by its decree or order bearing date the 15th day of June, 1877, after such hearing, adjudged and decreed in substance that said coupons did continue to constitute a portion of said indebtedness; but refused to adjudge or decree that the funds in the hands of the receivers appointed in said cause and causes (which funds consisted of the net income of the mortgaged property) should be applied in the first instance to the payment of the instalments of interest which became due on the principal of said indebtedness in the order in which such instalments became due; and also refused to adjudge and decree that said coupons above referred to were entitled to priority of payment out of the proceeds of the sale of said mortgaged property before payment of any part of the coupons which subsequently matured, and before payment of any of the principal of said indebtedness; each of which
1569 refusals was, as your petitioners claim, erroneous, and your petitioners were and are aggrieved thereby; and the said court adjudged by its said decree of June 15th, 1877, that the bonds representing the principal of said indebtedness, and the coupons for interest which matured after November 1, 1874, were secured equally with coupons which matured May 1, 1874, or November 1, 1874, and were to be ratably paid from the proceeds of the property, without preference or priority among them, in which particular the said decree was, as your petitioners claim, erroneous; and the said court further, at the same time and by the same decree, adjudged that the masters appointed by said decree to make sale of said mortgaged property should receive in payment from the last and best bidder bonds which had not matured at the time of said decree upon an equal footing with coupons which had matured on or before November 1, 1874; in which particular and in other particulars the said decree was, as your petitioners claim,
1570 erroneous, and they were and are aggrieved thereby.

Wherefore these appellants appeal to the Supreme Court of the United States from so much and such parts of the said decree of June 15th, 1877, as they were and are aggrieved by as aforesaid, and from each and every part of said decree which denies or omits to provide a remedy for the rights and claims of these appellants.

And these appellants respectfully pray that the pleadings, proofs, depositions, affidavits, orders, decrees, and other proceedings in the said cause and causes may be sent to this Supreme Court of the United States without delay, and that the said Supreme Court of the United States will proceed to hear the cause, and that the said decree of the said circuit court may be modified, amended, or reversed as justice to these appellants may require in the respects and as to the matters aforesaid, and that such further or other decree may be made as to the said Supreme Court shall seem just.

Dated August 13, 1877.

1571 (S'gn'd) WILLIAM H. HAYS,
" WILLIAM S. PIERSON,
" T. HASKINS DUPUY,
" ALEXANDER DUNCAN,
By C. W. BANGS,
Their Solicitor.

and others were defendants, and the said appellants having filed the security required by law:

You are hereby cited to be and appear before the Supreme Court of the United States on the second Monday of October next, to do and receive what may pertain to justice to be done in the premises.

Given under my hand this 20th day of August, 1877.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. S.

1549 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Samuel Davis, being duly sworn, deposes and says that on the 22nd day of August, 1877, he served the within citation on William Butler Duncan by delivering a copy thereof to said Duncan in person at the city of New York, and on E. L. Andrews, esq., solicitor for Rudolph Merian and others, by delivering a copy thereof to said Andrews in person in the city of New York; & that on the 23d day of August, 1877, he served the said citation on Charles Moran, esq., attorney in fact for D'Orelli Ziegler & others, by delivering a copy thereof to said Moran in person at the city of New York.

SAMUEL DAVIS.

Sworn to before me this 24th day of August, 1877.

[SEAL.] W'M S. BAINTON,
(139) *Notary Public, N. Y. Co.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Thomas W. Fitzgerald, being duly sworn, deposes & says that on the 23rd day of August, 1877, at Westport, in the State of Connecticut, he served the foregoing citation on Morris Ketchum by delivering a copy thereof to said Morris Ketchum in person.

THO'S W. FITZGERALD.

Sworn to before me this 24th day of August, 1877.

[SEAL.] W'M S. BAINTON,
(139) *Notary Public, N. Y. Co.*

1550 Notice received of foregoing citation 27 August, 1877.

GEORGE N. STEWART,
Sol'r for Mob. & Ohio R. R. Co.

Notice accepted by Peter & Tho's A. Hamilton, as per acceptance hereto attached.

By the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States.

To Morris Ketchum, Louis Belloni, j'r, D'Orelli Ziegler, Henry Jump, Masson Chavannes, Bernard de Watteville, Rudolph Merian, Eugene Renevier, Alfred Renevier, Charles Carrard, & Cephise Chuffard, William Butler Duncan, and Andrew F. Elliott:

Whereas William H. Hays, William S. Pierson, T. Haskins Dupuy, & Alexander Duncan have appealed to the Supreme Court of the United States from a certain decree of the circuit court of the United States for the southern district of Alabama, made on the fifteenth day of June, eighteen hundred and seventy-seven, in a consolidated cause then pending in the said court, in which William Butler Duncan & others were complainants, & The Mobile & Ohio Railroad Company & others were defendants, & the said appellants having filed the security required by law:

You are hereby cited to be & appear before the Supreme Court of the United States on the second Monday of October next to do & receive what may pertain to justice to be done in the premises.

Given under my hand this 20th day of August, 1877.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. S.

Service accepted Aug't 27, 1877.

P. & T. A. HAMILTON,
Sol'rs D. & E.

(Indorsed:) U. S. circuit court. William H. Hays & al., appellants, vs. Morris Ketchum & al., appellees. Citation. C. W. Bangs, sol'r. To P. & T. A. Hamilton, esq's, solicitors for William B. Duncan & al., trustees, &c.

(Indorsed:) U. S. circuit court. William H. Hays & al., appellants, vs. Morris Ketchum & al., appellees. Citation. C. W. Bangs, sol'r for appellants. Filed August 27th, 1877. N. W. Trimble, clerk.

1551 *Appeal bond.*

U. S. circuit court, southern district of Alabama.

WILLIAM H. HAYS, WILLIAM S. PIERSON, T. Haskins Du Puy & Alexander Duncan, appellants,
vs.
MORRIS KETCHUM & AL., APPELLEES.

Know all men by these present, that we, William M. Clarke & Roswell G. Ralston, of the city of New York, are held and firmly bound unto Morris Ketchum, D'Orelli Ziegler, Masson Chavannes, Henry Jump, Bernard de Watteville, Rudolph Merian, Eugene Renevier, Charles Carrard, Alfred Renevier, Cephise Chuffard, William Butler Duncan, and Andrew Foster Elliot, appellees, in the sum of one thousand dollars, lawful money of the United States, to be paid to the said appellees, their successors, executors, administrators, or assigns respectively; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these 1552 presents, sealed with our seals, dated the 18th day of August, eighteen hundred and seventy-seven.

Whereas, on or about the ninth day of June, eighteen hundred and seventy-seven, in the circuit court of the United States for the southern district of Alabama, in three certain causes in equity theretofore pending in that court, in one of which William Butler Duncan and Andrew Foster Elliot, trustees, were complainants; in another of which Morris Ketchum was complainant, and in another of which D'Orielli Ziegler and others were complainants, an order was made by the said court whereby the said causes were consolidated;

And whereas, afterwards and on or about the fifteenth day of June, eighteen hundred and seventy-seven, a decree was made by the said court in the said cause and causes, from which decree the said appellants William H. Hays, William S. Pierson, T. Haskins DuPuy, 1553 and Alexander Duncan have taken an appeal to the Supreme Court of the United States in respect to certain matters in the said decree contained and certain matters from said decree omitted:

Now the condition of the above obligation is such that if the said appellants shall prosecute the said appeal to effect, and shall answer and pay all costs which shall be awarded against them if they shall fail to make their appeal good, or the said decree be affirmed as to the said appellants, then this obligation to be void.

(S'gn'd) WILLIAM M. CLARKE. [SEAL.]
(") R. G. RALSTON. [SEAL.]

Sealed, signed, and delivered in the presence of—
HENRY P. BUTLER.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this eighteenth day of August, 1877, before me appeared William M. Clarke and Roswell G. Ralston, known to me to be the same 1554 persons described in and who executed the foregoing bond and acknowledged to me that they executed the same.

[SEAL.] (S'gn'd) HENRY P. BUTLER,
U. S. Commissioner for the Southern Dist. of N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William M. Clarke and Roswell G. Ralston being duly severally sworn, do depose and say, and each for himself says, that he is a householder in the city of New York, residing in said city; and that he is worth the sum of two thousand dollars, over and above all his liabilities, exclusive of property exempt from execution.

(S'gn'd) WILLIAM M. CLARKE.
(") R. G. RALSTON.

Sworn to before me this 18th day of August, 1877.
(S'gn'd) HENRY P. BUTLER,
[SEAL.] *U. S. Commissioner for the Southern Dist. of N. Y.*

The foregoing bond approved as to form and amount sufficiency upon the appeal mentioned and as to sufficiency of sureties, but not to operate as a supersedeas. August 20th, 1877.

(S'gn'd) JOSEPH P. BRADLEY,
Associate Justice Supreme Court U. S.

1555 (Endorsed:) To be filed with clerk of court at Mobile. (S'gn'd) J. P. Bradley, justice. Filed August 27th, 1877. (S'gn'd) N. W. Trimble, clerk.

1556 *Notice of claim of appeal of W'm H. Hays and others.*

In the circuit court of the United States for the southern district of Alabama.

Consolidated cause.

WILLIAM BUTLER DUNCAN AND ANDREW FOSTER Elliot, trustees, &c.,
vs.
THE MOBILE & OHIO RAILROAD COMPANY & AL.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
& al.

D'ORELLI ZIEGLER & AL.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
& al.

Please take notice that William H. Hays, William S. Pierson, T. Haskins Du Puy, and Alexander Duncan, parties to the consolidated cause, claim an appeal and hereby appeal to the Supreme Court of the United
States from so much of the decree made in the above entitled cause
1557 and causes on June 15th, 1877, as overrules the exceptions taken
by them or either of them to the master's report and reports; and also from so much of the said decree as ordered and adjudged that the first-mortgage bonds therein mentioned are secured equally with the coupons which became due on the first day of May & November, 1874, and are to be ratably paid from the proceeds of the property without giving priority or preference to said coupons and the interest thereon; and also from so much of said decree as omitted to order and adjudge that the holders of said coupons are, up to the amount of said coupons and interest thereon, entitled to the proceeds of said property before any of such proceeds are applied to the payment of any subsequently maturing coupons or to the payment of any part of the principal of said bonds; and also from so much of said decree as orders, adjudges, or decrees that any coupon which matured after November 1, 1874 (1, 1874), or
that any bond, be received by the masters in payment from the
1557½ highest and last bidder without providing that such highest and
last bidder shall first pay in to the masters an amount of money sufficient to satisfy in full the said coupons which matured on May 1, 1874, and November 1, 1874, respectively, with the interest thereon, or without providing that the master should allow to the highest and last bidder against his bid the amount of said last mentioned coupons and the interest thereon so far as such coupons should be held by such bidder and should be produced and delivered to the masters for cancellation in the order of their maturity; and also from so much of said decree as omitted to order and adjudge that the funds remaining in the hands of the receivers should be applied to the payment of the coupons secured by said first mortgage and the interest on such coupons, according to the order of the maturity of such coupons.

Dated August 13th, 1877.

(S'gn'd) C. W. BANGS,
Solicitor for Appellants.

1558 To N. W. TRIMBLE, Esqr., *Clerk, &c.*
To E. L. ANDREWS, Esqr.,
Solicitor for Morris Ketchum, D'Orelli Ziegler, Masson Chavannes, Henry Jump, Bernard de Watteville, Cephise Chuffard, Rudolph Merian, Eugene Renevier, Alfred Renevier, Charles Carrard, & Louis J. Bellani.

GEORGE N. STEWART, Esqr.,
Solicitor for the Mobile and Ohio Railroad Company.

WILLIAM JONES, Esqr., & **E. H. GRANDIN**, Esqr.,
Solicitors for Second-Mortgage Trustees, &c.

P. & T. A. HAMILTONS, Esq'r's,
Solicitors for W'm Butler Duncan, and Andrew Foster Elliot, Trustees, &c.

1559 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Samuel Davis, being duly sworn, deposes and says that on the 22nd day of August, 1877, he served the within notice on William Butler Duncan by delivering a copy thereof to said Duncan in person at the city of New York; and on E. L. Andrews, esqr., solicitor for Rudolph Merian & others, by delivering a copy thereof to said Andrews in person in the city of New York; and that on the 23rd day of August, 1877, he served the said notice on Charles Moran, esqr., attorney in fact for D'Orelli Ziegler & others, by delivering a copy thereof to said Moran in person at the city of New York.

(S'gn'd) SAMUEL DAVIS.

Sworn to before me this 24th day of August, 1877.

[SEAL.] (S'gn'd) W'M S. BAINTON,
(139) *Notary Public, N. Y. Co.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

1560 Thomas W. Fitzgerald, being duly sworn, deposes and says that on the 23rd day of August, 1877, at Westport, in the State of Connecticut, he served the foregoing notice on Morris Ketchum by delivering a copy thereof to said Morris Ketchum in person.

(S'gn'd) THO'S W. FITZGERALD.

Sworn to before me this 24th day of August, 1877.

[SEAL.] (S'gn'd) W'M S. BAINTON,
Notary Public, N. Y. Co.

Notice of foregoing received August 27, 1877.

(S'g'd) GEORGE N. STEWART,
Solicitor for Mobile and Ohio Railroad Co.

Notice of foregoing accepted by Peter & Tho's A. Hamilton, August 27, 1877. See acceptance hereto attached.

(S'gn'd) GEORGE N. STEWART.

Filed August 27th, 1877.

(S'gn'd) N. W. TRIMBLE, *Clerk.*

1561 In the circuit court of the United States for the southern district of Alabama.

Consolidated causes.

WILLIAM BUTLER DUNCAN & ANDREW FOSTER Elliot, trustees, &c.,
vs.
THE MOBILE & OHIO RAILROAD COMPANY & AL.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD COMPANY & AL.

D'ORELLI ZIEGLER & AL.
vs.
THE MOBILE & OHIO RAILROAD COMPANY & AL.

Please to take notice that William H. Hays, William S. Pierson, T.

**Haskins DuPuy, & Alexander Duncan, parties to the consolidated cause,
claim an appeal and hereby appeal to the Supreme Court of the United
States from so much of the decree made in the above entitled
1562 cause and causes on June 15th, 1877, as overrules the exceptions
taken by them or either of them to *to* the master's report and reports;
and also from so much of said decree as ordered and adjudged
that the first mortgage bonds therein mentioned are secured equally
with the coupons which became due on the first day of May & November,
1874, and are to be ratably paid from the proceeds of the property
without giving priority or preference to said coupons and the interest
thereon; and also from so much of said decree as omitted to order and
adjudge that the holders of said coupons are, up to the amount of said
coupons and interest thereon, entitled to the proceeds of said property
before any of such proceeds are applied to the payment of any subsequently
maturing coupons or to the payment of any part of the principal
of said bonds; and also from so much of said decree as orders, adjudges,
or decrees that any coupon which matured after November 1,
1874, or that any bond be received by the masters in payment
1563 from the highest and last bidder without providing that such
highest and last bidder shall first pay in to the masters an amount
of money sufficient to satisfy in full the said coupons which matured on
May 1, 1874, and November 1, 1874, respectively, with the interest thereon,
or without providing that the masters should allow to the highest
and last bidder against his bid the amount of such last mentioned coupons
and the interest thereon, so far as such coupons should be held by
such bidder, and should be produced and delivered to the masters for
cancellation in the order of their maturity; and also from so much of
said decree as omitted to order and adjudge that the funds remaining in
the hands of the receivers should be applied to the payment of the coupons
secured by said first mortgage and the interest on such coupons,
according to the order of the maturity of such coupons.**

Dated August 13th, 1877.

(S'gn'd) C. W. BANGS.
Solicitor for Appellants.

To N. W. TRIMBLE, Esqr., *Clerk, &c.*
To E. L. ANDREWS, Esqr.,
Solicitor for Morris Ketchum, D'Orelli Ziegler, Masson Chavannes, Henry Jump, Bernard de Watteville, Cephise Chuffard, Rudolph Merian, Eugene Renevier, Alfred Renevier, Charles Carrard, & Louis J. Belloni.
GEORGE N. STEWART, Esqr.,
Solicitor for the Mobile and Ohio Railroad Company.
WILLIAM JONES, Esqr., & E. H. GRANDIN, Esqr.,
Solicitor for Second Mortgage Trustees, &c.
P. & T. A. HAMILTON, Esq'r's,
Solicitors for William Butler Duncan &
Andrew Foster Elliot, Trustees, &c.

Service accepted Aug't 27, 1877.
(S'g'd) P. & T. A. HAMILTON,
Sol's D. & E.

1564 Service accepted August 27, 1877.
(S'gn'd) GEORGE N. STEWART,
Sol'r for Mobile & Ohio R. R. Co.

(Endorsed:) To P. & T. A. Hamilton, esq'r's, solicitors for William Butler Duncan & al., trustees, &c.

Filed August 27th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1565 *Appeal of W'm H. Hays & others.*

In the circuit court of the United States for the southern district of Alabama.

Consolidated causes.

WILLIAM BUTLER DUNCAN AND ANDREW FOSTER Elliot, trustees, &c.,
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

D'ORELLI ZIEGLER ET AL.
vs.
MOBILE & OHIO RAILROAD COMPANY ET AL.

To the honorable the Supreme Court of the United States:

The appeal of William H. Hays, William S. Pierson, T. Haskins DuPuy, and Alexander Duncan, respectfully shows as follows:

The complainants in the several causes above entitled, prior to the year 1877 filed their respective bills of complaint in the circuit court of the United States for the southern district of Alabama, for the 1566 avowed purpose of obtaining satisfaction of an indebtedness incurred by the Mobile & Ohio Railroad Company, and secured as to the payment thereof by a mortgage or deed of trust made by said company in the year 1853; the said William Butler Duncan and Andrew Foster Elliot claiming to be trustees under said mortgage, and claiming that said company had made default in the payment of coupons for interest on said indebtedness which became due May 1st, and had made default also in the payment of coupons for interest on said indebtedness which became due on November 1, 1874; the said Morris Ketchum claiming to be sole trustee under said mortgage, and claiming that said Duncan and Elliot were not trustees under said mortgage, and claiming that said company had not made default in the payment of any of said coupons, and that said coupons did not continue to constitute any part of the indebtedness secured by said mortgage; and said D'Orelli Ziegler and his co-complainants complaining that said company had not made default in the payment of any of said 1567 coupons, and that said coupons did not continue to constitute any part of the indebtedness secured by said mortgage, and claiming to be entitled to maintain their action as holders of part of the indebtedness secured by said mortgage, and that said Duncan and Elliot were not trustees under said mortgage; and said Ketchum, as well as said Ziegler and his associates, claiming to be entitled to restrain and enjoin said Duncan and Elliot from proceeding to enforce the payment or promote the collection of any part of the said indebtedness.

In said action of said Duncan & Elliot your petitioners, as successive holders of the said coupons, intervened as parties for the protection of

their own interests, and afterwards the said court, by its order made on or about the 9th day of June, 1877, in substance, directed all said causes to be consolidated, and to proceed together to a hearing and to a decree; and thereupon your petitioners, before said hearing was had, became and were parties to said causes as consolidated,
1568 and were, on said hearing, heard by counsel as such parties.

The said court, by its decree or order bearing date the 15th day of June, 1877, after such hearing, adjudged and decreed in substance that said coupons did continue to constitute a portion of said indebtedness; but refused to adjudge or decree that the funds in the hands of the receivers appointed in said cause and causes (which funds consisted of the net income of the mortgaged property) should be applied in the first instance to the payment of the instalments of interest which became due on the principal of said indebtedness in the order in which such instalments became due; and also refused to adjudge and decree that said coupons above referred to were entitled to priority of payment out of the proceeds of the sale of said mortgaged property before payment of any part of the coupons which subsequently matured, and before payment of any of the principal of said indebtedness; each of which
1569 refusals was, as your petitioners claim, erroneous, and your petitioners were and are aggrieved thereby; and the said court adjudged by its said decree of June 15th, 1877, that the bonds representing the principal of said indebtedness, and the coupons for interest which matured after November 1, 1874, were secured equally with coupons which matured May 1, 1874, or November 1, 1874, and were to be ratably paid from the proceeds of the property, without preference or priority among them, in which particular the said decree was, as your petitioners claim, erroneous; and the said court further, at the same time and by the same decree, adjudged that the masters appointed by said decree to make sale of said mortgaged property should receive in payment from the last and best bidder bonds which had not matured at the time of said decree upon an equal footing with coupons which had matured on or before November 1, 1874; in which particular and in other particulars the said decree was, as your petitioners claim,
1570 erroneous, and they were and are aggrieved thereby.

Wherefore these appellants appeal to the Supreme Court of the United States from so much and such parts of the said decree of June 15th, 1877, as they were and are aggrieved by as aforesaid, and from each and every part of said decree which denies or omits to provide a remedy for the rights and claims of these appellants.

And these appellants respectfully pray that the pleadings, proofs, depositions, affidavits, orders, decrees, and other proceedings in the said cause and causes may be sent to this Supreme Court of the United States without delay, and that the said Supreme Court of the United States will proceed to hear the cause, and that the said decree of the said circuit court may be modified, amended, or reversed as justice to these appellants may require in the respects and as to the matters aforesaid, and that such further or other decree may be made as to the said Supreme Court shall seem just.

Dated August 13, 1877.

1571 (S'gn'd) WILLIAM H. HAYS,
" WILLIAM S. PIERSON,
" T. HASKINS DUPUY,
" ALEXANDER DUNCAN,
By C. W. BANGS,
Their Solicitor.

which such instalments became due, and also refused to adjudge and decree that said coupons above referred to were entitled to priority of payment out of the proceeds of the sale of said mortgaged property before payment of any part of the coupons which subsequently matured and before payment of any of the principal of said indebtedness, each of which refusals was, as your petitioners claim, erroneous, and your petitioners were and are aggrieved thereby; and the said court adjudged by its said decree of June 15th, 1877, that the bonds representing the principal of said indebtedness, and the coupons for interest which matured after November 1, 1874, were secured equally with the coupons which matured May 1, 1874, or November 1, 1874, and were to be ratably paid from the proceeds of the property without preference or priority among them, in which particular the said decree was, as your petitioners claim, erroneous; and the said court further, at the
1578 same time and by the same decree, adjudged that the master appointed by said decree to make sale of said mortgaged property should receive in payment from the last and best bidder bonds which had not matured at the time of said decree upon an equal footing with coupons which had matured on or before November 1, 1874; in which particular, and in other particulars, the said decree was, as your petitioners claim, erroneous, and they were and are aggrieved thereby.

Wherefore these appellants appeal to the Supreme Court of the United States from so much and such parts of said decree of June 15th, 1877, as they were and are aggrieved by as aforesaid, and from each and every part of said decree which denies or omits to provide a remedy for the rights and claims of these appellants.

And these appellants respectfully pray that the pleadings, proofs, depositions, affidavits, orders, decrees, and other proceedings in
1579 the said cause and causes may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court of the United States will proceed to hear the cause, and that the said decree of the said circuit court may be modified, amended, or reversed as justice to these appellants may require in the respects and as to the matters aforesaid, and that such further or other decree may be made as to the said Supreme Court shall seem just.

Dated August 13th, 1877.

(S'gn'd) WILLIAM H. HAYS,
" WILLIAM S. PIERSON,
" T. HASKINS DU PUY,
" ALEXANDER DUNCAN,
By C. W. BANGS,
Their Solicitor.

The foregoing appeal allowed, bond approved, and citation signed this 20th day of August, 1877.

(S'gn'd) JOSEPH P. BRADLEY,
Associate Justice Supreme Court U. S.

(Endorsed:) (S'g'n) C. W. Bangs, sol'r for appellants.

1580 To P. & T. A. HAMILTON, Esq'r's,
Solicitors for William B. Duncan & al., Trustees, &c.

Service accepted Aug't 27, '77.
(S'gn'd) P. & T. A. HAMILTON, *Sol'rs.*

Filed August 27th, 1877.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1581 Circuit court of the United States for the southern district of Alabama.

I, N. W. Trimble, clerk of the circuit court above entitled, hereby certify the foregoing pages, numbered from 1 to 38 inclusive, contain a true and correct transcript of the notice of appeal, allowance of appeal, appeal, appeal bond, and the endorsements thereon in the appeal of William H. Hays, William S. Pierson, T. Haskins Du Puy, and Alexander Duncan in the consolidated cause of W'm Butler Duncan and Andrew Foster Elliot, trustees, &c., against the Mobile and Ohio Railroad Company and others; Morris Ketchum vs. same; D'Orelli Ziegler and other vs. same, as the same appear on file and of record in my office; also the original citation on said appeal.

In testimony whereof I hereunto subscribe my name and cause the seal of said circuit court to be affixed, this 12th day of March, A. D. 1878.

Attest:

[SEAL.] N. W. TRIMBLE, *Clerk, &c.*

1582 NOTE.—The pleadings, proofs, depositions, affidavits, orders, decrees, and other proceedings are not included in this transcript, because I was not instructed by appellant's counsel to include them and for the reason that the same have heretofore been transmitted to the Supreme Court at Washington, on the appeal of Morris Ketchum and D'Orelli Zeigler and others in the same cause. Certain proceedings omitted in the transcript prepared for said Ketchum and D'Orelli Zeigler and others are now being prepared under a certiorari from the Supreme Court, and will be forwarded to Washington as soon as completed.

[SEAL.] N. W. TRIMBLE,
Clerk U. S. Circuit Court Sou. Dist. Ala.

M'CH 12, 1878.

(Indorsement on cover:) No. 1057. William H. Hays, William S. Pierson, T. Haskins Dupuy, & Alexander Duncan, appellants, vs. Morris Ketchum et al. S. Alabama C. C. U. S. Filed 15th March, 1878.

444 p

A

No appearance

6 Otto 659

Field J.

April 22. 1878

~~M. R.~~

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 879.

MORRIS KETCHUM ET AL., APPELLANTS,

VS.

WILLIAM BUTLER DUNCAN ET AL.

CERTIORARI AND RETURN.

FILED APRIL 1, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 879.

MORRIS KETCHUM ET AL., APPELLANTS,

vs.

WILLIAM BUTLER DUNCAN ET AL.

CERTIORARI AND RETURN.

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a THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the southern district of Alabama, greeting:

Whereas, in a certain suit in said circuit court between William Butler Duncan et al., complainants, and the Mobile & Ohio Railroad Company et al., defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal taken by Morris Ketchum et al., agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit, that—

1. Order of May 14, 1875, appointing receivers.
2. Bonds of Duncan & Elliott, as receivers.
3. Inventory of property in hands of receivers, filed September 29, 1875.
4. Petition of Rogers Locomotive Works, filed January 3, 1876.
5. Order on said petition.
6. Petition for injunction and permission to bring suits, filed June 8, 1876, and order thereon, and writ of injunction and return.
7. Motion for dissolution of injunction, filed June 22, 1876.
8. Interrogatories, filed December 9, 1876.
9. Cross-interrogatories, filed December 29, 1876.
10. Affidavits, filed April 5, 1877, to accompany report of that date.
11. Notice of filing master's report, filed April 5, 1877.
12. Schedules and exhibits, filed April 6, 1876, accompanying master's report.

b 13. Proofs of claim filed by Moran Brothers.

14. Proofs of claim filed by Moran Brothers, agents.
15. Proofs of claim filed by Charles Moran.
16. Proofs of claim filed by Charles Moran, agent.
17. Proofs of claim filed by A. D. Moran and D. C. Moran.
18. Proofs of claim filed by Alexander Duncan.
19. Proofs of claim filed by Louis J. Belloni, jr., or Louis Belloni, jr.
20. Proofs of claim filed by Hays, Pierson & Dupuy.
21. Index of all the claims presented to special master.
22. Notice of filing report of special master, April 5, 1877.
23. Notice of filing report, filed May 3, 1877.
24. Order entered on rule book May 7, 1877, setting case down for decree.
25. Notice and proof before master, four papers, filed May 24, 1877.
26. Report of W. B. Duncan and A. F. Elliott, trustees and receivers, &c., of their accounts for the quarter ending January 1, 1877, and schedules accompanying report.
27. Report of W. B. Duncan and A. F. Elliott, trustees and receivers, &c., of their accounts for the quarter ending April 1, 1877, and schedules accompanying report.
28. Affidavit of W. E. Kimball, filed in Ketchum suit, April 6, 1876.
29. Notice of motion in Ketchum suit for appointment of receivers, with affidavits, exhibits, and service of same, filed April 7, 1876.
30. The following affidavits filed in Ketchum suit in April, 1876, viz, affidavits of Charles Walsh, Theodore Guesnard, A. L. Willoughby, and other affidavits and papers filed on behalf of Duncan & Elliott.
31. The following papers filed April 7, 1876, viz, transcript of proceedings against Morris Ketchum et al.; consent of Wilson & Iselin, to pres-

ent trustees, and affidavits as to Ketchum's responsibility; letters of Charles Walsh, Alexander Jackson, and George H. Young.

32. Order entered April 8, 1876, overruling motion to remove trustees.

33. Appearance and notices of motion filed in Ketchum suit, May 1 and 5, 1876.

34. Amendments filed to original bill in Ketchum suit, May 10, 1876, with petition and order.

35. Affidavit of marshal filed May 12, 1876, in Ketchum suit.

36. Answer of M. & O. R. R. Co. to motion filed May 17, 1876, in Ketchum suit.

37. Three motions filed June 5, 1876, in Ketchum suit.

38. Order of court and copy of original bill, filed in Ketchum suit, January 24, 1877.

c 39. Petition of Rogers Locomotive and Machine Works, filed in Ketchum suit, February 7, 1877, and order thereon and other petitions, orders, exhibits and motions, filed the same day.

40. Petitions, orders, and notices filed in Ketchum suit, February 17, 1877.

41. Petition and order filed in Ketchum suit, February 20, 1877.

42. Exceptions to answer of A. F. Elliott, filed in Ketchum suit, February 23, 1877.

43. Claims of Elliott & Barlow, filed in Ketchum suit, March 26, 1877.

44. Claim of W. B. Duncan, filed in Ketchum suit, May 8, 1877.

45. Claim of M. & O. R. R. Co., filed same day.

46. Notices of motion filed in Ketchum suit, May 25, 1877.

47. Claim of Dunn & Dickson, filed in Ketchum suit, May 29, 1877.

48. Affidavit of W. H. Hays and others, filed in Ketchum suit, June 5, 1877, with agreement of bondholders.

49. Exhibits A to F, to bill of complaint in Ziegler suit, filed April 2, 1877.

50. Petition for commission, filed April 23, 1877, together with order thereon, and commission, and return thereto, and depositions of Charles Moran, Amedee D. Moran and D. Comyn Moran, in Ziegler suit.

51. Notice of motion filed in Ziegler suit, May 25, 1877—
are omitted from the transcript on said appeal.

You therefore are hereby commanded, that, searching the records and proceedings in said cause, you certify what omissions you shall find to the said Supreme Court of the United States, to the extent of the papers above enumerated, so that you have the same together with this writ before the said Supreme Court forthwith.

Witness the honorable Morrison R. Waite, Chief Justice of
d said Supreme Court, the twenty-fifth day of February, A. D. 1878.

J. W. MIDDLETON,
Clerk Supreme Court U. S.

Received this 28th day of February, 1878, and in compliance with the terms of the within writ of certiorari, I have this day certified the papers and proceedings enumerated therein to the Supreme Court of the United States, and have forwarded the same, together with this writ, to the clerk of said Supreme Court at Washington.

N. W. TRIMBLE,
Clerk, &c., U. S. Circuit Court, Sou. Dist. Ala.

March 28th, 1878.
Received this 28th day of February, A. D. 1878.

1 *Decree appointing W'm B. Duncan & A. F. Elliot receivers.*

Circuit court of the United States, southern district of Alabama, 5th judicial circuit.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT, plaintiffs & trustees,
vs.
MOBILE AND OHIO RAILROAD COMPANY, William D. Dunn, George H. Young, Samuel Williams, John Reid, Robert C. Crawford, Adrian Iselin, Richard T. Wilson, Samuel L. Barlow, defendants.
} In chancery.

AT CHAMBERS, 14 *May*, 1875.

Present, Hon. W'm B. Woods, circuit judge.

This cause was submitted upon the bill, exhibits, consents of, and
notices to, material defendants upon a motion made on behalf of the
plaintiffs by their solicitors, which is filed, the object of which is to
confirm the said plaintiffs in possession as trustees of the rail-
2 roads, property, effects, franchises, and faculties of the Mobile
and Ohio Railroad Company, so that the same, during the
pendency of the suit, should be managed and employed by the plaintiffs so as to preserve the franchises and property, fulfil the contracts with the States through which it passes, to subserve the public convenience by transporting freight, passengers, and the mails, and to execute the deeds under which the plaintiffs have their appointment.

It appears from the exhibits to the bill, as well as from its statements,
that the railroad property of the Mobile and Ohio Railroad Company
passes through the States of Alabama, Mississippi, Tennessee, and
Kentucky, and was constructed under charters granted by the legisla-
tures of those States. The length of the railroad is five hundred and
twenty-seven miles, and there are several lateral or branch roads; its
domicil being at Mobile, Alabama, and its northern terminus be-
3 ing Columbus, Kentucky, on the Ohio River. The bonded debt
and interest thereon exceeds twelve million of dollars.

There are a number of mortgages, or deeds of trust, wherein there are different trustees, some of them affecting portions of the road, others the whole road, and involving questions of priority and complication in the management, and the accounts. It appears there has been a continuing default in the payment of interest on all of this bonded debt, and that there is a large floating debt. It appears that there was granted to the Mobile and Ohio Railroad Company above one million of acres of the public lands by Congress, which remain for a large part unsold, and are included in the mortgages.

The plaintiffs are the only trustees under a deed of trust, dated 1st
day of November, 1853, to secure by the terms bonds to the sum
4 of six million of dollars, with coupon warrants for the payment
of semi-annual interest, and which embraces the railroad, rail-
ways, warehouses, fences, bridges, rights, privileges, franchises, and all other property owned and to be acquired by the company, including the donation made by act of Congress.

These trustees have fulfilled the conditions of the deed, and with notice to, and the consent of the company, have displaced the board of directors in the management, custody, care and control of this property. The trustees of the mortgage upon the railroad in Tennessee, and who claim a priority over that portion of road to secure bonds amounting to $1,685,000 consent to the entry and to the allowance of the powers the plaintiffs desire. The trustees in another mortgage also consent, as appears from an exhibit to the bill.

5 The exhibits J, K, L, show that the trustees have a sanction for this motion from the corporation and from the mortgagees in two mortgages made by the corporation, which affect the property and embrace the interests of more than one-fourth of the mortgage-bond debt not embraced in the first mortgage represented by the plaintiffs. No opposition has been offered to the motion submitted by the trustees in other mortgages. In view of the great length of the road, the location in different States and jurisdictions; the number of mortgages and the questions of priority to be ascertained; the necessity for an efficient and responsible government of the railroad, its business and franchises pending the suit, the court concludes to make the following order:

Order.

6 The court orders that William Butler Duncan and A. Foster Elliott, the plaintiffs in this bill, and the only trustees under the deed of mortgage or trust of the date of the 1st November, 1853, and being filed as exhibit C to this bill, shall, until the further orders of this court, possess, occupy, and employ the railroad and railways of the Mobile and Ohio Railroad Company, within the States of Alabama, Mississippi, Tennessee, and Kentucky, including the rails, bridges, fences, warehouses, fixtures, real estate, rights, privileges, faculties, and other property embraced within the terms of the said deed of the 1st day of November, 1853, and to operate and manage the same by their superintendents, managers, officers, agents, conductors, and employees, and that they exercise the franchises and faculties granted to the company, conduct the business of the said company, and receive the tolls, freights, incomes, profits, rents, and proceeds from said property, and with 7 the amount to pay the taxes, assessments, charges which affect the same in their hands, and such expenses and charges of the laborers, hands, employees, and for supplies and materials as may be in arrear for three months prior to their entry, and which, in the judgment of the said trustees, shall be essential and necessary to the maintenance of the business of the said road. Also, to make necessary repairs, improvements, and alterations where the same will facilitate and secure business for the railroad, or preserve the property from dilapidation and waste, and the residue to hold subject to the order and disposition of this court.

The court further orders that the plaintiffs aforesaid, until further orders, in the care, custody, control, and management of the property, be regarded as holding to the court the relation of receivers, and that the responsibility and accounting required of receivers is required of 8 them, and the same protection of the property in their custody will be extended to them, and for this end they will each give bonds to the judges of this court for their fidelity and accountability in their trusts in the penal sum of fifty thousand dollars, and also for their obedience to the orders and decrees of this court.

The said plaintiffs are permitted to apply to the court for instructions and orders from to time as they may be advised is proper by motion or petition.

The said plaintiffs will, prior to the first day of October next, return an inventory of all of the property, estates, rights, and claims which

shall come to their hands under the said deed, and of the debts and liabilities of the said railroad company which affect the property with a
lien or incumbrance, and shall file an account of their receipts for
9 the railroad and other property and their expenditures, and to do
the same every four months thereafter in respect to the management, business, and administration of the road.

(S'g'd) W. B. WOODS,
U. S. Circuit Judge, 5th Circuit.

Received and filed May 19th, A. D. 1875.
NATHANIEL W. TRIMBLE, *Clerk.*

10 *Bond of A. F. Elliott.*

UNITED STATES OF AMERICA,
Fifth judicial circuit, southern district of Alabama.

Know all men by these presents, that And. Foster Elliott, of the State of Louisiana, and Leopold Christ, of the city of New Orleans, State of Louisiana, are held and firmly bound unto the judges of the circuit court of the United States for the fifth judicial circuit and the southern district of Alabama, in the penal sum of fifty thousand dollars, lawful money of the United States, to be paid to the said judges of the said circuit court of the United States, or their successors in office, for which payment well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this nineteenth day of May, A. D. 1875.

The condition of this obligation is such that whereas the above bounden And. Foster Elliott and W'm Butler Duncan, the latter of the
State of New York, did on the 11th day of May, 1875, file their
11 bill of complaint on the equity side of the circuit court of the
United States for the fifth judicial circuit and southern district of Alabama, wherein the Mobile and Ohio Railroad Company, William D. Dunn, George H. Young, and others are made defendants, and therein stated that they are in possession of the line of railroads, lands, rolling-stock, and other property of said Mobile and Ohio Railroad Company, as trustees thereof under the terms and provisions of a certain deed of mortgage and trust executed by said company, on the 1st day of November, 1853, for the uses, purposes, and trusts, in and by said deed declared and created, and prayed that they might be recognized and confirmed in their said possession, and be protected therein and allowed to manage and administer said property and the faculties and franchises connected therewith, under the instructions of the court, as receivers and officers of the court, and as such pass their accounts before the court.

12 Upon the filing of which said bill and presentation thereof to
the honorable William B. Woods, the circuit judge of said circuit, on the 14th day of May, 1875, such order was made that said Duncan and Elliott are directed to occupy and employ said property with the privileges and faculties attached, and receive the tolls and income thereof, and manage the same as receivers with the responsibility and accounting required of receivers, with liberty to apply for instructions and orders for the proper management of said property under the direction of said court, as they may be advised; all which will more fully appear by reference to the said bill of complaint, and to the said order as they remain of record in the said circuit court of the United States for

the circuit and district aforesaid, in the city of Mobile and State of Alabama.

Now, then, if the said And. Foster Elliott aforesaid shall well and truly do and perform all the acts and things required of him as receiver and manager aforesaid, under the orders of said court, in the above-named case therein pending, and well and truly account
13 for all moneys and property that may come to his possession as trustee and receiver aforesaid in the performance of said trusts, and faithfully observe and obey the orders and decrees of the court in the premises, then this obligation and all herein contained shall become null and void, otherwise to be and remain in full force and effect.

AND. FOSTER ELLIOTT.
LEOPOLD CHRIST.

Witness as to A. Foster Elliott:
P. HAMILTON.
Witness as to signature of Leopold Christ:
F. A. WOOLFLEY.

UNITED STATES OF AMERICA,
District of Louisiana:

Lepold Christ, surety on the foregoing bond, being duly sworn, deposes and says that he is worth the sum of fifty thousand dollars over and above his debts and liabilities, and property exempt from execution.

LEOPOLD CHRIST.

Subscribed and sworn before me this 19th May, 1875.

W. B. WOODS,
U. S. Circuit Judge.

14 Bond approved.

W. B. WOODS,
U. S. Circuit Judge.

Filed May 21st, A. D. 1875.

N. W. TRIMBLE, *Clerk.*

Bond of W. B. Duncan.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit, Southern District of Alabama:

Know all men by these presents that W'm Butler Duncan, of the State of New York, and William H. Hays, of New York State, are held and firmly bound unto the judges of the circuit court of the United States for the fifth judicial circuit and the southern district of Alabama in the penal sum of fifty thousand dollars lawful money of the United States, to be paid to the said judges of the said circuit court of the United States, or their successors in office, for which payment well and truly to be made, we bind ourselves and our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed
15 with our seals and dated this 24th day of May, A. D. 1875.

The condition of the above obligation is such that whereas the above bounden Wm. Butler Duncan and A. Foster Elliott, the latter of the State of Louisiana, did, on the 11th day of May, 1875, file their bill of complaint on the equity side of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, wherein the Mobile and Ohio Railroad Company, William D. Dunn, George H. Young, and others, are made defendants, and therein stated that they are in possession of the line of railroad lands, rolling-stock, and other property of said Mobile & Ohio Railroad Company, as trustees thereof under the terms and provisions of a certain deed of mortgage and trust executed by said company on the first day of November, 1853, for the uses and purposes and trusts in and by said deed declared and created, and prayed that they might be recognized and confirmed in their said possession, and be protected therein, and allowed to 16 manage and administer said property and the faculties and franchises connected therewith under the instructions of the court as receivers and officers of the court, and as such pass their accounts before the court.

Upon the filing of which said bill, and presentation thereof to the Hon. William B. Woods, the circuit judge of said circuit, on the 14th day of May, 1875, such order was made that said Duncan and Elliot are directed to occupy and employ said property, with the privileges and faculties attached, and receive the tolls and income thereof, and manage the same as receivers, with the responsibility and accounting required of receivers, with liberty to apply for instructions and orders for the proper management of said property, under the direction of said court, as they may be advised, all which will more fully appear by reference to the said bill of complaint, and to the said orders as they remain of record in the said circuit court of the United States for the circuit and district aforesaid, in the city of Mobile and State of 17 Alabama.

Now then if the said W'm Butler Duncan aforesaid shall well and truly do and perform all the acts and things required of him as receiver and manager aforesaid under the orders of said court in the above-named case therein pending, and well and truly account for all moneys and property that may come to his possession as trustee and receiver aforesaid in the performance of said trusts, and faithfully observe and obey the orders and decrees of the court in the premises, this obligation and all herein contained shall become null and void; otherwise to be and remain in full force and effect.

W. BUTLER DUNCAN.
W. H. HAYS.

In presence of—
EDWARD L. OWEN.

Approved May 31, 1875.

W. B. WOODS,
U. S. Circuit Judge, 5th Circuit.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William Butler Duncan and William H. Hays, being duly 18 sworn, depose and say, and each for himself says, that he is worth the sum of one hundred thousand dollars over and above all his just debts and liabilities.

W. BUTLER DUNCAN.

Subscribed and sworn to before me this 24th day of May, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 24th day of May, 1875, before me personally came William Butler Duncan and William H. Hays, to me known, and known to me to be the individuals described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same for the uses and purpose therein mentioned.

[SEAL.] **EDWARD L. OWEN,**
U. S. Commissioner for the Southern Dist. of New York.

19 I am personally acquainted with William Butler Duncan, esquire, one of the obligors in the foregoing bond, and believe him to be responsible for the sum above mentioned; and were the suit in which the said bond is given pending in a court of which I am judge, and were the said bond presented to me for approval therein, I would, from my personal knowledge of Mr. Duncan and on the face of the foregoing paper, approve the said bond.

SAM'L BLATCHFORD,
District Judge of the United States for the Southern District of New York.

Filed in clerk's office June 1st, A. D. 1875.

N. W. TRIMBLE, *Clerk.*

20 *Bond of W. B. Duncan & A. F. Elliott.*

Know all men by these presents, that we, William Butler Duncan' of the city and county and State of New York, and A. Foster Elliot, of New Orleans, in the State of Louisiana, and Samuel L. M. Barlow and William W. MacFarland, of said city of New York, are held and firmly bound unto the honorable the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, in the sum of one hundred thousand dollars, in lawful money of the United States of America, to be paid to them the said judges or their successors or assigns. For which payment well and truly to be made, we bind ourselves and our several heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this seventeenth day of August, A. D. one thousand eight hundred and seventy-five.

21 Whereas in a certain suit in chancery now pending in the said court before the said judges, in which suit William Butler Duncan and A. Foster Elliot as trustees and so forth, are the complainants, and the Mobile and Ohio Railroad Company, William D. Dunn, and others are defendants, an order has heretofore been granted, giving to the said complainants certain power and authority, and requiring them to give an additional bond in the sum aforesaid conditioned as the bond heretofore by them given and payable as therein with two or more good sureties; which bond is by said order required to be submitted for approval to one of the judges of said court; as by said order bearing date the tenth day of August, now instant, will, reference being thereto had, more fully appear.

22 Now the condition of the above obligation is such, that if the said William Butler Duncan and A. Foster Elliot, and each of them, shall in all things fulfil the condition of the said bond heretofore by them given in this suit, and shall in all things well and truly do and perform all and every their duties as trustees and receivers, as in said bond set forth and according to law and the rules of this court, as well as the powers upon them conferred by said order of this court, and shall well and truly account for and pay over all moneys or other property which may come into the hands of them or either of them as receivers and trustees, and abide by and obey all the orders of any

court of competent jurisdiction in the premises, then the above obligation to be void; otherwise to be of full force and virtue.

(Signed) W. BUTLER DUNCAN.
AND. FOSTER ELLIOT.
(Signed) SAMUEL L. M. BARLOW.
(Signed) W. W. MACFARLAND.

Signed and sealed in presence of—
(Signed) R. E. STILWELL.

SOUTHERN DISTRICT OF NEW YORK,
State, city, and county of New York, ss:

23 Samuel L. M. Barlow and William W. MacFarland, the sureties in the aforegoing bond named, being duly and severally sworn, say and says that he is a resident and freeholder within the State of New York, and is worth the sum of one hundred thousand dollars over and above all his debts and liabilities, and exclusive of his property by law exempt from execution.

(Signed) SAMUEL L. M. BARLOW.
(Signed) W. W. MACFARLAND.

Subscribed and sworn to before me this day of August, 1875.
[COM'R'S SEAL.] (Signed) R. E. STILWELL,
U. S. Commissioner Southern District of New York.

SOUTHERN DISTRICT OF NEW YORK,
State, city, and county of New York:

24 On this twentieth day of August, A. D. 1875, before me, R. E. Stilwell, U. S. commissioner for the southern district of New York, personally appeared William Butler Duncan, A. Foster Elliot, Samuel L. M. Barlow, and William W. MacFarland, to me personally known, and known to me to be the individuals described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same as their voluntary act and deed for the uses and purposes therein set forth.

(Signed) R. E. STILWELL,
U. S. Commissioner Southern Dist. of New York.

The foregoing bond is approved.
August 23rd, 1875.
(Signed) W. B. WOODS,
U. S. Circuit Judge, 5th circuit.

Filed August 28th, 1875.
N. W. TRIMBLE, *Clerk.*

25 (Recapitulation of Abstracts will be found on pages 19 and 20.)

Abstract of inventories of material on file in office of the auditor Mobile & Ohio Railroad, Mobile, Alabama.

Page 1. INVENTORY A.

Mobile depot.

Schedule 1.	Materials car-repairer, pass'g'r	2,010 42	
" 2.	" " " freight	503 49	
			2,513 91

Whistler, Ala.

Schedule 3.	Materials in machine-shop	11,730 45	
“ 4.	“ “ pattern “ “	285 40	
“ 5.	“ “ carpenter “	5,905 32	
“ 6.	“ “ coppersmith “	1,038 65,	
“ 7.	“ “ store-room	43,436 00	
“ 8.	“ “ construction shed	16,243 51	
“ 9.	“ “ upholster's shop	1,898 23	
“ 10.	“ “ paint “	1,359 21	
“ 11.	“ “ repair “	1,638 05	
“ 12.	“ “ iron-foundry	1,945 83	
			85,480 65

Shubuta, Miss.

Schedule 13.	Materials in repair-shop	1,597 63	
“ 14.	“ car-repairers	82 85	
			1,680 48

Meridian, Miss.

Schedule 15.	Material car-repairers	153 53	153 53

Macon, Miss.

Schedule 16.	Material for car-repairers	261 52	
“ 17.	“ “ engines	1,060 77	
“ 18.	Lumber for engines & car	103 65	
“ 19.	Material in store-room	9,183 06	
			10,609 00
		Forward	100,437 57

C. A. WETTON, *Aud.* Sept. 22, 1875.

26 Page 2. Am't bro't forw'd.......................... 100,437 57

Jackson, Tenn.

Schedule 20.	Material in shop	20,709 02	
			20,709 02

Total Abstract A.. 121,146 59

Total Abstract A.. 121,146 59

C. A. WETTON, *Aud.*

27 *Abstract of inventories of machinery & tools on file in office of the auditor of the Mobile & Ohio Railroad, Mobile, Alabama, May 8th, 1875.*

Page 3. INVENTORY B.

Mobile, Ala.

Schedule 1.	Machinery & tools repair-shop	2,748 48	
			2,748 48

Whistler, Ala.

Schedule 2.	Machinery & tools blacksmith-shop	8,312 75	
“ 3.	“ “ boiler-shop	1,051 50	
“ 4.	“ “ copper & tin shop	1,071 50	
“ 5.	“ “ carpenter-shop	8,087 00	
“ 6.	“ “ construction-shop	137 45	
“ 7.	“ “ dry-house	204 00	
“ 8.	“ “ brass-foundry	583 65	
“ 9.	“ “ iron-foundry	2,920 00	
“ 10.	“ “ machine-shop	52,156 75	
“ 11.	“ “ office	411 50	
“ 12.	“ “ pattern-shop	17,046 05	
“ 13.	“ “ paint-shop	366 30	
“ 14.	“ “ freight-car shop	490 10	
“ 15.	“ “ store-room	855 50	
“ 16.	“ “ upholsterer-shop	21 55	
			93,724 60

Shubuta.

Schedule 17. Machinery & tools repair-shop	979 06	
		979 06

MISSISSIPPI DIVISION.

Macon, Miss.

Sched'le 1. Machinery & tools blacksmith-shop	1,150	
2. “ “ carpenter “	1,020	
3. “ “ coppersmith “	150 60	
4. “ “ machine “	7,096	
5. “ “ round-house	260 40	
6. “ “ boiler-shop	964	
7. “ “ paint “	74	
		10,715
Forward		108,167 14

C. A. WETTON, *Aud.*

28 Page 4.

Am't for'd		108,167 14

Jackson, Tenn.

Schedule—Machinery & tools in blacksmith-shop	2,159 “	
“ “ “ “ boiler-shop	1,493 65	
“ “ “ “ carpenter's shop	1,979 36	
“ “ “ “ coppersmith “	278 25	
“ “ “ “ machine “	18,472 60	
“ “ “ “ round-house	326 “	
“ “ “ “ paint-shop	114 75	
“ “ “ “ patte'n-shop	2,231 “	
“ “ “ “ brass-foundry	246 50	
“ “ “ “ store-room	330 15	
“ “ “ “ M. mechanic's office	154 65	
	27,785 91	
“ “ “ car-repairer	110 50	
“ “ “ “ “ calk'g	146 50	
		28,042 91
Total abstract B		136,210 05
Total abstract B		136,210 05

C. A. WETTON, *Aud.*

29 ***Abstract of inventories—“Buildings, station-buildings, platforms, wood and water stations, turn-tables, round-houses, section-houses, & cabins,” on file in office of the auditor Mobile & Ohio Railroad, Mobile, Ala., May 8th, 1875.***

Page 5.

INVENTORY C.

Mobile.

Schedule 1. Buildings at Mobile	76,100 “

Whistler.

Sched. 2. Shop buildings—brick	88,000 “
frame	16,000 “

Alabama division.

Sched. 3. Station-buildings & platforms	19,200 “
“ 4. Wood & water stations	6,600 “
“ 5. Turn-tables & round-houses	4,515 “
“ 6. Section-houses & cabins	20,625 “

Macon.

Sched.	7. Shop buildings	3,050 "	
"	8. Office "	2,000 "	

Mississippi div'n.

Sched.	9. Station-buildings & platforms	19,450 "	
"	10. Wood & water stations	7,620 "	
"	11. Turn-tables & round-houses	4,800 "	
"	12. Section-houses & cabins	10,325 "	

Jackson, Tenn.

Sched.	13. Shop buildings	34,250 "	

Tenn. & Ky. div'n.

Sched.	14. Station-buildings & platforms	19,835 "	
	15. Wood & water stations, T. tables, & R. houses	4,750 "	
	16. Section-houses & cabins	8,950 "	
			346,070 00
	Total abstract C		346,070 00

C. A. WETTON, *Aud.*

30 *Abstract of inventories of "furniture, fixtures, etc., at stations," on file in office of auditor Mobile & Ohio Railroad, Mobile, Ala., May 8th*, 1875.

Page 6.

INVENTORY D.

Mobile.

Sched.	1. Furniture, fixtures, etc., gen. office building	2,000 "	
"	2. " " g. man. & d. sup't, &c	2,112 50	

Alabama div'n.

Sched.	3. Furniture, fixtures, &c., at stations in this div'n	6,374 55	

Mississippi div'n.

Schedule	4. Furniture, fixtures, etc., at stations in this division	2,416 00	
"	5. Track-scales	1,600 00	
"	6. Babcock extinguisher	1,360 00	

Tenn. & K'y div'n.

Schedule	7. Furniture, fixtures, etc., at stations in this div'n	5,331 95	
			21,195 00
	Total abstract D		21,195 00

C. A. WETTON, *Aud.*

31 *Abstract of inventories—"Utensils, material, & tools on roadway," on file in office of the auditor Mobile & Ohio Railroad, Mobile, Alabama, May 8th*, 1875.

Page 7.

INVENTORY E.

Alabama division.

Schedule	1. Utensils, material, & tools on roadway, including wood, coal, & old iron	36,726 07

Mississippi division.

Schedule	2. Utensils, material, & tools on roadway, including wood, coal, & old iron	37,268 00

Tenn. & Kentucky div'n.

Schedule 3. Utensils, materials, & tools on roadway, including wood, coal, & old iron	16,311 84	
Total abstract E		90,305 91
Total abstract E		90,305 91

C. A. WETTON, *Aud.*

32 ***Abstract of inventories—"Tools, materials, & utensils, on passenger & freight trains," on file in the office of the auditor Mobile & Ohio Railroad, Mobile, Alabama, May 8th, 1875.***

Page 8.

INVENTORY F.

Alabama division.

Schedule 1. Tools, materials, & utensils on passenger & freight trains	1,016 75	

Mississippi division.

Schedule 2. Tools, materials, in passenger & freight trains	200 00	

Tenn. & K'y division.

Schedule 3. Tools, materials, & utensils on passenger & freight trains	782 35	
		1,999 10
Total abstract F		1,999 10

C. A. WETTON, *Aud.*

33 ***Abstract of inventories of telegraph materials, etc., on file in office auditor Mobile & Ohio Railroad, Mobile, Alabama.***

Page 9.

INVENTORY G.

Alabama division.

Schedule 1. Telegraph material, including $197\frac{8}{10}$ miles @ $35.00 per mile	7,659 50	

Mississippi division.

Schedule 2. Telegraph material	28 00	

Tenn. & K'y division.

Schedule 3. Telegraph material, including $31\frac{4}{10}$ miles @ $35.00 per mile	1,099 00	
Total abstract G		8,786 50
Total abstract G		8,786 50

C. A. WETTON, *Aud.*

34 *Abstract of inventories, "Locomotives," on file in the office of the auditor Mobile & Ohio Railroad, Mobile, Alabama.*

Page 10.

INVENTORY H.

Alabama division.		
Schedule 1. 41 locomotives, valued	249,500 00	
Mississippi division.		
Schedule 2. 23 locomotives, valued	132,300 00	
Tenn. & K'y division.		
Schedule 3. 30 locomotives, valued	187,500 00	
		569,300 00
Total abstract H		569,300 "

C. A. WETTON, *Aud.*

35 *Abstract of inventory of cars used on entire line Mobile & Ohio R. R'd, on file in the office of the auditor Mobile & Ohio R. R'd, Mobile, Alabama, May* 8, 1875.

Page 11.

INVENTORY I.

602 box	cars,	@ $450	270,900 00	
242 flat	"	@ 350	84,700 00	
36 stock	"	@ 450	16,200 00	
61 palaces	"	@ 400	24,400 00	
48 caboose	"	@ 450	21,600 00	
6 express	"	@ 2,000	12,000 00	
11 baggage	"	@ 2,000	22,000 00	
30 coaches	"	@ 2,500	75,000 00	
1 officer car,		@ 5,000	5,000 00	
				531,800 00
Total abstract I				531,800 00

C. A. WETTON, *Aud.*

36 *Abstract of inventory of city and town lots owned by the Mobile and Ohio Railroad Co., on file in the office of the auditor of Mobile & Ohio R. Road, Mobile, Alabama, May* 8th, 1875.

Page 12.

INVENTORY J.

Lots in the city of Mobile not used for railroad purposes.

ORANGE GROVE TRACT.

Nos. 18, 19, & 20 in square No. 272. See plat No. 1, warehouse.	2,500 00
Nos. 8, 9, 12, 13, 14, & 15 in square No. 273. See Plat No. 1, Meridian warehouse	10,500 00
The above warehouse is subject to mortgage of $4,650.00.	
Nos. 12, 28, & 30 in square No. 280. See Plat No. 1 & half interest in lots 21, 22, 23, 24, 24½, 25, 26, & 27 in same square. See Plat No. 1	2,000 00
Nos. 1 to 13, inc. All of square No. 308. See Plat No. 1	1,500 00
Nos. 1, in square No. 303. See Plat No. 1	600 00
Nos. 1 to 6, inc. All of square 309. See Plat No. 1	800 00
Nos. 5, 6, & 7. All of block east of square 309. See Plat No. 1	500 00

Nos. 1 to 10, inc. All of square No. 373. See Plat No. 1	800 00	
Nos. 1 to 5, inc. All of square 372. See Plat No. 1	250 00	
Nos. 1 to 15, inc. All of square 395. See Plat No. 1	750 00	
Fractional square east of square 395. See Plat No. 1	75 00	
Nos. 1 to 15, inc. All of square 404. See Plat No 1	750 00	
Amt. forward	21,025 00	

C. A. WETTON, *Aud.*

37 Page 13.

Amount forward	21,025 00	
Nos. 1 to 7, inc. All of square 405. See Plat No. 1	350 00	
Nos. 1 to 6, inc. All of square 423. See Plat No. 1	300 00	
Fractional square east of square 423. See Plat No. 1	100 00	
Orange Grove property, viz, 95 lots owned in whole and half interest in 8 lots	21,775 00	
Water front and lots acquired by purchase on Water street north of Maine street & and known as Mobile & Ohio R. R. wharf property. See Plat No. 2	3,000 00	24,775 00

Town lots outside of city limits & not included on schedule of hands, Mobile County.

Whistler, town of:		
One-third interest in lots & area unsold	6,000 00	
Mauvilla, town of:		
180 lots unsold, valued at	1,500 00	
Citronelle, town of:		
470 lots unsold "	6,000 00	
Interest in town lots in Mobile County outside city limits		13,500 00
Lots in city & county of Mobile		38,275 00
Forward		38,275 00

C. A. WETTON, *Aud.*

38 *Abstract of inventory of town sites and lots thereon in the State of Mississippi, on file in the office of auditor Mobile and Ohio Railroad, Mobile, Alabama.*

Page 14		38,275 00
Village of State Line, Wayne Co., Mississippi:		
70 lots unsold, with an area of 260 acres, valued per acre @ $10.00	2,600 00	
Village Waynsboro, Wayne Co., Miss.:		
120 lots unsold, with an area of 350 acres, valued p'r acre at $10.00	3,500 00	
Village De Soto, Clark Co., Miss.:		
24 lots unsold, with an area of 200 acres, valued p'r acre @ $10.00	2,000 00	
Shubuta, Clark Co., Miss.:		
430 lots unsold, with an area of 350 acres, valued p'r acre @ $10.00	3,500 00	
Quitman, Clark Co., Miss.:		
14 lots unsold, with an area of 10 acres, valued p'r acre, $10.00.	100 00	
Meridian, Lauderdale Co., Miss.:		
238 lots unsold	12,000 00	
Marion, Lauderdale Co., Miss.:		
107 lots unsold, of which the co. owns ½ interest, said interest valued at	500 00	
Lockart, Lauderdale Co., Miss.:		
Area for town site, 25 acres, valued at $10.00 p'r acre	250 00	
Markeeta, Kemper Co., Miss.:		
Area of lots unsold, 120 acres, valued at $5.00 per acre	600 00	

Sucarnochee, Kemper Co., Miss.: Area of lots unsold, 120 acres, valued at $5.00 p. acre	600 00	
Scooba, Kemper Co., Miss.: 131 lots unsold; area unsold, 160 acres; interest valued at	1,000 00	
Forward	26,650 00	38,275 00

C. A. WETTON, *Aud.*

39	Page 15. Am't forward	26,650 00	38,275 00
	Wahalak, Kemper Co., Miss.: Area unsold, 140 acres; co's ½ int. valued at	200 00	
	Saltillo, Lee Co., Miss.: 18 block; area in acres, 30; value per acre, $10.00	300 00	
	Baldwyn, Prentiss Co., Miss.: ½ int. in unsold lots, area not definitely ascertained, valued at	500 00	
	Booneville, Prentiss Co., Miss.: ½ int. in unsold lots, number & area not definitely ascertained	500 00	
	Town-lots in Mississippi	28,150 00	28,150 00

RECAPITULATION.

Town lots in Miss	28,150 00	
" " " Ala	38,275 00	
Total	66,425 00	
Total abstract J		66,425 00

C. A. WETTON, *Aud.*

40 *Abstract of inventory on file in the auditor's office Mobile & Ohio R. Rd., of lands owned by Mobile & Ohio R. Rd. Co., Mobile, Alabama, May 8th*, 1875.

Page 16.

INVENTORY K.

State of Alabama.

Mobile Co.: Number of acres on hand	223,325 28	
Baldwyn Co.: Number of acres on hand	14,477 56	
Washington Co.: Number of acres on hand	278,038 38	
Choctaw Co.: Number of acres on hand	11,395 78	
Sumter Co.: Number of acres on hand	5,631 89	
		532,868 89
Total abstract K		532,868 89

C. A. WETTON, *Aud.*

41 *Abstract of inventory on file in the auditor's office, Mobile & Ohio R. R'd, of lands owned by Mobile & Ohio R. R'd Co., Mobile, Alabama, May 8th*, 1875.

Page 17.

INVENTORY L.

State of Mississippi.

Jackson Co.: Number of acres on hand	12,723 54
Greene Co.: Number of acres on hand	93,674 66

Wayne Co.:		
Number of acres on hand	189,434 37	
Clark Co.:		
Number of acres on hand	131,630 “	
Jasper Co.:		
Number of acres on hand	16,246 80	
Lauderdale Co.:		
Number of acres on hand	121,546 63	
Newton Co.:		
Number of acres on hand	18,421 61	
Kemper Co.:		
Number of acres on hand	42,400 64	
Winston Co.:		
Number of acres on hand	4,451 13	
Noxubee Co.:		
Number of acres on hand	23,448 63	
Lowndes Co.:		
Number of acres on hand	3,435 74	
Okitleleiha Co.:		
Number of acres on hand	5,462 19	
Monroe Co.:		
Number of acres on hand	1,950 87	
Total abstract L		663,826 81

C. A. WETTON, *Aud.*

42 *Abstract of inventory on file in the auditor's office, Mobile & Ohio R. R'd, of lands owned by Mobile & Ohio R. R'd Co., Mobile, Alabama, May 8th,* 1875.

Page 18.

INVENTORY M.

State of Kentucky.

	Acres.
Hickman Co.:	
Lands owned by Co	1,258 50

INVENTORY N.

Lands opposite Cario, Ills., Filmore City	100 “

C. A. WETTON, *Aud.*

43 *Recapitulation of abstracts of inventories.*

Page 19.

Inventory A:	
Materials	121,146 59
Inventory B:	
Machinery & tools	136,210 05
Inventory C:	
Buildings, station-buildings, platforms, wood & water stations, turn-tables & round-houses, section-houses and cabins	346,070 00
Inventory D:	
Furniture, fixtures, etc.; at stations	21,195 00
Inventory E:	
Utensils, materials, & tools on roadway	90,305 91
Inventory F:	
Tools, materials, & utensils on pass'g'r & fr't trains	1,999 10
Inventory G:	
Telegraph materials, etc	8,786 50

Inventory H:		
Locomotives	569,300 00	
Inventory I:		
Cars & coaches	531,800 00	
Inventory J:		
City & town lots in the States of Ala. & Miss	66,425 00	
Forward		$1,893,238 15

C. A. WETTON, *Aud.*

44 Page 20.

Am't forward		$1,893,238 15
Inventory K:		
Lands in Alabama owned by co., number of acres	532,868 89	
Inventory L:		
Lands in Mississippi, owned by co., number of acres	664,826 81	
Inventory M:		
Lands in Kentucky, Cairo Junction, subject to a lien of $8,000	1,258 50	
Inventory N:		
Lands opposite Cairo, Fillmore City	100 00	
Total acres, nominal value	1,199,054 20	
Total valuation		$1,893,238 15

The donated lands are held under a deed of trust, and the proceeds of sales used in the retirement of £ bonds, according to its terms.

Length of main track	472 miles.
" " branches owned	46 "
" " " leased	9 "
" " side-track	48 "
Total	575

W. BUTLER DUNCAN, *M. & O. R. R.*

C. A. WETTON, *Aud.*

45 (Indorsed:) A 1. Return by W. B. Duncan & A. F. Ellit, trustees and receivers of the Mobile and Ohio R. R., of inventory of property owned by the Mobile and Ohio R. R. Co. on the 8th day of May, 1875, to the United States circuit court for the southern district of Alabama, at Mobile. Filed September 29th, 1875. N. W. Trimble, clerk.

46 *Petition of Rogers Locomotive Machine Works.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama. In equity.

To the honorable the judges of said court:

The petition of the Rogers Locomotive and Machine Works, a corporation created by the laws of the State of New Jersey, and a citizen of said State, respectfully sheweth unto your honors:

1. That said corporation is holder and owner of certain bonds of the Mobile and Ohio Railroad Company, a corporation hereinafter referred to, issued under a certain mortgage of the said company known as the secornd mortgage thereof, made on the 15th day of February, A. D. 1860; that petitioner holds of said bonds, each with certain unpaid coupons for interest attached, to the amount of principal of
47 ninety-one thousand two hundred dollars.

2. That there is pending undetermined in said court a suit in equity, wherein William Butler Duncan, who is a citizen of the State of New York, and A. Foster Elliot, who is a citizen of the State of

Louisiana, are complainants, and the said The Mobile and Ohio Railroad Company, a corporation incorporated by act of the general assembly of the State of Alabama, which is a citizen of the State of Alabama, and others, are defendants; that in and by the bill of complaint in said cause, the said complainants set up and allege themselves to be entitled to certain rights and relief, and also set up and allege other parties named therein to be entitled to certain rights and relief, and pray for the enforcement of such alleged rights and for alleged appro-
48 priate relief; and also allege and pretend that certain of said alleged rights are paramount and superior to those of holders of bonds issued by said railroad company and secured by the mortgage known as the second mortgage of said company aforesaid.

3. That petitioner desires to controvert and deny and traverse many of the allegations of said bill of complaint, and to make defences thereto, for themselves as holders of bonds issued under said second mortgage aforesaid, and for all others in similar right with themselves who may choose to come in and contribute to the expenses of such defences, and that they are entitled so to do by the rules and practice of this honorable court.

Your petitioner further prays that your honors will be pleased to grant a decree of this honorable court, allowing petitioner
49 and others in similar right as aforesaid to be made defendants to said bill of complaint in said cause, and also to file an answer and plea to said bill of complaint and a cross-bill in said cause for the enforcement of their rights against the said defendant railroad corporation, and against other parties to said cause, and for all such other and further relief to which your petitioners and others in similar right as aforesaid may be entitled in equity and good conscience, and your petitioner will ever pray, &c.

Dated Mobile, Alabama, December 7th, 1875.

(Signed) E. H. GRANDIN,
Sol'r of Petitioners.

(Endorsed:)
We accept service of this petition.
Dec'r 10, '75.
(S'g'd) HAMILTONS,
For Compl'ts.

50 (Endorsed:) Filed Jan. 3, 1876.
(S'g'd) N. W. TRIMBLE, *Clerk.*

51 Circuit court of the United States for the southern district of Alabama.

WEDNESDAY MORNING, *January 5th*, 1876.

Court met pursuant to adjournment. Present, the honorable William B. Woods, judge presiding.

W'M BUTLER DUNCAN & A. FOSTER ELLIOTT
vs.
THE MOBILE AND OHIO R. R. CO. & ALS.
} No. 90. On bill, &c.

In this cause the petition of the Rogers Locomotive and Machine Works, a corporation of the State of New Jersey, praying to be admitted a defendant in the same, and for leave to file a cross-bill, &c., in the same was presented by E. H. Grandin, solicitor of said corporation and filed.

52 *Petition for injunction & permission to bring suits.*

THE SOUTHERN DISTRICT OF ALABAMA,
Mobile, ss:

The United States circuit court for the southern district of Alabama, fifth judicial circuit.

W'M BUTLER DUNCAN ET AL., COMPLAINANTS,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et al., respondents.

To the honorable judges of said court:

Your petitioners, W'm Butler Duncan and Andrew F. Elliott, heretofore duly recognized and confirmed by this court in this cause as trustees in possession of said railroad and property covered by a certain deed of trust bearing date Nov'r 1st, 1853, and more particularly referred to and described in the orders of this court, respectfully represent to your honors that among said property then in their possession and control there are bodies of land chiefly valuable for their timber; that said
53 lands have been and are being constantly trespassed upon and the timber destroyed and carried away to the great injury thereof. And as there may be some doubt whether your petitioners under the circumstances can maintain or bring any action for the recovery of any such timber or wood, or for the protection of such property without the permission of your honors first obtained:

Wherefore your petitioners pray your honor to authorize and empower them to bring such suit, give bond, and do anything and all such other things as they may from time to time be advised is necessary for the protection of such property, or for the recovery of any timber or wood which has or may be taken from any of said lands; and that your honor will grant to your petitioners an injunction restraining any and all parties whatever from trespassing on, or cutting or removing any wood or timber from, any of said lands, or of selling or disposing of wood or timber that may have been unlawfully cut or carried
54 therefrom while said petitioners are or have been possession of said property.

And your petitioners will ever pray.

(Signed) P. & T. A. HAMILTON,
For Petitioners.

(Endorsed:) Filed June 8th, 1876. (Signed) N. W. Trimble, clerk.

Order on petition granting injunction.

THURSDAY MORNING, *June 8th*, 1876.

Court met pursuant to adjournment. Present, the honorable William B. Woods, judge, presiding.

* * * *

W'M BUTLER DUNCAN & ANDREW FOSTER Elliott, trustees, &c.,
vs.
THE MOBILE & OHIO RAILROAD CO. ET AL.

55 The complainants, as trustees in possession under the orders of this court of the Mobile and Ohio Railroad and certain real and

personal property, having filed their petition to this court setting forth in effect that a large portion of said real estate which is chiefly valuable for the wood and timber thereon, and that said lands have been and are being constantly trespassed upon, and the timber destroyed and carried away to the great injury thereof, and praying this court to authorize and empower them to bring suit and give bond, and to do any and all such other things as they may from time to time be advised for the protection of such property, or for the recovery of any timber or wood which has or may be taken from said lands so in their possession; and also praying this court to grant an injunction restraining any and all parties whatever from trespassing on or cutting or removing any wood or timber from any of said lands, or of selling or disposing of wood or timber that may have been unlawfully cut or carried
56 therefrom while said petitioners are or have been in possession of said property.

And the said petition coming on to be heard and the matter being examined and understood by the court, it is hereby ordered and decreed that the prayer of said petitioners be granted in all things, and permission is hereby given them to bring or maintain any suit, or do any thing they may be advised is necessary, for the protection of said lands and for the recovery of wood or timber unlawfully cut thereon while in their possession. And it is further ordered that the writ of injunction do issue out of and under the seal of this court, restraining any and all persons from trespassing on or cutting or removing any wood or timber from any of said lands—or of selling, removing, or disposing of wood or timber, that may have been unlawfully cut or carried therefrom—while said petitioners are or have been in possession of said lands
57 and property under the sanction and orders of this court.

(Signed) W. B. WOODS, *Judge.*

(Original endorsed:) Filed June 8th, 1876. (S'g'd) N. W. Trimble, clerk.

Injunction.

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN & ANDREW FOSTER Elliott, trustees & receivers,
vs.
MOBILE AND OHIO RAILROAD COMPANY, et al.

The President of the United States of America to any and all persons to whom these presents shall come, greeting:

58 You are hereby strictly monished and enjoined from trespassing on or cutting or removing wood or timber from any lands of the Mobile and Ohio Railroad Company, or from selling, removing, or disposing of wood or timber that may have been unlawfully cut or carried from said lands while the above-mentioned trustees, Duncan and Elliott, have been or are in possession of said lands and property under the sanction and orders of this court.

Witness honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 8th day of June, A. D. 1876.

Attest:
[SEAL.] (S'g'd) N. W. TRIMBLE,
Clerk U. S. Cir. C'rt, Sou. Dist. Ala.

To the marshal of the United States for the southern district of Alabama, or any of his deputies, to execute.
(S'g'd) N. W. TRIMBLE, *Clerk, &c.*

Issued June 8th, 1876.

Marshal's return.

59 Received, marshal's office, June 8th, A. D. 1876, and executed same by serving a copy of the within notice upon Henry Robinson.
(Signed) GEORGE TURNER,
U. S. Marshal,
By GEO. W. LEWIS,
Sp'c'l D'p'ty.

Returned and filed June 9th, 1876.
(Signed) N. W. TRIMBLE, *Clerk.*

60 *Motion for dissolution of injunction, &c.*

In the circuit court of the United States for the southern district of Alabama, at Mobile.

W'M BUTLER DUNCAN AND ANDREW FOSTER Elliott, trustees and receivers,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, et al.
} No. 90. In equity.

In the matter of the petition of said receivers as against Elisha B. Lott, tax-collector, &c., and in the matter of the injunction granted upon said petition against said tax-collector, the said Elisha B. Lott moves the court that said injunction be dissolved—

1st. Because of the insufficiency of the matters in the petition for an injunction, and because of want of equity therein.

2nd. Because of the matters set forth in the petition and in the answer thereto.

61 3rd. Because of the nature and condition of the pleadings in reference to the matters of said petition.

(S'g'd) C. W. RAPIER,
Solicitor for the motion.

M'ss'rs G. N. STEWART and HAMILTON, *Contra.*

EXHIBIT A.

Mobile and Ohio Railroad Co.'s paper endorsed by W. D. Dunn.

Date.	No.	To whom payable.	On what account.	Due.	Amount.
1874. Dec. 1	1454	M'r's Roberts	Loan	1875. Dec. 4	$1,800 00
4	1516	J. V. Harris (gold)	"	"	4,740 00
"	1524	Gainesville Nat. Bank	"	7	7,126 51
"	1527	" " "	"	"	500 00
2	1457	Tho's P. Miller and Co	"	13	1,500 00
	1458	" " "	"	15	1,500 00
12	1580	J. M. Morgan (gold)	"	"	4,250 00
22	1624	Tuscaloosa Nat. Bank	"	22	2,000 00
2	1461	Tho's P. Miller & Co	"	1876. Jan. 4	1,500 00
1875. Jan. 4	1638	C. W. Rapier	"	"	1,000 00
1874. Dec. 15	1607	Southern Bank of Ala	"	5	2,[illegible] 00
2	1463	Tho's P. Miller & Co	"	9	1,[illegible] 00
18	1614	M'r's R. E. Thompson, ex	"	13	1,[illegible] 00
	1615	" " "	"	"	1,500 00
	1616	" " "	"	"	1,500 00
12	1582	J. M. Morgan (gold)	"	16	4,250 00
2	1465	Tho's P. Miller & Co	"	20	1,500 00
22	1625	Tuscaloosa Nat. Bank	"	22	2,000 00
1875. Ap'l 1	1729	C. C. Hannermann	"	25	2,000 00
1874. Dec. 22	1626	Tuscaloosa Nat. Bank	"	29	2,375 00
2	1468	Tho's P. Miller & Co	"	Feb. 7	1,[illegible] 00
17	1613	J. C. Gillespie	"	8	3,375 00
4	1528	Gainesville Nat. Bank	"	13	1,797 75
					52,833 26

Exhibit A to claim of W'm D. Dunn.

JAMES GILLETTE,
Special Master.

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EXHIBIT B.

Mobile and Ohio Railroad Co.'s paper endorsed by A. Murdock and W. D. Dunn.

Date.	No.	To whom payable.	On what account.	Due.	Amount.
1874.				1875.	
Nov. 16	1400	W'm Horton	Loan....	Nov. 19	$19,680 30
	1401	"	"	" "	7,940 00
30	1425	Columbus Ins. and Banking Co	"	Dec. 3	6,750 00
Dec. 2	1455	T. P. Miller & Co	"	4	1,500 00
4	1521	T. T. Tyree	"	" "	6,700 00
7	1522	Tho's R. Foster	"	" 5	2,700 00
4	1525	Gainesville Nat. Bank	"	" 7	2,804 49
5	1523	Columbus Ins. and Banking Co	"	" 8	5,850 00
2	1456	Tho's P. Miller & Co	"	" 11	1,500 00
14	1587	Henry Dryer	"	" 14	1,125 00
2	1459	Tho's P. Miller & Co	"	" 15	1,500 00
2	1481	John Bowen	"	" 19	3,375 00
1875.					
Jan. 21	1684	Gen. Bocock	"	" 26	2,000 00
1874.					
Dec. 15	1610	T. G. Bush, ag't	"	" 28	3,750 00
12	1576	Jarvis Turner	"	" 29	1,100 00
				1876.	
	1577	"	"	Jan. 2	1,100 00
2	1462	Tho's P. Miller & Co	"	" 5	1,500 00
11	1565	John Grant	"	" 8	960 00
12	1578	Jarvis Turner	" ...	" 12	1,100 00
2	1464	T. P. Miller & Co	"	" 15	1,500 00
14	1588	H. Dryer	"	" "	1,125 00
1875.					
Jan. 16	1673	Columbus Ins. and Banking Co	"	" 16	5,850 00
21	1685	Gen. Bocock	"	" 21	2,000 00
22	1677	Columbus Ins. and Banking Co	" ...	" 22	5,850 00
5	1642	A. T. Slaughter (gold)	"	" 26	1,339 30
4	1640	C. H. Leannean	"	" 28	3,200 00
64					
M'ch 20	1718	J. M. Morgan (gold)	" ...	" 30	1,620 15
1874.					
Dec. 2	1467	T. P. Miller & Co	"	Feb. 3	1,500 00
	1469	"	"	" 15	1,500 00
	1483	John Bowen	"	" 16	3,600 00
	1470	T. P. Miller and Co	"	" 22	1,950 00
	1478	"	"	" 19	1,500 00
1875.					
Jan. 21	1686	Gen. Bocock	"	" 22	2,000 00
1874.					
Dec. 14	1589	Henry Dryer	"	" 23	1,125 00
	1579	Jarvis Turner	"	" 25	1,100 00
	1566	John Grant	"	" 26	960 00
12	1585	J. M. Morgan (gold)	"	" 27	2,100 00
					112,754 74

Exhibit B to claim of W'm D. Dunn.

JAMES GILLETTE,
Special Master.

65 *Affidavit of agent of William D. Dunn, of Mobile, Ala., for protection against indorsed notes.*

THE UNITED STATES OF AMERICA,
Southern District of Alabama:

W'M BUTLER DUNCAN AND A. FOSTER ELLIOTT, trustees,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.

Personally appeared before me this 11th October, 1876, Moses Waring, who, being duly sworn, deposes and says that he is agent for W'm D. Dunn in this special matter, and as such agent he says that at various times the said W'm D. Dunn endorsed the notes of the Mobile and Ohio Railroad Company amounting to the sum of fifty-three thousand ($53,833.26) eight hundred and thirty-three & $\frac{26}{100}$ dollars, as is more fully shown and set forth in detail in Exhibit A hereto attached, and that together with Abram Murdock he endorsed notes of the defendant, the Mobile and Ohio Railroad Company, amounting to one hundred ($112,754.74) and twelve thousand seven hundred and fifty-four & $\frac{74}{100}$ dollars, as is 66 more fully shown and set forth in detail in Exhibit B, hereunto attached.

And deponent further says that the said William D. Dunn is liable for the amounts of said indebtedness of the Mobile and Ohio Railroad Company and interest on the notes endorsed by him from the date of maturity of the same, as said dates are set forth in the exhibits referred to.

And deponent further says that all of said notes are outstanding as just debts of said company, but in whose hands deponent is not able to state.

And deponent further says that he is authorized by his principal to make this deposition; and he makes the Exhibits A and B herein referred to a part thereof.

Deponent further says, on oath, that all of said indebtedness is secured by the deposit, as collateral, of the consolidated mortgage-bonds of said railroad company, which, when deposited, were valued at seventy-five cents on the dollar of the face-value of said bonds, some of said bonds being deposited with the holders of said notes and some with the 67 Bank of Mobile.

And further deponent saith not.

M. WARING.

Subscribed and sworn to before me this 11th day of October, 1876.

JAMES GILLETTE,
Special Master.

Filed Oct. 11, 1876.

JAMES GILLETTE,
Special Master.

Filed April 5th, 1877.

N. W. TRIMBLE, *Clerk.*

68 *Affidavit of bonds held by committee of reorganization of M. & O. R. R., by T. Haskins Du Puy, of committee.*

Fifth judicial circuit southern district of Alabama, circuit court of the United States.

W'M BUTLER DUNCAN & A. FOSTER ELLIOTT, trustees,
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET als.
} In equity.

Before Special Master James Gillette comes T. Haskins Du Puy, of the State of Pennsylvania, but temporarily sojourning in Mobile, State of Alabama, who, being duly sworn, on his oath saith, that W. M. Hays, W'm S. Pierson, with himself, are a committee appointed by the bondholders of the Mobile and Ohio Railroad Company, or the largest part thereof, for the purpose of reorganization of said company; that his said associates and himself are the holders and possessors, by assignment and delivery of the former holders, of the bonds heretofore issued by said railroad company, to the amounts and of the description designated in the schedule hereto attached, with all the outstanding and unpaid coupons attached to, or detached from, said bonds; also 69 the outstanding and unpaid coupons which matured in the year 1874 upon the bonds of the issues known as sterling and interest-arrearage bonds, which bonds are in the hands of holders not represented by committee, which detached coupons amount in the aggregate to exceeding the sum of $250,000.

The particulars of a portion of these securities have heretofore been presented to the master by W'm H. Hays, the chairman of the committee of reorganization. The amounts herein specified include those so presented, and others since then assigned and delivered to said committee.

Schedule.

1st mortgage sterling	$3,211,000
Funded interest	1,802,800
Tennessee subst'n	1,473,000
Second mortgage	857,861
Convertible	392,300
	7,736,961

Besides a considerable amount of securities assigned to the committee of reorganization, but not yet actually delivered.

Mobile, 30th March, 1877.

(Signed) T. HASKINS DU PUY.

Subscribed and sworn to before me, March 31, 1877.

JAMES GILLETTE,
Special Master.

Filed April 5th, 1877.

N. W. TRIMBLE, *Clerk.*

70 This is to certify that the following described bonds, with coupons attached, and interest accruing, are owned by me, Henry Bright, of the town of Northampton, and State of Massachusetts, and

are valid claims against the Mobile & Ohio R. R. Co'y, being wholly unpaid, to wit:

1 6 p'r c't sterling bond No. 5290, dated Nov. 1st, 1853, payable Nov. 1st, 1883, 225 £ st'g, or 1000.00, interest payable in London, 6 £ S May 1st & Nov. 1st, or payable at office in Mobile, $40, May 1st & Nov. 1st, with certificate attached.. 1,000 00

This bond is secured by 1st mortgages on road equipments, chartered rights, surplus earnings, and all lands of the Co'y.

1 8 p'r c't interest bond O, No. 244, dated Nov. 1st, 1866. Payable Nov. 1st, 1876, interest 8 p'r c't, payable semi-annually at office in Mobile, on May 1st & Nov. 1st.. 1,000 00

This bond is secured by 1st mortgage on road equipments, and all land donated to the Co'y by the United States. All coupons falling due subsequent to Nov. 1st, 1874, are attached to the above described two bonds:

71 1 income bond M, No. 97, dated March 1st, 1867, for.................. 100 00
1 " " " " 98, " " " " "........................ 100 00
1 " " T, " 207, " " " " "........................ 300 00
1 income bond T, No. 208, dated March 1st, 1867, for........................ 300 00

Interest 8 p'r c't coupons payable annually on March 1st. These bonds are payable 10 y'rs after date, and mature March 1st, 1877; the company reserving the right to redeem them after five years' time from date.

4 2nd mortgage bonds for 1000.00 each, all dated March 1st, 1871, Rr. No. 1, 2, 3, & 4.. 4,000 00

They are secured by 2d mortgage in pursuance of certain resolutions of the board of directors, adopted on Feb'y 8, 1871, 2d mortgage being dated Feb'y 15, 1860. All coupons falling due subsequent to March 1st, 1875, are attached to all the above described eight bonds.

1 10 y'r 8 p'r c't bond, No. 245, interest payable quarterly, 1st March, June, Sept., & December, for $3,250, 1st quarter's interest due March 1st, 1874... 3,250 00

Interest for 5 quarters, to March 1st, 1875, on the above bond has been paid;
72 all subsequent interest on the same is unpaid. This bond was issued to me in lieu of one hundred and thirty shares of stock that I paid the co'p'y twenty-five dollars per share for, and on my transferring said 130 shares to Duncan, Sherman & Co. in trust.

All the above described bonds and coupons were deposited in the vault of the Northampton National Bank, Northampton, Massachusetts, for safe keeping, and were stolen therefrom by burglars, who entered and robbed said vault on the 26th day of January, 1876. The robbery of the bonds has been extensively advertised and other efforts are being made for their recovery. Beside the above, I own and hold coupons to the amount of ($384) three hundred and eighty-four dollars, that fell due March 1st, 1875, and were cut from the eight bonds (whose coupons are payable annually on the 1st of March), and sent to Mobile for collection, but were returned to me, the co'y failing to pay them.

11 bonds, amount of the 11 bonds.......................... $10,050 00
Amount of coupons cut from the bonds............ 384 00

73 To which must be added the amount of coupons attached to bonds as they mature and the interest on the $3,250 bond.

I have made this statement in response to a call of James Gillette, esquire, as a special master, appointed by the United States circuit court, sitting at Mobile, as made by his advertisement in the Mobile Daily Register, April 27, 1876.

Northampton, Mass., May 4th, 1876.

(Signed) HENRY BRIGHT.

COMMONWEALTH OF MASSACHUSETTS,
Hampshire , *ss:*

MAY 4TH, A. D. 1876.

Then personally appeared before me, Samuel T. Spaulding, a notary public within and for the said county of Hampshire, at Northampton in said county, the within-named Henry Bright, personally known to me to be the signer of the foregoing statement, and made oath that the same is true before me.

[SEAL.] SAMUEL T. SPAULDING,
Notary Public.

74 THE COMMONWEALTH OF MASSACHUSETTS.
Hampshire, *ss:*

I, W'm P. Strickland, clerk of the supreme judicial court, a court of record for the county and commonwealth aforesaid, and also clerk of said county, do certify that Samuel T. Spaulding, esq., whose name is affixed to the certificate on the paper hereto annexed, was, at the date thereof, a notary public within and for said county, duly commissioned, and acting under the authority of this commonwealth, and that full faith and credit is and ought to be given to his acts and attestations done in that capacity, and that I am acquainted with the handwriting of the said Samuel T. Spaulding, and believe his signature to said certificate is genuine; also, that the instrument hereto annexed is executed according to the laws of this commonwealth, for the purposes therein expressed, and that said Samuel T. Spaulding was duly authorized to take the acknowledgment of deeds and to administer oaths under the laws of said commonwealth.

75 In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme judicial court, and of said county, this fourth day of May, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] W'M P. STRICKLAND, *Clerk.*

76 *List of numbers of bonds.*

STOLEN BONDS.

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
5290	1st mortg. sterling certificate.	November 1st, 1853...	£225	4	£27	
244	10 ye'r int., series O	November 1st, 1866....	$1, 000	4	$160	
97	2nd mortg., series U	March 1st, 1867	$100	2	$16	
98	....	....	$100	2	$16	
207	2nd mortg., series T	M'ch 1st, 1867	$300	2	$48	
208	2nd mortg., series T.........	M'ch 1st, 1867	$300	2	$48	
1	2nd mortg., series RR	M'ch 1st, 1871	$1, 000	2	$160	
2	....	....	$1, 000	2	$160	
3	....	....	$1, 000	2	$160	
4	....	....	$1, 000	2	$160	
245	Convertible, 8 p. c..........	Dec., 1873	$3, 250	.....	......	Int. from Dec. 1st, 1874.

77 (Indorsed:) Sterling and interest 2nd mortgage and convertible bonds. Exhibit F. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan

and A. Foster Elliot, trustees, *vs.* The Mobile and Ohio Railroad Company et als. Affidavit of claim of Henry Bright, of Northampton, Mass. For stolen bonds. Received and filed this 22nd day of May, A. D. 1876. James Gillette, special master, commissioner. Filed April 5th, 1877. N. W. Trimble, clerk.

78 In the circuit court of the United States for the southern district of Alabama.

WILLIAM BUTLER DUNCAN & A. FOSTER Elliott, trustees, &c., *vs.* THE MOBILE AND OHIO RAILROAD COMPANY et als.	No. 90. In Equity.

Notice is hereby given that James Gillette, special master, on the 5th day of April, 1877, filed in the clerk's office his report of the funded debt of the Mobile and Ohio Railroad Company, and the claims presented and proved, &c., under the third paragraph of the decree of reference of March 6th, 1876.

April 5th, 1877.

N. W. TRIMBLE,
Clerk & Master.

79 In the circuit court of the United States, fifth judicial circuit & southern district of Ala.

W. B. DUNCAN & A. F. ELLIOTT, TRUSTEES,
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

EXHIBITS C, D, AND E, OF MASTER'S REPORT.

Filed April 5th, 1877.

N. W. TRIMBLE, *Clerk.*

80 EXHIBIT C.—*Schedule one of master's report. First-mortgage sterling bonds and coupons*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
1	May 15	Roff, Miss Phœbe E	Mobile, Alabama	Henry J. Roff, ag't, &c
2	" 16	Adrian, Miss Eliza	" "	S. C. Stramler, " "
3	" 17	Prior, Miss Sarah H	" "	
6	" 19	Rhodes, James	Marengo Co. "	W'm H. Ross, Mobile
7	" "	Taylor, E. T	" " "	" " " "
8	" "	Ross, W'm H	Mobile, " "	
9	" 20	Muller, Miss Laura M	" "	
10	" "	Schieffelin, Geo., estate of	" "	M. Dolive, one of executors
11	" "	Rapier, C. W	" "	
13	" 22	Lowe, Cornelia C	" "	H. A. Lowe, ag't
14	" "	Philipi, A	" "	
17	" "	Hamilton, Amelia H	" "	Tho's A. Hamilton, ag't
18	" "	Hamilton, Tho's A	" "	
19	" "	Whiting, Nathan	" "	
20	" 23	Battle, M'r's Henrietta	" "	Geo. B. Clitherall, ag't
21	" "	Muldon, Ellen	" "	Daniel McNeil, "
22	" "	Muldon, Rebecca A	" "	" " "
23	" 24	Greenwood, Pauline, est. of	Daphne, Baldwin Co., Ala	W'm H. Gasque, trustee
24	" "	Clitherall, M'r's Sarah A	Mobile, "	Geo. B. Clitherall, ag't
25	" 26	Sampson, M'r's E. M	Prairie Bluff, Wilcox Co., Ala	James Rogers, ag't, Mobile
26	" 29	Nardin, Lucien	Mobile, Alabama	
28	" 30	Robinson, Rob't, est. of	" "	Ellen Robinson, executrix
29	" "	Herpin, Mary T	" "	E. P. Herpin, ag't
30	" "	Brainard, M'r's M. J	" "	W'm J. Brainard, ag't
34	June 8	Cooper, M'r's Adele S	McKindley, Marengo Co., Ala	M. G. Hudson, ag't, Mobile.
35	" 9	Frazer, M'r's Hesse	Winnsborough, Fairfax Co., S. C.	And. Crawford, ag't, Columbia, S. C.
37	" "	Crawford, Andrew	Columbia, Richland Co., S. C.	
41	" 20	Krouse, T. J	Suggsville, Clarke Co., Ala	
42	" 23	Overall, Gibson Y	Mobile, Alabama	
43	" 24	Sykes, A. J	Aberdeen, Miss.	
44	" 27	Emanuel, I. H. & Sarah Levy	Mobile & Philadelphia, Ala. and Pa.	Edward C. Emanuel, Mobile.
45	" "	Levy, M'r's Sarah	Philadelphia, Pa	" " " "
46	" "	Emanuel, Isabella H	Mobile, Alabama	" " " "
49	" 30	Clarke, Hosea, estate of	Dover, New Hampshire	C. W. Woodman, adm'r
51	July 1	Lyons, Jacob C	Philadelphia, Pa	
52	" "	Levy, M'r's B. E	Columbia, S. C	Jacob C. Lyons, ag't, Philadelphia.
53	" 3	Reese, Mrs. Margaret	Mobile, Alabama	Moses Waring, ag't
55	" 5	Trabue, George W	Nashville, Tenn	W'm D. Dunn, ag't, Mobile, Ala.
57	" 10	Holmes, James W	Mobile, Alabama	
59	" 12	Taber, Archibald	" "	Lloyd Bowers, ag't
60	" "	Rosengarten, Geo. D	Philadelphia, Pa	
61	" 17	Kennedy, Mary Ann	Mobile, Alabama	Tho's H. Price, ag't, &c
62	" 18	Lull, M'r's T. V. A	Columbus, Miss	
63	" "	Benoit, M'r's Cornelia	" "	N. E. Goodwin, ag't & att'y
66	" "	Murdock, Mrs. G. A	" "	G. W. Cox
67	" "	Columbus Ins. & B'k'g Co	" "	N. E. Goodwin, cashier
68	" "	Miller, M'r's Cath., guardian	" "	W. H. Sims, ag't
69	" "	Morgan, John M	" "	John D. Morgan, ag't
70	" "	Williams, Johnston & Co	" "	R. T. Williams, cashier

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Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
71	July 18	Maxwell, Pinkney J	Columbus, Miss	
72	" "	Gilmer, Susan C., est. of	" "	Jno. Gilmer, executor
73	" "	Lee, M'r's S. D	" "	N. E. Goodwin, ag't & att'y
74	" "	Columbus Ins. & Bkg. Co	" "	" " " cashier
75	" "	Cox, M'r's E. A	" "	G. W. Cox, agt. & att'y
76	" "	Sykes, I. M. & W. E	" "	" " " guardian
77	" "	Harris, Mary E	" "	Geo. H. Harris, ag't & att'y.
78	" "	Sims, Wm. H	" "	
79	" "	Johnson, Chas. A	" "	
81	" 22	Lynch, Rev. John	Ballymena, Ireland	
82	" "	Marshall, Orsamus H	Buffalo, Erie Co., N. Y	
83	" 26	Hutchison, Miss Lillius	Knowe Aye, Ayershire, Scotland.	

* 2 due May & Nov., '66; 3 due May 1, '67; 3 due Nov. 1, '67.

of the Mobile and Ohio Railroad Company, presented and proved to the special master.

Bonds.					Coupons.								Grand total.			Number of coupons to become due to—	Amount.
Number.	Series.	Amount.			Number of coupons attached unpaid to Nov. 1, 1876.	Amount.			Number of coupons detached unpaid to Nov. 1, 1876.	Amount.							
		£	s.	d.		£	s.	d.		£	s.	d.	£	s.	d.		£ s. d.
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....
3	......	675	0	0	12	81	0	0	......	....			756	0	0	......	....
4	......	900	0	0	16	108	0	0	*8	54	0	0	1,062	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
9	......	2,025	0	0	36	243	0	0	......	....			2,268	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
4	......	900	0	0	16	108	0	0	......	....			1,008	0	0	......	....
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....
4	......	900	0	0	16	108	0	0	......	....			1,008	0	0	......	....
4	......	900	0	0	16	108	0	0	......	....			1,008	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....
8	......	1,800	0	0	32	216	0	0	......	....			2,016	0	0	......	....
3	......	675	0	0	12	81	0	0	......	....			756	0	0	......	....
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....
20	......	4,500	0	0	80	540	0	0	......	....			5,040	0	0	......	....
3	......	675	0	0	12	81	0	0	......	....			756	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
3	......	675	0	0	12	81	0	0	......	....			756	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
32	......	7,200	0	0	128	864	0	0	......	....			8,064	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
24	......	5,400	0	0	96	648	0	0	......	....			6,048	0	0	......	....
3	......	675	0	0	12	81	0	0	......	....			756	0	0	......	....
4	......	900	0	0	16	108	0	0	......	....			1,008	0	0	......	....
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....
8	......	1,800	0	0	32	216	0	0	......	....			2,016	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
12	......	2,700	0	0	48	324	0	0	......	....			3,024	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
9	......	2,025	0	0	36	243	0	0	......	....			2,268	0	0	......	....
1	......	225	0	0	5	33	15	0	......	....			258	15	0	......	....
7	......	1,575	0	0	28	189	0	0	......	....			1,764	0	0	......	....
64	......	14,400	0	0	256	1,728	0	0	†1	6	15	0	16,134	15	0	......	....
16	......	3,600	0	0	64	432	0	0	......	....			4,032	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
32	......	7,200	0	0	128	864	0	0	......	....			8,064	0	0	......	....
362	......	81,450	0	0	1,449	9,780	15	0	9	60	15	0	91,291	10	0	......	....
4	......	900	0	0	16	108	0	0	......	....			1,008	0	0	......	....
2	......	450	0	0	12	81	0	0	......	....			531	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....
15	......	3,375	0	0	60	405	0	0	......	....			3,780	0	0	......	....
4	......	900	0	0	16	108	0	0	......	....			1,008	0	0	......	....
17	......	3,825	0	0	68	459	0	0	......	....			4,284	0	0	......	....
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....

† Due 1 Nov., '75.

EXHIBIT C.—*Schedule one of master's report. First-mortgage sterling bonds and coupons*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
84	" 27	Soule, Lydia L	Boston, Mass	
85	" "	Eads, Caswell	Mobile, Alabama	
86	" "	Irwin, Lee Fern	" "	
87	" "	Irwin, Mary E., et als	" "	Lee Fern Irwin, ag't
89	" 29	Merrill, Daniel F	Washington, D. C	Jno. F. Calef, ag't, Mobile
90	" 31	Sands, M'r's Fanny	Mobile, Alabama	Moses Waring, ag't, Mobile
92	Aug. 3	Gibson, M'r's Antonette	" "	Daniel P. Bestor, " "
93	" 7	Bronson, Henry	New Haven, Conn	
94	" 9	Kerr, Jno. Hutchinson	13 Blythewood Square, Glasgow, Scotland.	
95*	" 10	Levy, Sarah	Philadelphia, Pa	
100	" 11	Rogers, Publius V	Utica, Oneida Co., N. Y	
103	" 12	Nichols, M'r's V	Baltimore, Md	R. Inge Smith, att'y
104	" "	Utley, David	Rome, New York	
106	" 18	Jenkins, M'r's Susan	Aberdeen, Miss	
107	" "	Jenkins, Silas, est. of	" "	M'r's Susan Jenkins, executrix.
108	" 19	Jones, M'r's Eliza	Mobile, Alabama	Wm. G. Jones, att'y, &c
109	" "	Dwight, Mrs. C. S	Adams, New York	
110	" 21	Burt, Alfred P	Baltimore, Md	
111	" "	Bell, Robert S	Dutchess Co., N. Y	
112	" 22	Munroe, Hugh	Mobile, Alabama	
113†	" 13	Merrill, Daniel F	Washington, D. C	
119	" 17	Parker, M'r's Mary Ann	Mobile, Alabama	Wm. G. Jones, att'y, &c
120	" 26	Hudson, Emily	Philadelphia, Pa	
121	" "	Carpenter, Joseph	" "	
123	" "	Fry, M'r's A. S	Mobile, Alabama	
124	" 28	Allen, Wm. W	" "	M. G. Hudson, ag't, &c
125	Sep. 2	Merriweather, Chas. G	" "	
126	" "	Berry, W. W	Nashville, Tenn	W. W. Berry, jr., att'y, &c.
128	" 13	Factors & Traders' Ins. Co	Mobile, Alabama	Robert F. Sparks, sec'y
132	" 20	Masters, John	Blooming Grove, Indiana	
133	" 21	Clegg, Francis	Manchester, England	
134	" 23	Cookson, Joseph	Meadows, Cheshire, England	
135	" 25	Winder, John Henry	Manchester, England	
136	" 26	Powell, Alfred H., guardian	Baltimore, Md	
137	" "	North, M'r's Emma M	New Orleans, La	Wm. B. Vail, atty. & ag't, Mobile.
142	Oct. 2	Salomonson, Edward	Manchester, England	
143	" 3	Hazard, Harriet P	Mobile, Alabama	Jas. B. Hazard, trustee
82				
144	Oct. 3	Higginbolton, John	Manchester, England	
145	" 4	Elgin, A. M	Mobile, Alabama	W'm A. Garnett, ag't
146	" "	Garnett, W'm A., & Co	" "	" " " partner
148	" 5	Peterson, Janet	" "	W'm Walker
150	" 6	Sim, Rachael Emma	Champion Hill, London, England.	
151	" 7	Cousins, R. H	Austin, Texas	Gaylord B. Clark, ag't, Mobile.
152	" 9	Jacobs, Angel H	London, England	
153	" "	Lever, James	Bolton, Lancaster Co., England.	
154	" "	Whitaker, Rob't	" " "	
155	" "	Payne, W'm Henry	" " "	
156	" "	Bradshaw, Jonas, James	" " "	
157	" "	Lawson, John	Manchester, England	
158	" "	Rawson, Henry	" "	
159	" "	Lemon, Archibald Dunlap	Belfast, Ireland	
160	" "	First Nat. B'k of Northampton	Northampton, Mass	W'm B. Hale, pres
161	" "	Maynard, Joseph	57 Coleman st., London, England.	
162	" "	Guesnard, M'r's Lea	Mobile, Alabama	Theodore Guesnard, ag't
164	" 10	Rix, William	Royalton, Windsor Co., Vermont.	
165	" "	Booth, Sallie A	Dallas Co., Ala	B. M. Woolsey, ag't, Selma
169	" "	Farrow, Henry	Mobile, Alabama	
170	" "	Railway Debenture Trust Co	London, England	W'm Bristow Morris, sec'y

* Also claim No. 45.

† Also claim No. 89.

of the Mobile and Ohio Railroad Company, presented and proved to the special master.

Bonds.					Coupons.								Grand total.			Number of coupons to become due to—	Amount.
Number.	Series.	Amount. £	s.	d.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount. £	s.	d.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount. £	s.	d.	£	s.	d.		
3		675	0	0	12	81	0	0					756	0	0		
6		1,350	0	0	24	162	0	0					1,512	0	0		
2		450	0	0	8	54	0	0					504	0	0		
1		225	0	0	4	27	0	0					252	0	0		
5		1,125	0	0	20	135	0	0					1,260	0	0		
1		225	0	0	4	27	0	0					252	0	0		
22		4,950	0	0	88	594	0	0					5,544	0	0		
1		225	0	0	4	27	0	0					252	0	0		
13		2,925	0	0	52	351	0	0					3,276	0	0		
13		2,925	0	0	52	351	0	0					3,276	0	0		
2		450	0	0	8	54	0	0					504	0	0		
5		1,125	0	0	20	135	0	0					1,260	0	0		
31		6,975	0	0	124	837	0	0					7,812	0	0		
4		900	0	0	12	81	0	0	‡125	843	15	0	1,824	15	0		
92		20,700	0	0	270	1,822	10	0	§14	94	10	0	22,617	0	0		
1		225	0	0	4	27	0	0					252	0	0		
3		675	0	0	12	81	0	0					756	0	0		
11		2,475	0	0	44	297	0	0					2,772	0	0		
1		225	0	0	4	27	0	0					252	0	0		
19		4,275	0	0	76	513	0	0					4,788	0	0		
1		225	0	0	4	27	0	0					252	0	0		
1		225	0	0	4	27	0	0					252	0	0		
2		450	0	0	8	54	0	0					504	0	0		
2		450	0	0	8	54	0	0					504	0	0		
1		225	0	0	4	27	0	0					252	0	0		
3		675	0	0	12	81	0	0					756	0	0		
2		450	0	0	8	54	0	0					504	0	0		
12		2,700	0	0	48	324	0	0					3,024	0	0		
6		1,350	0	0	24	162	0	0					1,512	0	0		
2		450	0	0	8	54	0	0					504	0	0		
3		675	0	0	12	81	0	0					756	0	0		
8		1,800	0	0	32	216	0	0					2,016	0	0		
2		450	0	0	8	54	0	0					504	0	0		
1		225	0	0	4	27	0	0					252	0	0		
1		225	0	0	4	27	0	0					252	0	0		
3		675	0	0	12	81	0	0					756	0	0		
2		450	0	0	8	54	0	0					504	0	0		
344		77,400	0	0	1,278	8,626	10	0	139	938	5	0	86,964	15	0		
8		1,800	0	0	32	216	0	0					2,016	0	0		
29		6,525	0	0	116	783	0	0					7,308	0	0		
									‖12	81	0	0	81	0	0		
9		2,025	0	0	36	243	0	0					2,268	0	0		
9		2,025	0	0	36	243	0	0					2,268	0	0		
1		225	0	0	4	27	0	0					252	0	0		
15		3,375	0	0	60	405	0	0					3,780	0	0		
3		675	0	0	12	81	0	0					756	0	0		
2		450	0	0	8	54	0	0					504	0	0		
1		225	0	0	4	27	0	0					252	0	0		
1		225	0	0	4	27	0	0					252	0	0		
1		225	0	0	4	27	0	0					252	0	0		
51		11,475	0	0	204	1,377	0	0					12,852	0	0		
10		2,250	0	0	40	270	0	0					2,520	0	0		
4		900	0	0	16	108	0	0					1,008	0	0		
17		3,825	0	0	68	459	0	0					4,284	0	0		
5		1,125	0	0	20	135	0	0					1,260	0	0		
3		675	0	0	12	81	0	0					756	0	0		
1		225	0	0	4	27	0	0					252	0	0		
1		225	0	0	4	27	0	0					252	0	0		
24		5,400	0	0	96	648	0	0					6,048	0	0		

‡Coupons of various dates.

§ Bonds, irregulary detached.

‖6 of May 1; 4 Nov. 1, 1875; 2 November 1, 1876.

EXHIBIT C.—*Schedule one of master's report. First mortgage sterling bonds and coupons*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
171	" 11	Bidgood, Tho's S	Mobile, Alabama	T. M. English, ag't
172	" "	Allen, Mrs. A. R	" "	
173	" "	Stables, James	Leeds, England	
175	" 12	Crawford, M'r s Q. B	Mobile, Alabama	Rob't C. Crawford, ag't
176	" 13	Pfoter, Mary Ann	New Orleans, La	Geo. N. Stewart, Mobile
177	" "	De Grusbe, Miss I. K	Mobile, Alabama	F. P. De Grushe, att'y
178	" "	King, W. D	Scooba, Noxubee Co., Miss	F. T. Copp, Mobile
179	" "	Willett, E. D	Pickens Co., Ala	" " " "
180	" "	Marmaduke, Zemula C	St. Louis, Missouri	Leslie Marmaduke, ag't
181	" 11	Fire Dep't Ins. Co	Mobile, Alabama	T. M. English, sec'y
182	" 14	Goodin, John	Fulshaw, Cheshire, England	
183	" "	Milford, Henry	Belfast, Ireland	
184	" "	Montgomery, Jno. James	" "	
185	" "	Cunningham, David McClure.	" "	
186	" "	Lepper, Francis Robert	" "	Henry Birkner, ag't, New York.
187	" "	Levy, H., estate of	Philadelphia, Pa	Jno. Samuel, trustee
189	" "	Tuthill, Geo. A	Mobile, Alabama	
190	" "	Kingham, Rev. John	Belfast, Ireland	
191	" "	Field, Mrs. C. B	St. Louis, Mo	
192	" "	Merrill, Miss D. L	Concord, N. H	
194	" "	Jaques, Henry L	New York City	
195	" "	Walker, Charles	Manchester, England	
197	" "	Euler, Geo. N	Bale, Switzerland	Alfred Merian, ag't, New York.
199	" 14	Sims, W'm, agent for owners	New York City, N. Y	W'm Sims, ag't, &c
200	" "	Hamilton, M'r's Peter, & Corline Goodman.	Mobile, Alabama	Peter Hamilton, att'y, &c
201	Aug. 9	Hunsiker & Co	Aaran, Switzerland	Fred Robst & Co., ag't, New York.
202	" "	Connoly, Theodore	New York City	
203	" "	Mathew, Frederick E	" " "	
83				
204	Aug. 10	Norton, G. W	Louisville, Kentucky	T. J. Slaughter, ag't, New York.
205	" 11	Musgrove & Company	New York City, N. Y	
206	" "	Price, Benjamin M	" " " "	
207	" "	Marsh, Hester	Nannet, Rockland Co., N. Y	
208	" "	Cropsey, Miss Henrietta E	" " "	Hester Marsh, agent
209	" 14	Cropsey, Marsh S	" " "	" " "
211	" "	Field, M'r's Margaret	New York City, N. Y	
212	" "	Perry, M'r's Mary H	" " " "	
213	" "	Cropsey, H. E. & M. E	Nannet, Rockland Co., N. Y	Hester Marsh for Ja's Cropsey, trustee.
214	" "	Switzer, Lewis	Brooklyn, N. Y	
215	" "	Price, David S	New York City, N. Y	
217	" 15	Braner, F. H	Bremen, Germany	E. Proenstadt & Co., ag't, New York.
218	" "	Bell, I. A	New York City, N. Y	
219	" 17	Binsse, Louis B	" " " "	
221	" "	Binsse, Delia	" " " "	L. B. Binsse, trustee, &c
222	" "	Birkner, Henry	" " " "	
223	" "	Griffith, W'm H	Croydon, England	G. S. Bonner & Co., New York.
225	" "	Duncan, Sherman & Co., bankrupt.	New York City, N. Y	W. B. Shipman, assignee
226	" "	Seaman, D. M	" " " "	
228	" 18	Warnes, Miss Georgie	College Point "	John Graham, ag't
230	" "	Duncan, A. R	New Club, Edinburgh, Scotland.	W'm Butler Duncan, New York.
231	" 19	Phelps, Samuel F		" " " "
234	" 21	Van Schaick & Co	New York City, N. Y	
235	" "	Sheldon, Israel	Orange, New Jersey	
238	" 22	Reynolds, John	New York City, N. Y	
240	" "	De Sotolongo, M. E	" " " "	John Reynolds, agent
241	" "	Handcock, Richard R., agent	" " " "	
242	" "	Stutzen, Herman	" " " "	

of the Mobile and Ohio Rairoad Company presented and proved to the special master.

Bonds.					Coupons.								Grand total.			Number of coupons to become due to——	Amount.
Number.	Series.	Amount.			Number of coupons attached unpaid to Nov. 1, 1876.	Amount.			Number of coupons detached unpaid to Nov. 1, 1876.	Amount.							
		£	s.	d.		£	s.	d.		£	s.	d.	£	s.	d.		
3	......	675	0	0	12	81	0	0	......	......			756	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
21	......	4,725	0	0	84	567	0	0	......	......			5,292	0	0	......	......
									*3	20	5	0	20	5	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
3	......	675	0	0	12	81	0	0	......	......			756	0	0	......	......
5	......	1,125	0	0	15	101	5	0	......	......			1,226	5	0	......	......
3	......	675	0	0	9	60	15	0	......	......			735	15	0	......	......
22	......	4,950	0	0	88	594	0	0	......	......			5,544	0	0	......	......
6	......	1,350	0	0	24	162	0	0	......	......			1,512	0	0	......	......
6	......	1,350	0	0	24	162	0	0	......	......			1,512	0	0	......	......
7	......	1,575	0	0	28	189	0	0	......	......			1,764	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
13	......	2,925	0	0	52	351	0	0	......	......			3,276	0	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
10	......	2,250	0	0	40	270	0	0	......	......			2,520	0	0	......	......
3	......	675	0	0	12	81	0	0	......	......			756	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
3	......	675	0	0	12	81	0	0	......	......			756	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
135	......	30,375	0	0	540	3,645	0	0	......	......			34,020	0	0	......	......
9	......	2,025	0	0	36	243	0	0	......	......			2,268	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
482	......	108,450	0	0	1,920	12,960	0	0	15	101	5	0	121,511	5	0	......	......
1	......	252	0	0	4	27	0	0	......	......			252	0	0	......	......
10	......	2,250	0	0	40	270	0	0	......	......			2,520	0	0	......	......
10	......	2,250	0	0	40	270	0	0	......	......			2,520	0	0	......	......
18	......	4,050	0	0	72	486	0	0	......	......			4,536	0	0	......	......
18	......	4,050	0	0	72	486	0	0	......	......			4,536	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
3	......	675	0	0	12	81	0	0	......	......			756	0	0	......	......
3	......	675	0	0	12	81	0	0	......	......			756	0	0	......	......
2	......	450	0	0	7	47	5	0	......	......			497	5	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
4	......	900	0	0	12	81	0	0	......	......			981	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
14	......	3,150	0	0	56	378	0	0	......	......			3,528	0	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
17	......	3,825	0	0	68	459	0	0	......	......			4,284	0	0	......	......
22	......	4,950	0	0	88	594	0	0	......	......			5,544	0	0	......	......
6	......	1,350	0	0	27	182	5	0	......	......			1,532	5	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
7	......	1,575	0	0	28	189	0	0	......	......			1,764	0	0	......	......
10	......	2,250	0	0	40	270	0	0	......	......			2,520	0	0	......	......
7	......	1,575	0	0	28	189	0	0	......	......			1,764	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
8	......	1,800	0	0	32	216	0	0	......	......			2,016	0	0	......	......
6	......	1,350	0	0	24	162	0	0	......	......			1,512	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
15	......	3,375	0	0	60	405	0	0	......	......			3,780	0	0	......	......

*Nov. 1, '63, '65, '67.

EXHIBIT C.—*Schedule one of master's report.—First-mortgage sterling bonds*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
243	Aug. 22	Griffith, Jno. R	Paris, France	H. Stutzen, ag't, New York
244	" "	Clarke, John F	Bayonne, New Jersey	Ja's H. Robertson, ag't, New York.
245	" "	Curtis, Judson	New York City, N. Y	" " " "
248	" 23	Wesson, Sarah L	" " "	Andrew Wesson, ag't
249	" "	Sprague, Daniel J	" " "	
250	" 24	Mars, Henry	Paris, France	Louis E. Binsse, ag't, New York.
251	" "	Levy & Borg	New York City, N. Y	Eugene M. Cave, clerk
252	" "	Board of Foreign Missions	" " "	Brown Bros. & Co., "
253	" "	Wemyss, James A	Gal'aton, Tenn	" " " "
255	" "	Pfizer, Cha's & Co	New York City, N. Y	Cha's Pfizer
256	" 25	Duncan, Alexander	Prince's Gate, London, England.	Rich'd A. Handcock, "
257	" "	Amy, H., & Co., ag'ts for owners.	New York City, N. Y	H. Amy, "
258	" 26	Lee, Elizabeth, estate of	" " "	Henry Lee, executor
259	" "	Althouse, Christian	" " "	Sam'l B. Althouse, ag't
260	" "	Seaman, M'r's Fannie	Far Rockaway, "	D. M. Seaman, ag't, clerk
261	" "	Otto, Jacob, estate	New York City, "	W'm F. Otto, executor, "
263	" "	Hopkins, Elisha W	Little Falls, "	
264	" "	Knox, J. C	Brooklyn, "	
265	" "	Seybert, Henry	Philadelphia, P'a	
266	" 28	Umpfelbach, F. J	Nanterre, near Paris, France.	C. Heydecker, ag't, New York.
268	" "	Hewlett, Abraham	Woodsburg, L. J., N. Y	
84				
271	Aug. 28	Bernstein, Charles	New York City, N. Y	
272	" "	Miller, Charles G	" " " "	
273	" "	Rouyer, E	Paris, France	Louis B. Binsse, ag't, New York.
274	" "	Keen, Anna M	Newark, New Jersey	Jonathan Keen, " "
275	" 29	Boyd, G. W	New York City, N. Y	
276	" "	Plant, H. B	" " " "	G. H. Tilley, ag't, "
277	" "	Lamarke, Hyacinthe	" " " "	
279	" 28	Iselin, A., & Co	" " " "	
279½	" 31	Iselin, & Co., A., ag'ts, for owners.	" " " "	A. Iselin & Co., ag'ts, New York.
281	" 28	Banque Commerciale	Bale, Switzerland	" " " "
282	" "	Societe Financiere Vandoise	Lawsanne, "	" " " "
283	" "	Passavant, Henry Iselin	Bale, "	" " " "
285	" "	Association Financiere	Geneva, "	" " " "
286	" "	Gentil, Theodore	Paris, France	" " " "
287	" "	Bory & Holland	Lawsanne, Switzerland	" " " "
288	" "	Iselin, M'r's Margaret A	New York City, N. Y	" " " "
289	" "	Kochlin, Edward	Bale, Switzerland	" " " "
290	" "	Lombard, Odier & Co	Geneva, "	" " " "
307	" "	Moran Bros	New York City, N. Y	
309	" 30	Fenner, Thomas	" " " "	Aubry Bennett, ag't
310	" "	Bennett, Sarah E	" " " "	" " "
311	" 31	Plock & Co., agents for owners.	" " " "	Plock & Co., ag'ts, New York.
313	" "	Berger, Francis E., estate of.	" " " "	Louis L. Delafile, trustee
314	" "	Farmers & Merchants' Loan & Trust Co.	Norfolk, Virginia	H. C. Hardy, pres't, New York.
315	" "	Pease, Edward R	New York City, N. Y	
316	" "	Peabody, Geo., est. of, Chas. W. Chandler, ex'r.	Philadelphia, P'a	C. E. Clark, N. Y. City, ag't for executor.
319	" "	De Barry, F	Stullgart, Germany	Shulz & Ruckgaber, ag'ts, New York.
321	Sept. 1	Darling, A. B	New York City, N. Y	
322	" "	Evans, M'r's Jno. W	Linden, Vermont	A. B. Darling, ag't, New York.
325	" "	Murphy, Samuel J	New York City, N. Y	
326	" "	Schmidt, J. Henry	Bremen, Germany	Cha's F. Schmidt, ag't, New York.
328	" "	Mott, Jno. W., estate of	Late Mobile, Ala	Ben. H. Silsbee, trustee, Salem, Mass.

and coupons of the Mobile and Ohio Railroad Company, &c.—Continued.

Bonds.					Coupons.								Grand total.			Number of coupons to become due to——.	Amount.		
Number.	Series.	Amount.			Number of coupons attached unpaid to Nov. 1, 1876.	Amount.			Number of coupons detached unpaid to Nov. 1, 1876.	Amount.									
		£	s.	d.		£	s.	d.		£	s.	d.	£	s.	d.		£	s.	d.
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
3	......	675	0	0	12	81	0	0	......	....			756	0	0	......	....		
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....		
11	......	2,475	0	0	44	297	0	0	*2	13	10	0	2,785	10	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....		
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....		
75	......	16,875	0	0	300	2,025	0	0	......	....			18,900	0	0	......	....		
94	......	21,150	0	0	376	2,538	0	0	......	....			23,688	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
1	......	225	0	0	5	33	15	0	......	....			258	15	0	......	....		
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....		
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....		
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....		
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....		
9	......	2,025	0	0	36	243	0	0	......	....			2,268	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
468	......	105,300	0	0	1,871	12,629	5	0	2	13	10	0	117,942	15	0	......	....		
11	......	2,475	0	0	44	297	0	0	......	....			2,772	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
26	......	5,850	0	0	104	702	0	0	......	....			6,552	0	0	......	....		
125	......	28,125	0	0	500	3,375	0	0	......	....			31,500	0	0	......	....		
13	......	2,925	0	0	52	351	0	0	......	....			3,276	0	0	......	....		
6	......	1,350	0	0	24	162	0	0	......	....			1,512	0	0	......	....		
......	......	....			......	....			†13	87	15	0	87	15	0	......	....		
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....		
25	......	5,625	0	0	100	675	0	0	......	....			6,300	0	0	......	....		
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....		
25	......	5,625	0	0	100	675	0	0	......	....			6,300	0	0	......	....		
8	......	1,800	0	0	32	216	0	0	......	....			2,016	0	0	......	....		
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....		
10	......	2,250	0	0	40	270	0	0	......	....			2,520	0	0	......	....		
4	......	900	0	0	16	108	0	0	......	....			1,008	0	0	......	....		
25	......	5,625	0	0	100	675	0	0	......	....			6,300	0	0	......	....		
378	......	85,050	0	0	1,512	10,206	0	0	......	....			95,256	0	0	......	....		
2	......	450	0	0	8	54	0	0	......	....			504	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
165	......	37,125	0	0	660	4,455	0	0	......	....			41,580	0	0	......	....		
11	......	2,475	0	0	44	297	0	0	......	....			2,772	0	0	......	....		
11	......	2,475	0	0	44	297	0	0	......	....			2,772	0	0	......	....		
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....		
49	......	11,025	0	0	196	1,323	0	0	......	....			12,348	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
6	......	1,350	0	0	24	162	0	0	......	....			1,512	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
1	......	225	0	0	4	27	0	0	......	....			252	0	0	......	....		
5	......	1,125	0	0	20	135	0	0	......	....			1,260	0	0	......	....		
23	......	5,175	0	0	92	621	0	0	......	....			5,796	0	0	......	....		

* May 1, '75.

† March 1, 1875.

EXHIBIT C.—*Schedule one of master's report.—First-mortgage sterling bonds*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
332	Sept. 1	Utley, George P	Saratoga Springs, N. Y	David Utley, ag't, Rome, N. Y.
334	" "	Utley, Squire	Western, Oneida Co., N. Y	
336	" 2	Nott, M'r's S. D	New York City, "	J. C. Nott, ag't, New York.
337	" "	Anze, M'r's M	" " " "	Payson Morrill, ag't, "
339	" "	Cochard, Edward	Thonon, France	Muller & Brown " "
340	" 4	Keeney, Rufus	Rome, Oneida Co., N. Y	
341	" 4	Kinney, Geo. W. G	" " " "	
344	" "	Moulton, Stephen	" " " "	
345	" "	Van Dresar, Ezekiel	" " " "	
347	" "	Utley, Harmon G	" " " "	
350	" "	Isabel, S. A	" " " "	
351	" "	Reed, C. C	" " " "	
352	" "	Nock, Thomas G	" " " "	
357	" "	Lynch, George H	" " " "	
360	" "	Bond, George W	Adams, " "	
361	" "	Drummond, David G	Lee, Oneida Co., "	
363	" "	Westfeldt, Mary E	Claymont, Del	
85				
	1876.			
365	Sept. 6	Howard, Cha's B	Watertown, New York	
366	" "	Barnum, Ja's H	Salesbury, Conn	
367	" 7	Cromwell, Carolina L	Skaneateles, New York	
368	" 8	La Roche, Bemort	Bale, Switzerland	A. Iselin & Co., ag'ts, New York.
369	" "	Rice, Thomas W	Brooklyn, New York	
370	" "	Lampson, C. M., & Co	London, England	
371	" "	Crawshay, Rob't Thompson	Metter Tydvill, Glamorganshire, Eng.	
372	" "	Bartlett, Jno. Edward	Aylesburg, Berks, England	C. M. Lampson & Co., London, Eng.
373	" "	Forman, W'm Henry, estate of.	London, England	Geo. Hardy, ex'rs, London, Eng.
375	" "	Judkins, Cha's H. E	Liverpool, "	
376	" "	Morgan, Junius Spencer	London, "	
377	" "	Keegan, Peter	Belfast, Ireland	
378	" 9	Ware, W. W		Gilleat Schroeder, ag't
379	" "	March, P. S	New York City, N. Y	
381	" 18	Wardwell, Allen M	Ellisburg, "	
382	" 11	Oelricks & Co	New York City, "	Cha's Rusch, clerk, Brooklyn.
383	" 14	Orr, James	Glasgow, Scotland	
386	" 15	Hays, W'm H	New York City, N. Y	
387	" "	Hays, W'm H., ag't for owners	" " "	W'm H. Hays, ag't, New York.
388	" "	Owen, M'r's E. H	Paris, France	
389	" "	Lussier, M'lle M. A	" "	
390	" "	Merss, Dwight F	Syracuse, New York	
391	" 16	West, M. C	Rome, "	
392	" "	Van Dresar, Steward	Western, Oneida Co, New York.	
394	" "	Van Dresar, Francis	" " "	
395	" "	Rowland, M'r's Alice J	Rome, New York	
397	" "	Bligh, Milton D	" "	
399	" 19	Shepard, Sydney	New Haven, Conn	
402	" 18	Dorrance, Daniel G	Oneida Castle, Oneida Co., N. Y.	
403	" 25	Duncan, Alexander	England	Geo. A. Leete, ag't, Providence, R. I.
405	" 21	Haven, Erastus B	Ellisburg, New York	
407	" 22	Upham, S. B	Watertown, "	
408	" "	McClellan Charles	Philadelphia, P'a	Cha's M. Clemmens, ag't
411	" 25	Hensler, Aug. B	Bale, Switzerland	A. Iselin & Co., ag'ts, New York.
412	" 26	Sandoz, Jules	Nanhatel, "	
413	" 27	Bickham, William	Manchester, England	
414	Oct. 14	Robinson, Thomas	London, "	
415	" "	Gamble, Mary	Belfast, Ireland	
416	" "	Mason, Alfred	Bath, Somersetshire, England	

* 1 of May 1 & 5 Nov. 1, '75; 5 of May 1 & 4 Nov. 1, '76.

and coupons of the Mobile and Ohio Railroad Company, &c.—Continued.

Bonds. Number.	Bonds. Series.	Bonds. Amount. £	s.	d.	Coupons. Number of coupons attached unpaid to Nov. 1, 1876.	Coupons. Amount. £	s.	d.	Coupons. Number of coupons detached unpaid to Nov. 1, 1876.	Coupons. Amount. £	s.	d.	Grand total. £	s.	d.	Number of coupons to become due to——.	Amount. £ s. d.
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
6	......	1,350	0	0	24	162	0	0	......	......			1,512	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
7	......	1,575	0	0	28	189	0	0	......	......			1,764	0	0	......	......
13	......	2,925	0	0	52	351	0	0	......	......			3,276	0	0	......	......
3	......	675	0	0	12	81	0	0	......	......			756	0	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
7	......	1,575	0	0	28	189	0	0	......	......			1,764	0	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
1,026	......	230,850	0	0	4,104	27,702	0	0	13	87	15	0	258,639	15	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
3	......	675	0	6	12	81	0	0	......	......			756	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
1	......	225	0	0	3	20	5	0	......	......			245	5	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
635	......	142,875	0	0	2,540	17,145	0	0	......	......			160,020	0	0	......	......
23	......	5,175	0	0	92	621	0	0	......	......			5,796	0	0	......	......
75	......	16,875	0	0	300	2,025	0	0	......	......			18,900	0	0	......	......
8	......	1,800	0	0	24	162	0	0	......	......			1,962	0	0	......	......
24	......	5,400	0	0	96	648	0	0	......	......			6,048	0	0	......	......
17	......	3,825	0	0	68	459	0	0	......	......			4,284	0	0	......	......
6	......	1,350	0	0	24	162	0	0	......	......			1,512	0	0	......	......
30	......	6,750	0	0	120	810	0	0	......	......			7,560	0	0	......	......
10	......	2,250	0	0	40	270	0	0	......	......			2,520	0	0	......	......
25	......	5,625	0	0	100	675	0	0	......	......			6,300	0	0	......	......
7	......	1,575	0	0	28	189	0	0	......	......			1,764	0	0	......	......
48	......	10,800	0	0	180	1,215	0	0	*15	101	5	0	12,116	5	0	......	......
21	......	4,725	0	0	84	567	0	0	......	......			5,292	0	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
11	......	2,475	0	0	44	297	0	0	......	......			2,772	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
1	......	225	0	0	4	27	0	0	......	......			252	0	0	......	......
6	......	1,350	0	0	24	162	0	0	......	......			1,512	0	0	......	......
51	......	11,475	0	0	204	1,377	0	6	......	......			12,852	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
......	......	......			......	......			†11,374	76,774	10	0	76,774	10	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
2	......	450	0	0	8	54	0	0	......	......			504	0	0	......	......
4	......	900	0	0	16	108	0	0	......	......			1,008	0	0	......	......
3	......	675	0	0	12	81	0	0	......	......			756	0	0	......	......
8	......	1,800	0	0	32	216	0	0	......	......			2,016	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
110	......	24,750	0	0	440	2,970	0	0	......	......			27,720	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......
5	......	1,125	0	0	20	135	0	0	......	......			1,260	0	0	......	......

† 11 May 1 & 102 Nov. 1, '73; 5,641 May 1 & 5,611 Nov. 1, 1874; 9 of May 1, 1875.

EXHIBIT C.—*Schedule one of master's report.—First-mortgage sterling bonds*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
419	Oct. 14	Keegan, James	Belfast, Ireland	
420	" "	Rose, Samuel	Fairfield, Indiana	Theo. F. Rose, ag't, Muncie, Ind.
421	" "	Lay, M'r's Henrietta C	Baltimore, Md	
422	" "	Scott, M'r's Annie G	Staunton, Virginia	M'r's H. C. Lay, ag't, Baltimore, Md.
423	" "	Pidgeon, Henrietta	Manchester, England	
424	" "	Terrill, George	Newport, Rhode Island	
425	" "	Whitehead, James	Manchester, England	
426	" "	Clarke, Freeman	Rochester, New York	
427	" "	Schunemann, Geo. F	New York City, N. Y	
429	" "	Jaz, Anton	Frankfort, Germany	
430	" "	Bischoff, Zu St. Alban	Bale, Switzerland	Geo. Wedil, ag't
86				
	1876.			
431	Oct. 14	Liernur, Cha's T	Frankfort-on-the-Main, Germany.	
432	" "	Eidgenossiesche, Bank	Zurich, Switzerland	L. Wolff, ag't, Frankfort, Germany.
433	" "	Du Mont, E., M'r's	Frankfort-on-the-Main, Germany.	A. Marmskopf, Frankfort, Germany.
434	" "	Gott, John, & Son	" " "	A. Wolff, ag't, Frankfort, Germany.
464	" 19	Lake Bro's	Grenada, Miss	M. G. Hudson, ag't, Mobile
465	" 21	Salomon, David, est. of	New York City, N. Y	W'm Salomon, executor
467	" 24	Anderson, Miss Kate	Mobile, Ala	W'm F. Stoutz, ag't
468	" "	Plock & Co., agents for owners.	New York City, N. Y	Plock & Co., ag'ts, New York.
469	" 26	Braunfels, M'r's Otto	Frankfort-on-the-Main, Germany.	W'm F. Sebert, ag't, Brooklyn, N. Y.
471	Nov. 1	Belloni, Lewis J., jr	New York City, N. Y	
474	" 14	Dixon, Joshua	Winsdale, Exeter, England	Ja's Sheppard, ag t, London, Eng.
475	" 28	Walkington, D. B	Thornhill, Belfast, Ireland	
	1877.			
476	Jan. 12	Goldstein, J	Paris, France	
478	" 19	Daingerfield, M'r's Margaret B.	Alexander, Va	
479	" 26	Du Puy, T. Haskins, trustee	Mobile, Ala	
480	" "	McCarty, Maurice, owner & ag't.	" "	
481	" "	Bowen, John	" "	

RECAPIT

	Bonds.				
	Number.	Series.	Amount.		
Page 1	362		81, 450	0	0
" 2	344		77, 400	0	0
" 3	482		108, 450	0	0
" 4	468		105, 300	0	0
" 5	1, 026		230, 850	0	0
" 6	1, 237		278, 325	0	0
" 7	162		36, 450	0	0
Total	4, 081		918, 225	0	0

* 1 May & Nov. 1, '76.

and coupons of the Mobile and Ohio Railroad Company, &c.—Continued.

Bonds.			Coupons.						
Number.	Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.	Grand total.	Number of coupons to become due to——.	Amount.
		£ s. d		£ s. d		£ s. d	£ s. d		£ s. d.
4	......	900 0 0	16	108 0 0	......	......	1, 008 0 0	......	......
3	......	675 0 0	12	81 0 0	......	......	756 0 0	......	......
10	......	2, 250 0 0	40	270 0 0	......	......	2, 520 0 0	......	......
3	......	675 0 0	12	81 0 0	......	......	756 0 0	......	......
2	......	450 0 0	8	54 0 0	......	......	504 0 0	......	......
7	......	1, 575 0 0	21	141 15 0	......	......	1, 716 15 0	......	......
5	......	1, 125 0 0	20	135 0 0	......	......	1, 260 0 0	......	......
9	......	2, 025 0 0	36	243 0 0	......	......	2, 268 0 0	......	......
1	......	225 0 0	4	27 0 0	......	......	252 0 0	......	......
10	......	2, 250 0 0	40	270 0 0	......	......	2, 520 0 0	......	......
4	......	900 0 0	16	108 0 0	......	......	1, 008 0 0	......	......
1, 237	......	278, 325 0 0	4, 920	33, 210 0 0	11, 389	76, 875 15 0	388, 410 15 0	......	......
1	......	225 0 0	4	27 0 0	......	......	252 0 0	......	......
5	......	1, 125 0 0	15	101 5 0	......	......	1, 226 5 0	......	......
58	......	13, 050 0 0	232	1, 566 0 0	......	......	14, 616 0 0	......	......
2	......	450 0 0	8	54 0 0	......	......	504 0 0	......	......
2	......	450 0 0	......	......	*2	13 10 0	463 10 0	......	......
2	......	450 0 0	8	54 0 0	......	......	504 0 0	......	......
1	......	225 0 0	4	27 0 0	......	......	252 0 0	......	......
14	......	3, 150 0 0	56	378 0 0	......	......	3, 528 0 0	......	......
1	......	225 0 0	4	27 0 0	......	......	252 0 0	......	......
6	......	1, 350 0 0	24	162 0 0	......	......	1, 512 0 0	......	......
15	......	3, 375 0 0	60	405 0 0	......	......	3, 780 0 0	......	......
3	......	675 0 0	12	81 0 0	......	......	756 0 0	......	......
5	......	1, 125 0 0	20	135 0 0	......	......	1, 260 0 0	......	......
5	......	1, 125 0 0	20	135 0 0	......	......	1, 260 0 0	......	......
......	......	......	......	......	†1	6 15 0	6 15 0	......	......
17	......	3, 825 0 0	68	459 0 0	......	......	4, 284 0 0	......	......
25	......	5, 625 0 0	100	675 0 0	......	......	6, 300 0 0	......	......
162	......	36, 450 0 0	635	4, 286 5 0	3	20 5 0	40, 756 10 0	......	......

ULATION.

Coupons.				
Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.	Grand total.
1, 449	9, 780 15 0	9	60 15 0	91, 291 10 0
1, 278	8, 626 10 0	139	938 5 0	86, 964 15 0
1, 920	12, 960 0 0	15	101 5 0	121, 511 5 0
1, 871	12, 629 5 0	2	13 10 0	117, 942 15 0
4, 104	27, 702 0 0	13	87 15 0	258, 639 15 0
4, 920	33, 210 0 0	11, 389	76, 875 15 0	388, 410 15 0
635	4, 286 5 0	3	20 5 0	40, 756 10 0
16, 177	109, 194 15 0	11, 570	78, 097 10 0	£1, 105, 517 5 0d

† May 1, 1875.

87 EXHIBIT C.—*Schedule two of master's report.—First-mortgage sterling interest bonds and*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
161	Oct. 9	Maynard, Joseph......	57 Coleman st., London, Eng..	....
170	" 14	Railway Debenture Trust Limited Co.	London, England	W'm Bristow Morris, sec'y....
316	" 9	Peabody, Geo., estate of.	Chas. W. Chandler, executor, Phila., Pa.	Cornelius H. Clark, ag't & att'y, Elizabeth, New Jersey.
370	Sept. 8	Lampson, C. M., & Co.	London, England, 64 Queen st., Cheapside.	Jas. Tinker, of Firm ....
371	" 8	Crawshay, Rob't Thompson.	Merthyr Tydvil Glamorganshire, England.	....
372	" 8	Bartlett, John Edward	Aylesbury, Berks Co., England.	James Tinker, of C. M. Lampson & Co., ag't, London, England.
373	" 8	Forman, W'm H., est. of.	Late of London, England	Geo. Hardy, of executors......
374	" 8	Lampson, Sir Curtis M.	London, England	Jas. Tinker, ag't, 64 Queen st., Cheapside.
376	" 8	Morgan, Junius Spencer.	London, England, 118 Cannon street.	....
403	" 25	Duncan, Alexander ...	....	Geo. A. Leete, att'y, Providence, R. I.
414	Oct. 14	Robinson, Thomas	London, England	....
423	" 14	Pidgeon, Henrietta....	Manchester, England	....
474	Nov. 14	Dixon, Joshua	Winsdale, Exeter, England ...	James Sheppard, London Joint Stock Bank, 5 Princes st.
475	" 28	Walkington, D. B	Thornhill Malone, Belfast Co. of Antrim, Ireland.	....
				Total proved ....

coupons of the Mobile and Ohio Railroad Company, presented and proved to the special master

Bonds.				Coupons.						
Number.		Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.	Grand total.	Number of coupons to become due to ——.	Amount.
			£ s. d.		£ s. d.		£ s. d.	£ s. d.		
20	....	B	4,000 0 0	80	480 0 0	....	....	4,480 0 0	......	......
50	....	"	10,000 0 0	200	1,200 0 0	....	....	11,200 0 0	......	......
18	....	"	3,600 0 0	72	432 0 0	....	....	4,256 0 0	......	......
......	2	C	200 0 0	8	24 0 0	....	....	....	......	......
26	....	B	5,200 0 0	104	624 0 0	....	....	....	......	......
......	1	C	100 0 0	4	12 0 0	....	....	5,936 0 0	......	......
270	....	B	54,000 0 0	1,080	6,480 0 0	....	....	....	......	......
......	3	C	300 0 0	12	36 0 0	....	....	60,816 0 0	......	......
3	....	B	600 0 0	12	72 0 0	....	....	....	......	......
......	17	C	1,700 0 0	68	204 0 0	....	....	2,576 0 0	......	......
186	....	B	37,200 0 0	744	4,464 0 0	....	....	....	......	......
......	1	C	100 0 0	4	12 0 0	....	....	41,776 0 0	......	......
84	....	B	16,800 0 0	336	2,016 0 0	....	....	....	......	......
......	3	C	300 0 0	12	36 0 0	....	....	19,152 0 0	......	......
......	29	"	2,900 0 0	116	348 0 0	....	....	3,248 0 0	......	......
......	....	......	....	....	....	*1,528	9,168 0 0	....	......	......
......	....	......	....	....	....	†152	456 0 0	9,624 0 0	......	......
12	....	B	2,400 0 0	48	288 0 0	....	....	....	......	......
......	9	C	900 0 0	36	108 0 0	....	....	3,696 0 0	......	......
......	2	"	200 0 0	8	24 0 0	....	....	224 0 0	......	......
5	....	B	1,000 0 0	20	120 0 0	....	....	1,120 0 0	......	......
2	....	"	400 0 0	8	48 0 0	....	....	448 0 0	......	......
676	67	......	141,900 0 0	2,972	17,028 0 0	1,680	9,624 0 0	168,552 0 0	......	......
676	....	......	135,200 0 0	2,704	16,224 0 0	1,528	9,168 0 0	160,592 0 0	......	......
......	67	......	6,700 0 0	268	804 0 0	152	456 0 0	7,960 0 0	......	......

* 764 May 1, & 764 Nov. 1, '74.
† 76 " 76 " "

88 **EXHIBIT C.**—*Schedule three of master's report.—First-mortgage ten-year interest bonds and*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
3	May 17	Prior, M'r's Sarah H	Mobile, Alabama	
8	" 19	Ross, William H	" "	
10	" 20	Schieffelin, Geo., est. of	" "	M. Dolive, one of executors
14	" 22	Philipi, A	" "	
16	" "	Powers, M'r's Lydia H.	" County "	T. A. Hamilton, att'y, Mobile, Ala.
18	" "	Hamilton, Tho's A	" Alabama	
19	Aug. 26	Whiting, Nathan	Mobile, "	
26	Oct. 14	Nardin, Lucien	" "	
27	May 29	Mixons, Jasper C	Mixons' L'd'g, Ala. River, Ala	Young & Jones, ag'ts, Mobile, Ala.
31	June 1	Crawford, John, col'd	M't Hebron, Greene Co., "	Ja's Crawford, " " "
"	" "	" " "	" " " " "	" " " " "
32	" "	Crawford, Miss Margaret L.	Mobile, Alabama	" " " " "
33	" "	Crawford, Sallie G	" "	Crawford, Eads & Co., " "
34	" "	Cooper, M'r's Adele S	McKindley, Marengo Co., Ala	M. G. Hudson, ag't, " "
"	" "	" " " "	" " "	" " " " "
35	" 9	Frazer, M'r's Hesse	Winnsborough, Fairfield Co., S. C.	Andrew Crawford, ag't, Columbia, S. C.
"	" "	" " "	" " " "	" " " " "
36	" "	Crawford, Miss Jane	" " " "	" " " " "
"	" "	" " "	" " " "	
46	" 27	Emanuel, Isabella H	Mobile, Alabama	Edward C. Emanuel, ag't, Mobile.
"	" "	" " "	" "	" " " "
47	" 28	McDearman, I. A., estate of.	Trenton, Gibson Co., Tenn	I. C. McDearman, adm'r
48	" 29	Miller, Thomas & Co	Mobile, Ala	Cha's B. Miller, ag't
51	July 1	Lyons, Jacob C	Philadelphia, Pa	
52	" "	Levy, M'r's B. E	Columbia, S. C	J. C. Lyon, ag't, Philadelphia, Pa.
54	" 3	Gannett, Alfred W	Washington, D. C., Treas. Dep't	
"	" "	" " "	" " "	
"	" "	" " "	" " "	
56	" 10	Thompson, M'r's Catharine A.	Memphis, Tenn	Egbert H. Grandin, ag't, Mobile
60	" 12	Rosengarten, George D.	Philadelphia, P'a	
"	" "	" " "	" "	
62	" 18	Lull, M'r's Francis V. A.	Columbus, Miss	
64	" "	Columbus B'k & Ins. Co.	" "	N. E. Goodwin, cashier
"	" "	" " "	" "	" " "
"	" "	" " "	" "	" " "
66	" "	Murdock, M'r's G. A	" "	G. W. Cox, att'y & ag't
"	" "	" " " "	" "	" " " "
68	" "	Miller, Catharine, guardian.	" "	W. H. Sims, " " "
"	" "	" " "	" "	" " " "
72	" "	Gilmer, Susan M., estate of.	" "	Jno. Gilmer, executor
74	" "	Columbus B'k & Ins. Co.	" "	N. E. Goodwin, cashier
"	" "	" " "	" "	" " "
76	" "	Cox, G. W., guardian	" "	
86	" 27	Irwin, Lee, Fern	Mobile, Alabama	
88	" 28	Somarindyke, Augustus.	Aurora, Kane Co., Ill's	
89	" 29	Merrill, Daniel F	Washington, D. C	Jno. F. Calef, ag't, Mobile, Ala
91	Aug. 1	Crawford, Sallie G	Mobile, Alabama	W'm D. Dunn, agent
89				
	1876.			
95	Aug. 10	Levy, Sarah	Philadelphia, Pa	
96	" 11	White, Elizabeth H	Utica, Oneida Co., N. Y	
97	" "	Henshaw, Jane	" " "	
98	" "	Birdseye, Joseph	" " "	
101	" "	Hunt, Jacob	" " "	
102	" "	Brown, James	" " "	

* Due May & Nov. 1, 1867.

coupons of the Mobile and Ohio Railroad Company, presented and proved to the special master.

Bonds.					Coupons.						
Number.			Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.	Grand total.	Number of coupons to become due to——.	Amount.
O.	P.	Q.									
....	....	2	......	400 00	8	64 00	....	....	464 00	....	......
2	....	....	......	2,000 00	8	320 00	....	....	2,320 00	....	......
1	....	....	......	1,000 00	4	160 00	*2	80 00	1,340 00	....	......
....	....	2	......	400 00	8	64 00	....	....	464 00	....	......
1	....	....	......	1,000 00	4	160 00	....	....	1,160 00	....	......
....	....	3	......	600 00	12	96 00	....	....	696 00	....	......
....	...	1	......	200 00	4	32 00	....	....	232 00	....	......
1	....	....	......	1,000 00	4	160 00	....	....	1,160 00	....	......
4	....	....	......	4,000 00	16	640 00	....	....	4,640 00	....	......
2	....	....	......	2,000 00	8	320 00					
....	....	2	......	400 00	8	64 00	....	....	2,784 00	....	......
....	....	4	......	800 00	16	128 00	....	....	928 00	....	......
....	....	....	......	....	....	....	*38	304 00	304 00	....	......
5	....	....	......	5,000 00	20	800 00					
....	....	3	......	600 00	12	96 00	....	....	6,496 00	....	......
4	....	....	......	4,000 00	16	640 00					
....	....	1	......	200 00	4	32 00	....	....	4,872 00	....	......
3	....	....	......	3,000 00	12	480 00					
....	1	....	......	500 00	4	80 00	....	....	4,060 00	....	......
7	....	....	......	7,000 00	28	1,120 00					
....	....	3	......	600 00	12	96 00	....	....	8,816 00	....	......
....	1	....	......	500 00	4	80 00	....	....	580 00	....	......
....	1	....	......	500 00	4	80 00	....	....	580 00	....	......
8	....	....	......	8,000 00	32	1,280 00	....	....	9,280 00	....	......
1	....	....	......	1,000 00	4	160 00	....	....	1,160 00	....	......
....	1	....	......	500 00	4	80 00					
1	....	....	......	1,000 00	4	160 00					
....	....	5	......	1,000 00	20	160 00	....	....	2,900 00	....	......
....	....	1	......	200 00	4	32 00	....	....	232 00	....	......
5	....	....	......	5,000 00	20	800 00					
....	....	5	......	1,000 00	20	160 00	....	....	6,960 00	....	......
2	....	....	......	2,000 00	8	320 00	....	....	2,320 00	....	......
7	....	....	......	7,000 00	28	1,120 00					
....	1	....	......	500 00	4	80 00					
....	....	1	......	200 00	4	32 00	....	....	8,932 00	....	......
2	....	....	......	2,000 00	8	320 00					
....	....	5	......	1,000 00	20	160 00	....	....	3,480 00	....	......
3	....	....	......	3,000 00	12	480 00					
....	1	....	......	500 00	4	80 00	....	....	4,060 00	....	......
....	....	4	......	800 00	24	192 00	....	....	992 00	....	......
1	....	....	......	1,000 00	4	160 00					
....	....	5	......	1,000 00	20	160 00	....	....	2,320 00	....	......
....	....	2	......	400 00	8	64 00	....	....	464 00	....	......
....	....	2	......	400 00	8	64 00	....	....	464 00	....	......
10	....	....	......	10,000 00	40	1,600 00	....	....	11,600 00	....	......
2	....	....	......	2,000 00	8	320 00					
....	....	1	......	200 00	4	32 00	....	....	2,552 00	....	......
....	....	38	......	7,600 00	114	912 00	....	....	8,512 00	....	......
72	6	90	......	$93,000 00	642	$14,640 00	40	$384 00	$108,024 00	....	......
3	....	....	......	3,000 00	12	480 00	}	....	4,176 00	....	......
....	....	3	......	600 00	12	96 00	}				
2	....	....	......	2,000 00	8	320 00	....	....	2,320 00	....	......
8	....	....	......	8,000 00	32	1,280 00	....	....	9,280 00	....	......
4	....	....	......	4,000 00	16	640 00	....	....	4,640 00	....	......
1	....	....	......	1,000 00	4	160 00	....	....	1,160 00	....	......
6	....	....	......	6,000 00	24	960 00	....	....	6,960 00	....	......

*** Hypothecated to said C. E. & Co. for $100, & in their possession, all dated Nov. 1, 1866.**

EXHIBIT C.—*Schedule three of master's report.—First-mortgage ten-year interest bonds and*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
104	1876. Aug. 12	Utley, David	Rome, New York	
105	" 14	Owens, M'r's M. B. & Sallie G.	Louisville, Kentucky	
114	" 22	Richardson, Lydia M	Bridgeport, Conn	
115	" "	Smith, Caroline T	Utica, Oneida Co., N. Y	
116	" "	Gage, A. S	" " "	
117	" 23	Brower, A. G	" " "	
124	" 28	Allen, William W. (W.)	Mobile, Alabama	M. G. Hudson, agent
127	" 11	Cove, Eliza, estate of	Utica, Oneida Co., N. Y	H. White & Ja's Brown, ex'rs
129	Sept. 19	Williams, M'r's E. S	Wilcox Co., Ala	Cha's G. Merriwether, ag't, Mobile.
130	" "	Mobley, Frank S	Escambia " "	" " "
131	" "	Mobley, I. B	West Point, Miss	" " "
132	" 20	Masters, John	Blooming Grove, Indiana	
140	" 29	Merritt, James B	Brooklyn, Alameda Co., Cal	
141	" "	Whitfield, Gaino	Demopolis, Ala	Cha's B. Whitfield
143	Oct. 3	Hazard, Harriet P	Mobile, Alabama	Ja's B. Hazard, ag't, Mobile
145	" 4	Elgin, A. M	" "	W'm A. Garnett
146	" "	Garnett, W'm A. & Co.	" "	" "
148	" 5	Peterson, Janet	" "	W'm Walker, agent
164	" 10	Rix, William	Royalton, Windsor Co., Vermont.	
172	" 11	Allen, M'r's A. R	Mobile, Alabama	
175	" 12	Crawford, M'r's Q. B	" "	Rob't C. Crawford, agent
177	" 13	De Grushe, Miss I. K	" "	F. P. DeGrushe, att'y, &c
187	" 14	Levy, H., estate of	Philadelphia, Pa	John Samuel, trustee
188	" "	Nelson, M'r's A. M	Malden, Mass	Jno. H. Higley, ag't, Mobile
189	" "	Tuthill, Geo. A	Mobile, Alabama	
191	" "	Field, M'r's C. B	S't Louis, Mo	
192	" "	Merrill, Miss D. L	Concord, N. H	
193	" "	Warlick, M'r's Nancy	Jackson, Tenn	James P. Warlick
199	" "	W'm Simms, ag't for owners.		
200	" "	Hamilton, M'r's Peter	Mobile, Alabama	Peter Hamilton, ag't
203	Aug. 10	Mather, Frederick E	New York City, N. Y	
211	" 14	Field, M'r's Margaret	" " "	
90				
216	1876. Aug. 14	Sewall, M'r's Joanna W	New York City, N. Y	
222	" 15	Birkner, Henry	" " " "	
228	" 18	Warnes, Miss Georgie	College Point, Long Island, "	John Graham, agent
229	" "	Morgan, Junius S	London, England	Drexel, Morgan & Co., ag'ts, New York.
231	" 19	Phelps, Samuel F	New York	W'm Butler Duncan, ag'ts, New York.
232	" 21	Randall, Francis	Orange, New Jersey	
233	" "	Lucas, Sarah A	Clinton, New York	Francis Randall, Orange, N. J
234	" "	Van Schaick & Co	New York City, "	W'm M. Van Schaick
235	" "	Sheldon, Israel	Orange, New Jersey	
243	" 22	Griffith, John R	Paris, France	H. Stutzer, ag't, New York
248	" 23	Wesson, Sarah L	New York City, New York	Andrew Wesson, agent
249	" "	Sprague, Daniel J	" " " "	
251	" 24	Levy & Borg	" " " "	Eugene M. Cave, clerk

coupons of the Mobile and Ohio Railroad Company, presented and proved, &c.—**Continued.**

Bonds.					Coupons.				Grand total	Number of coupons to become due to —.	Amount.
Number.			Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.			
O.	*P.*	*Q.*									
	12			6,000 00	48	960 00			74,240 00		
		50		10,000 00	200	1,600 00					
48				48,000 00	192	7,680 00					
		2		400 00	8	64 00			2,204 00		
	1			500 00	4	80 00					
1				1,000 00	4	160 00					
5				5,000 00	20	800 00			5,800 00		
2				2,000 00	8	320 00			2,320 00		
1				1,000 00	4	160 00			1,160 00		
	10			5,000 00	40	800 00			5,800 00		
		2		400 00	8	64 00			464 00		
2				2,000 00	8	320 00			2,320 00		
2				2,000 00	8	320 00			2,320 00		
1				1,000 00	4	160 00			1,160 00		
1				1,000 00	4	160 00			1,160 00		
1				1,000 00	4	160 00			1,160 00		
		1		200 00	3	24 00			224 00		
4				4,000 00	16	640 00			8,120 00		
		15		3,000 00	60	480 00					
		"					*4	32 00	32 00		
		1		200 00	4	32 00			232 00		
		1		200 00	4	32 00			812 00		
	1			500 00	4	80 00					
		7		1,400 00	28	224 00			1,624 00		
1				1,000 00	4	160 00			1,392 00		
		1		200 00	4	32 00					
1				1,000 00	4	160 00			1,624 00		
		2		400 00	8	64 00					
	"						†4	80 00	96 00		
"							‡2	16 00			
1				1,000 00	4	160 00			1,160 00		
		2		400 00	8	64 00			464 00		
		4		800 00	12	96 00			896 00		
		3		600 00	12	96 00			696 00		
		2		400 00	8	64 00			1,044 00		
	1			500.00	4	80 00					
1				1,000 00	4	160 00			1,624 00		
		2		400 00	8	64 00					
		2		400 00	8	64 00			464 00		
		1		200 00	4	32 00			232 00		
		5		1,000 00	20	160 00			1,160 00		
		5		1,000 00	20	160 00			1,160 00		
1				1,000 00	4	160 00			1,160 00		
97	25	111		$131,700 00	927	$21,032 00	10	$128 00	$152,860 00		
	8			4,000 00	32	640 00			4,640 00		
8				8,000 00	32	1,280 00			10,208 00		
		4		800 00	16	128 00					
1				1,000 00	4	160 00			1,740 00		
	1			500 00	4	80 00					
		1		200 00	4	32 00			232 00		
7				7,000 00	28	1,120 00			8,120 00		
1				1,000 00	4	160 00			1,160 00		
		3		600 00	12	96 00			696 00		
	1			500 00	4	80 00			580 00		
4				4,000 00	16	640 00			4,640 00		
		1		200 00	4	32 00			3,132 00		
2				2,000 00	8	320 00					
	1			500 00	4	80 00					
	1			500 00	4	80 00			580 00		
3				3,000 00	12	480 00			3,480 00		
		1		200 00	4	32 00			232 00		

* May 1, 1875. † May 1, Nov. 1, '68. May 1, Nov. 1, '69. ‡ May 1 & Nov. 1, '68.

EXHIBIT C.—*Schedule three of master's report.—First-mortgage ten-year interest bonds and*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
257	1876. Aug. 25	Arny, H. & Co., ag'ts for owners.	New York City, New York	
263	" 26	Hopkins, Elisha W	Little Falls, "	
264	" "	Knox, J. C	Brooklyn, "	
267	" 28	New York Infant Asylum.	New York City, "	L. M. Bates
269	" "	Schenck, M'r's M. S		Ja's R. Blossom, ag't, New York
274	" "	Keen, Anna M	Newark, New Jersey	Jonathan Keen, agent
275	" 29	Boyd, George W	New York City, N. Y	
276	" "	Plant, H. B	" " " "	G. H. Tilley, agent
277	" "	Lamarche, Hyacinthe	" " " "	
278	" "	Schmidt, Cha's D	" " " "	
279	" 28	Iselin, A. & Co	" " " "	A. Iselin, jr
307	" 30	Moran Bro's	" " " "	
308	" "	Winthrop, Katharine G	Providence, Rhode Island	Geo. Leary, ag't, New York City.
309	" "	Fenner, Thomas	New York City, N. Y	Aubry Bennett, ag't.
311	" 31	Plock & Co., ag'ts for owners.	" " " "	
312	" "	Cartwright, Benjamin	Newark, New Jersey	
314	" "	Farmers' & Merchants' Loan & Trust Co.	Norfolk, Virginia	Henry C. Hardy, pres., New York.
321	Sep. 1	Darling, A. B	New York City	
322	" "	Evans, M'r's John W	Linden, Vermont	A. B. Darling, ag't, N. Y. City.
323	" "	Farrell, J. L. A. Rossiter et als.		F. W. Dunton, " " "
324	" "	Williston, Mary L	Simsbury, Conn	H. K. Pomroy, ag't, New York.
91				
329	1876. Sept. 1	Bartlett, Levi	Skaneatels, Onandago Co., N. Y	
330	" "	Kellogg, Mary Bartlett	" " "	
331	" "	Bartlett, Harriet E	" " "	
333	" "	Martin, Patrick	Rome, Oneida Co., "	
335	" 2	Sistare, George R	New York City, "	
341	" 4	Keeney, Geo. W. G	Rome, Oneida Co., "	
345	" "	Van Dresar, Ezekiel	" " "	
347	" "	Utley, Harmon G	" " "	
349	" "	Southwick, Augustus B	" " "	
351	" "	Reid, C. C	" " "	
352	" "	Nock, Thomas G	" " "	
354	" "	Scudder, Samuel O	" " "	
357	" "	Lynch, George H	" " "	
362	" "	Barton, John B	" " "	
363	" "	Westfeldt, Mary E	Claymont, Del	
367	" "	Cromwell, Caroline L.	Skaneatels, New York	
381	" 18	Wardwell, Allen M	Ellisburgh, "	

coupons of the Mobile and Ohio Railroad Company, presented and proved, &c.—**Continued.**

Bonds.					Coupons.						
Number.			Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.	Grand total.	Number of coupons to become due to ——.	Amount.
O.	*P.*	*Q.*									
10	....	....	......	10,000 00	40	1,600 00	....	....	11,600 00	....	......
....	....	2	......	400 00	8	64 00	....	....	1,044 00	....	......
....	1	....	......	500 00	4	80 00					
5	....	....	......	5,000 00	20	800 00	*1	40 00	....	....	......
....	4	....	......	2,000 00	16	320 00	....	....	8,160 00	....	......
10	....	....	......	10,000 00	40	1,600 00	....	....	11,600 00	....	......
4	....	....	......	4,000 00	16	640 00	....	....	5,568 00	....	......
....	....	4	......	800 00	16	128 00					
....	....	5	......	1,000 00	15	120 00	....	....	1,120 00	....	......
3	....	....	......	3,000 00	12	480 00	....	....	4,640 00	....	......
....	....	5	......	1,000 00	20	160 00					
35	....	....	......	35,000 00	140	5,600 00	....	....	60,088 00	....	......
....	22	....	......	11,000 00	88	1,760 00					
....	....	29	......	5,800 00	116	928 00					
12	....	....	......	12,000 00	48	1,920 00	....	....	15,660 00	....	......
....	3	....	......	1,500 00	12	240 00					
2	....	....	......	2,000 00	8	320 00	....	....	2,320 00	....	......
2	....	....	......	2,000 00	8	320 00	....	....	2,320 00	....	......
3	....	....	......	3,000 00	12	480 00	....	....	3,480 00	....	......
2	....	....	......	2,000 00	8	320 00	....	....	2,320 00	....	......
....	....	1	......	200 00	4	32 00	....	....	232 00	....	......
4	....	....	......	4,000 00	16	640 00	....	....	5,684 00	....	......
....	1	....	......	500 00	4	80 00					
....	....	2	......	400 00	8	64 00					
5	....	....	......	5,000 00	20	800 00	....	....	5,800 00	....	......
3	....	....	......	3,000 00	12	480 00	....	....	3,480 00	....	......
....	1	....	......	500 00	4	80 00	....	....	580 00	....	......
....	1	....	......	500 00	4	80 00	....	....	580 00	....	......
15	....	....	......	15,000 00	60	2,400 00	....	....	18,684 00	....	......
....	1	....	......	500 00	4	80 00					
....	....	3	......	600 00	13	104 00					
....	....	2	......	400 00	8	64 00	....	....	464 00	....	......
141	46	63	......	$176,600 00	996	$28,224 00	1	$40 00	$204,864 00	....	......
1	....	....	......	1,000 00	4	160 00	....	....	1,740 00	....	......
....	1	....	......	500 00	4	80 00					
....	1	....	......	500 00	4	80 00	....	....	580 00	....	......
....	2	....	......	1,000 00	8	160 00	....	....	1,160 00	....	......
5	....	....	......	5,000 00	20	800 00	....	....	5,800 00	....	......
7	....	....	......	7,000 00	28	1,120 00	....	....	11,716 00	....	......
....	3	....	......	1,500 00	12	240 00					
....	....	8	......	1,600 00	32	256 00					
....	....	1	......	200 00	4	32 00	....	....	232 00	....	......
1	....	....	......	1,000 00	4	160 00	....	....	2,900 00	....	......
....	1	....	......	500 00	4	80 00					
....	....	5	......	1,000 00	20	160 00					
2	....	....	......	2,000 00	8	320 00	....	....	4,988 00	....	......
....	1	....	......	500 00	4	80 00					
....	....	9	......	1,800 00	36	288 00					
....	8	....	......	4,000 00	32	640 00	....	....	5,800 00	....	......
1	....	....	......	1,000 00	4	160 00					
1	....	....	......	1,000 00	4	160 00	....	....	1,160 00	....	......
6	....	....	......	6,000 00	24	960 00	....	....	6,960 00	....	......
....	1	....	......	500 00	4	80 00	....	....	580 00	....	......
....	....	5	......	1,000 00	20	160 00	....	....	1,160 00	....	......
....	1	....	......	500 00	4	80 00	....	....	580 00	....	......
2	....	....	......	2,000 00	8	320 00	....	....	2,900 00	....	......
....	1	....	......	500 00	4	80 00					
....	....	2	......	400 00	8	64 00	....	....	464 00	....	......
1	....	....	......	1,000 00	4	160 00	....	....	2,320 00	....	......
....	2	....	......	1,000 00	8	160 00					
2	....	....	......	2,000 00	8	320 00	....	....	2,320 00	....	......

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* May 1, 1875.

Exhibit C.—*Schedule three of master's report—First-mortgage ten-year interest bonds and*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
382	1876. Sept. 18	Oelricks & Co.	New York City, New York	Chas. Reusch, for firm
386	" 15	Hays, William H	" " " "	
387	" "	Hays, W'm H. ag't for owners.	" " " "	
390	" "	Morss, Dwight F	Syracuse, "	
399	" "	Shepard, Sidney	New Haven, "	
400	" 19	Denio, Israel	Rome, Oneida Co, "	
401	" "	Gavarret, Jules	Paris, France	Louis B. Binsse, ag't, New York
403	" 25	Duncan, Alexander	——, England	Geo. A. Leete, ag't, Providence, R. I.
404	" 20	Wardwell, Cha's H	Ellisborough, New York	
406	" 22	Kissam, Mrs. Isabella C	Utica, "	
409	" 23	Nicholson, William	Westmoreland, "	
416	Oct. 14	Mason, Alfred	Bath, Somerset Co., England	
92				
421	1876. Oct. 14	Lay, Mrs. Henrietta C	Baltimore, Md	
422	" "	Scott, Mrs. Anna G	Staunton, Virginia	Henrietta C. Lay, ag't, Baltimore.
424	" "	Terrill, George	Newport, Rhode Island	
426	" "	Clarke, Freeman	Rochester, New York	
465	" 21	Salomon, David, est. of	New York City, "	W'm Salomon, executor
479	1877. Jan'y 26	Du Puy, T. Haskins, trustee.	Mobile, Ala	
480	" "	McCarthy, Maurice ——, agent & owner	" "	

coupons of the Mobile and Ohio Railroad Company, presented and proved, &c.—Continued.

Bonds.					Coupons.				Grand total.	Number of coupons to become due to ——.	Amount.
Number.			Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.			
O.	*P.*	*Q.*									
8	...	...	......	8,000 00	32	1,280 00	......	......	9,280 00	......	......
5	...	...	......	5,000 00	20	800 00	......	......	10,672 00	......	......
...	2	...	......	1,000 00	8	160 00					
...	...	16	......	3,200 00	64	512 00					
3	...	...	......	3,000 00	12	480 00	......	......	3,480 00	......	......
7	...	...	......	7,000 00	28	1,120 00	......	......	8,120 00	......	......
86	...	...	......	86,000 00	344	13,760 00	......	......	101,036 00	......	......
...	1	...	......	500 00	4	80 00					
...	...	3	......	600 00	12	96 00					
...	1	...	......	500 00	4	80 00	......	......	580 00	......	......
3	...	...	......	3,000 00	12	480 00	......	......	4,176 00	......	......
...	...	3	......	600 00	12	96 00					
"	...	...	......	......	......	......	*1,290	51,600 00	64,668 00	......	......
...	"	...	......	......	......	......	†287	5,740 00			
							‡916	7,328 00			
2	...	...	......	2,000 00	8	320 00	......	......	2,320 00	......	......
2	...	...	......	2,000 00	8	320 00	......	......	2,320 00	......	......
2	...	...	......	2,000 00	8	320 00	......	......	2,320 00	......	......
4	...	...	......	4,000 00	16	640 00	......	......	6,264 00	......	......
...	2	...	......	1,000 00	8	160 00					
...	...	2	......	400 00	8	64 00					
151	28	54	......	$175,800 00	932	$28,128 00	2,493	$64,668 00	$268,596 00	......	......
1	...	...	......	1,000 00	4	160 00	......	......	1,160 00	......	......
...	1	...	......	500 00	4	80 00	......	......	580 00	......	......
...	1	...	......	500 00	4	80 00	......	......	2,668 00	......	......
...	...	4	......	800 00	16	128 00					
1	...	...	......	1,000 00	4	160 00					
...	1	...	......	500 00	4	80 00	......	......	580 00	......	......
...	1	...	......	500 00	4	80 00	......	......	580 00	......	......
...	...	3	......	600 00	12	96 00	......	......	696 00	......	......
...	2	...	......	1,000 00	6	120 00	......	......	1,120 00	......	......
...	...	3	......	600 00	12	96 00	......	......	......	......	......
...	1	...	......	500 00	4	80 00	......	......	1,276 00	......	......
2	7	10	......	$7,500 00	74	$1,160 00	......	......	$8,660 00	......	......

* 17, Nov. 1, '73; 638, May 1, & 635, Nov. 1, '74.
† 4, " 142, " & 141, " "
‡ 6, " 457, 453, " "

	Bonds.				
	Number.			Series.	Amount.
	O.	*P.*	*Q.*		
1st sheet	72				72,000 00
		6			3,000 00
			90		18,000 00
					93,000 00
2nd sheet	97				97,000 00
		25			12,500 00
			111		22,000 00
					131,700 00
3rd sheet	141				141,000 00
		46			23,000 00
			63		12,600 00
					176,600 00
4th sheet	151				151,000 00
		28			14,000 00
			54		10,800 00
					175,800 00
5th sheet	2				2,000 00
		7			3,500 00
			10		2,000 00
					7,500 00
			463	O. Bonds	463,000 00
			112	P. "	56,000 00
			328	Q. "	65,600 00
Totals			903	O. P. & Q.	$584,600 00

ULATION.

Coupons.								Grand total.
Number of coupons attached unpaid to Nov. 1, 1876.			Amount.	Number of coupons detached unpaid to Nov. 1, 1876.			Amount.	
O.	P.	Q.		O.	P.	Q.		
228			11,520 00	2			80 00	83,600 00
	24		480 00					3,480 00
		330	2,640 00			38	304 00	20,944 00
			14,640 00				384 00	108,024 00
388			15,520 00					112,520 00
	100		2,000 00		4		80 00	14,580 00
		439	3,512 00			6	48 00	25,760 00
			21,032 00				128 00	152,860 00
564			22,560 00	1			40 00	163,600 00
	184		3,680 00					26,680 00
		248	1,984 00					14,584 00
			28,224 00				40 00	204,864 00
604			24,160 00	1,290			51,600 00	226,760 00
	112		2,240 00		287		5,740 00	21,980 00
		216	1,728 00			916	7,328 00	19,856 00
			28,128 00				64,668 00	268,596 00
8			320 00					2,320 00
	26		520 00					4,020 00
		40	320 00					2,320 00
			1,160 00					8,660 00
		1,852	75,080 00			1,293	51,720 00	586,800 00
		446	8,920 00			291	5,820 00	70,740 00
		1,273	10,184 00			960	7,680 00	83,464 00
		3,571	$93,184 00			2,544	$65,220 00	$743,004 00

94 EXHIBIT C.—*Schedule four of master's report.—First-mortgage interest arrearage & proved to the*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
8	May 19	Ross, W'm H	Mobile, Alabama	
14	" 24	Philipi, A	" "	
16	" "	Powers, Mrs. Lydia H	Mobile County, Ala	Tho's A. Hamilton, att'y, Mobile.
17	" "	Hamilton, Amelia H	Mobile, Alabama	" " "
18	" "	Hamilton, Thomas A	" "	
19	Aug. 26	Whiting, Nathan	" "	
21	May 23	Muldon, Ellen	" "	Daniel McNeil, att'y & ag't
26	" 29	Nardin, Lucien	" "	
27	" "	Mixons, Jasper C	Mixon's L'd'g, Ala. River, Ala	Young & Jones, ag'ts, Mobile, Ala.
29	" 30	Herpin, Mary T	Mobile, Alabama	E. P. Herpin, ag't, Mobile, Ala
38	June 10	Waring, Moses	" "	
41	" 20	Krouse, T. J	Suggsville, Clarke Co., Ala	
46	" 27	Emanuel, Isabella H	Mobile, Alabama	Edward C. Emanuel, ag't
48	" 29	Miller, Tho's P., & Co	" "	Cha's B. Miller, ag't
51	July 1	Lyons, Jacob C	Philadelphia, Pa	
52	"	Levy, Mrs. B. E	Columbia, South Carolina	J. C. Lyons, ag't, Philadelphia, Pa.
53	" 3	Reese, Mrs. Margaret	Mobile, Alabama	Moses Waring, ag't
54	" "	Gannett, Alfred W	Washington, D. C., Treas. Dep't.	
55	" 5	Trabue, George W	Nashville, Tenn	W'm D. Dunn, ag't, Mobile, Ala.
56	" 10	Thompson, Mrs. Caroline A.	Memphis, Tenn	Egbert H. Grandin, att'y, Mobile.
57	" "	Holmes, James W	Mobile, Alabama	
58	" 11	Crawford, Ja's, bankrupt est.	" "	Barnewall & Gaynor, assignees, &c.
60	" 12	Rosengarten, Geo. D	Philadelphia, Pa	
62	" 18	Lull, Mrs. Frances V. A.	Columbus, Miss	
64	" "	Columbus Ins. Br'k'g Co.	" "	N. E. Goodwin, cashier
65	" "	Torry, Mrs. Lucie	" "	" " att'y & ag't
66	" "	Murdock, Mrs. G. A	" "	G. W. Cox, "
68	" "	Miller, Mrs. Cath., guardian.	" "	W'm H. Sims, "
69	" "	Morgan, John M	" "	John D. Morgan, "
72	" "	Gilmer, Susan C., estate of.	" "	John Gilmer, executor
74	" "	Columbus Ins. & B'k'g Co.	" "	N. E. Goodwin, cashier
75	" "	Cox, Mrs. E. A	" "	G. W. Cox, att'y & ag't

95

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
76	July 18	Cox, G. W., guardian	Columbus, Miss	
84	July 27	Soulé, Lyd'a L	Boston, Mass	
89	" 29	Merrill, Daniel F	Washington, D. C	Jno. F. Calep, ag't, Mobile
90	" 31	Sands, Mrs. Fanny	Mobile, Alabama	Moses Waring, ag't

funded interest bonds and coupons of the Mobile and Ohio Railroad Company, presented and special master.

Bonds.			Coupons.						
Number.	Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.	Grand total.	Number of coupons to become due to—	Amount.
1	Funded F_1	500 00	4	80 00	......	......	580 00	......	......
1	Arrearage F_1	1,000 00	4	160 00					
1	" F_2	500 00	4	80 00					
1	" F_3	300 00	4	48 00					
3	" F_4	300 00	12	48 00	......	......	2,436 00	......	......
1	Funded F_1	500 00	4	80 00	......	......	580 00	......	......
1	" F	1,000 00	4	160 00	......	......	1,160 00	......	......
1	" F_1	500 00	4	80 00	......	......	580 00	......	......
4	" F	4,000 00	16	640 00					
1	" F_1	500 00	4	80 00	......	......	5,220 00	......	......
2	" F_1	1,000 00	10	200 00	......	......	1,200 00	......	......
1	" F_1	500 00	4	80 00					
1	" F	1,000 00	4	160 00	......	......	1,740 00	......	......
5	" F_1	2,500 00	20	400 00					
1	" F	1,000 00	4	160 00	......	......	4,060 00	......	......
4	" F_1	2,000 00	16	320 00	......	......	2,320 00	......	......
1	" F	1,000 00	4	160 00	......	......	1,160 00	......	......
1	" F	1,000 00	4	160 00	......	......	1,160 00	......	......
2	" F	2,000 00	8	320 00					
1	" F_1	500 00	4	80 00	......	......	2,900 00	......	......
1	Arrearage F_2	500 00	4	80 00	......	......	580 00	......	......
1	Funded F_1	500 00	4	80 00	......	......	580 00	......	......
2	" F_1	1,000 00	8	160 00	......	......	1,160 00	......	......
1	" F	1,000 00	4	160 00	......	......	1,160 00	......	......
8	" F	8,000 00	32	1,280 00					
1	" F_1	500 00	4	80 00					
1	Arrearage F_2	500 00	4	80 00	......	......	10,440 00	......	......
2	Funded F	2,000 00	8	320 00					
2	" F_1	1,000 00	8	160 00	......	......	3,480 00	......	......
5	" F	5,000 00	20	800 00					
7	" F_1	3,500 00	28	560 00	......	......	9,860 00	......	......
3	" F	3,000 00	12	480 00	......	......	3,480 00	......	......
1	" F_1	500 00	6	120 00	......	......	620 00	......	......
1	Arrearage F^2	500 00	4	80 00	......	......	580 00	......	......
1	" F_1	1,000 00	4	160 00					
1	" F_3	300 00	4	48 00	......	......	1,508 00	......	......
3	" F_1	3,000 00	12	480 00					
1	" F_2	500 00	4	80 00					
1	" F_3	300 00	4	48 00					
1	" F_4	100 00	4	16 00	......	......	4,524 00	......	......
1	" F_1	1,000 00	4	160 00	......	......	1,160 00	......	......
1	" F_1	1,000 00	4	160 00					
1	" F_4	100 00	4	16 00	......	......	1,276 00	......	......
2	" F_1	2,000 00	8	320 00					
1	" F_4	100 00	4	16 00	......	......	2,436 00	......	......
1	Funded F_1	500 00	4	80 00	......	......	580 00	......	......
1	" F_1	500 00	6	120 00	......	......	620 00	......	......
2	Arrearage F_4	200 00	8	32 00	......	......	232 00	......	......
8	Funded F	8,000 00	32	1,280 00	......	......	9,280 00	......	......
96		$67,700 00	390	$10,952 00	......	......	$78,652 00	......	......
1	Funded F	1,000 00	4	160 00					
2	" F_1	1,000 00	8	160 00					
2	Arrearage F_3	600 00	8	96 00					
1	" F_4	100 00	4	16 00	......	......	3,132 00	......	......
2	Funded F	2,000 00	6	240 00	......	......	2,240 00	......	......
1	" F	1,000 00	4	160 00	......	......	1,160 00	......	......
2	" F	2,000 00	8	320 00	......	......	2,320 00	......	......

EXHIBIT C.—*Schedule four of master's report.—First-mortgage*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
95	Aug. 10	Levy, Sarah	Philadelphia, Pa	
99	" 11	Day, Addison	Utica, Oneida Co., N. Y	
103	" 12	Nichols, Mrs. Virginia P.	Baltimore, Md	R. Inge Smith, att'y, Mobile
104	Sept. 20	Utley, David	Rome, Oneida Co., N. Y	
106	Aug. 18	Jinkins, Mrs. Susan M.	Aberdeen, Miss	
107	" "	Jinkins, Silas, estate of	" "	Mrs. S. M. Jenkins, executrix
112	" 22	Munroe, Hugh	Mobile, Ala	
113	" 13	Merrill, Daniel F	Washington, D. C	
115	" 22	Smith, Caroline T.	Utica, Oneida Co., N. Y	Addison Day, att'y, &c
119	" 17	Parker, Mrs. Mary Ann	Mobile, Alabama	W'm G. Jones, att'y & ag't
122	" 26	Lagurenne, Julia	Philadelphia, Pa	
125	Sept. 2	Merriwether, Cha's G	Mobile, Alabama	
129	" 19	Williams, Mrs. E. S	Wilcox Co., "	Cha's G. Merriwether, ag't, Mobile.
145	Oct. 4	Elgin, A. M	Mobile, Ala	W'm A. Garnett, ag't, Mobile
148	" 5	Peterson, Janet	" "	W'm Walker, att'y & ag't
172	" 11	Allen, Mrs. A. R	" "	
173	" "	Stables, James	Lane Ending, Horsforth, N. Leeds, England.	
176	" 13	Pfister, Mary Ann	New Orleans, La	Geo. N. Stewart, att'y, &c
177	" "	De Grushe, Miss J. K	Mobile, Alabama	F. P. De Grushe, att'y, &c
191	" 14	Field, Mrs. C. B	St. Louis, Missouri	
200	" "	Hamilton, Mrs. Peter	Mobile, Alabama	Peter Hamilton, att'y, &c
203	Aug. 10	Mather, Frederick E	New York City, N. Y	
207	" 11	Marsh, Hester	Nannet, Rockland Co., N. Y	
208	" "	Cropsey, Mrs. Henrietta E.	" " "	Hester Marsh, ag't
211	" 14	Field, Mrs. Margaret	New York City, "	
212	" "	Perry, Mrs. Mary H	" " " "	
216	" "	Sewall, Mrs. Joanna W		
219	" 17	Binsse, Louis B	" " " "	
220	" "	Binsse, Henry L	Chicago, Ills	L. B. Binsse, ag't, New York
224	" "	Roberts, Edward M	New York City, N. Y	
225	" "	Duncan, Sherman & Co., bankrupt.	" " " "	W. B. Shipman, assignee
96 227	Aug. 18	Boynton, E. C	Newburg, New York	
231	" 19	Phelps, Samuel F	New York	Wm. Butler Duncan, New York.
232	" 21	Randall, Francis	Orange, New Jersey	
234	" "	Van Schaick & Co	New York City	
235	" "	Sheldon, Israel	Orange, New Jersey	
236	" 21	Gannett, Ezra S	New York City, N. Y	
243	" 22	Griffith, Jno. R	Paris, France	H. Stulzen, ag't, New York
248	" 23	Wesson, Sarah L	New York City, N. Y	Andrew Wesson, ag't
251	" 24	Levy & Borg	" " " "	Eugene M. Cave, clerk
263	" 26	Hopkins, Elisha W	Little Falls, New York	
264	" "	Knox, J. C	Brooklyn, "	
269	" 28	Schenck, Mrs. M. S		Jno. R. Blossom, ag't, New York.
274	" "	Keen, Anna M	Newark, New Jersey	Jonathan Keen, ag't, New York.

* 1 May 1 & 1 Nov. 1, 1875

interest arrearage and funded interest bonds and coupons, &c.—Continued.

Bonds.			Coupons.				Grand total.	Number of coupons to become due to ——.	Amount.
Number.	Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount			
1	" F	1,000 00	4	160 00	......	....	1,160 00	.....	....
8	" F_1	4,000 00	32	640 00	......	....	4,640 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
13	" F	13,000 00	52	2,080 00					
4	" F_1	2,000 00	16	320 00	......	....	17,400 00	.....	....
1	" F	1,000 00	4	160 00	*8	320 00	1,480 00	.....	....
4	" F	4,000 00	16	640 00	......	....	4,640 00	.....	....
5	Arrearage F_1	5,000 00	20	800 00					
1	" F_2	500 00	4	80 00	......	....	6,380 00	.....	....
1	Funded F	1,000 00	4	160 00	......	....	1,160 00	.....	....
3	" F_1	1,500 00	12	240 00	......	....	1,740 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
2	" F	2,000 00	8	320 00	......	....	2,320 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
1	" F	1,000 00	4	160 00					
1	Arrearage F_4	100 00	4	16 00	......	....	1,276 00	.....	....
1	Funded F	1,000 00	4	160 00					
3	" F_1	1,500 00	12	240 00	......	....	2,900 00	.....	....
1	" F_1	500 00	4	80 00					
1	Arrearage F_4	100 00	4	16 00	......	....	696 00	.....	....
10	Funded F	10,000	40	1,600 00					
6	" F_1	3,000 00	21	480 00	......	....	15,080 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
4	Arrearage F_4	400 00	16	64 00	......	....	464 00	.....	....
2	Funded F_1	1,000 00	8	160 00	......	....	1,160 00	.....	....
1	" F_1	500 00	4	80 00					
1	Arrearage F_2	500 00	4	80 00	......	....	1,160 00	.....	....
2	Funded F	2,000 00	8	320 00					
1	" F_1	500 00	4	80 00	......	....	2,900 00	.....	....
1	" F	1,000 00	4	160 00	......	....	1,160 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
2	" F_1	1,000 00	8	160 00					
1	" F	12,000 00	48	1,920 00					
2	Arrearage F_1	2,000 00	8	320 00	......	....	17,400 00	.....	....
4	Funded F	4,000 00	16	640 00					
3	" F_1	1,500 00	12	240 00	......	....	6,380 00	.....	....
1	" F_1	500 00	4	80 00	......	....	580 00	.....	....
6	" F_1	3,000 00	24	480 00	......	....	3,480 00	.....	....
1	" F	1,000 00	5	200 00	......	....	1,200 00	.....	....
129	....	$94,800 00	515	$15,128 00	8	320 00	$110,248 00	.....	....
5	Funded F	5,000 00	20	800 00	......	....	5,800 00		
5	" F	5,000 00	20	800 00	......	....	5,800 00		
3	" F	3,000 00	12	480 00	......	....	3,480 00		
1	" F_1	500 00	4	80 00	......	....	580 00		
7	" F	700 00	28	1,120 00	......	....			
2	" F_1	1,000 00	8	160 00	......	....	9,280 00		
5	" F	5,000 00	20	800 00	......	....			
1	" F_1	500 00	4	80 00	......	....	6,380 00		
2	" F	2,000 00	8	320 00	......	....			
2	" F_1	1,000 00	8	160 00	......	....	3,480 00		
1	" F_1	500 00	4	80 00	......	....	580 00		
1	" F_1	500 00	4	80 00	......	....	580 00		
1	" F_1	500 00	4	80 00	......	....	580 00		
1	" F	1,000 00	4	160 00	......	....			
1	Arrearage F_1	1,000 00	4	160 00	......	....			
1	Funded F_1	500 00	4	80 00	......	....	2,900 00		
2	" F_1	1,000 00	8	160 00	......	....	1,160 00		
1	" F_1	500 00	3	60 00	......	....	560 00		

1 May 1 & 1 Nov. 5, 1876.

EXHIBIT C.—*Schedule four of master's report. First mortgage*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
275	" 29	Boyd, Geo. W	New York City, N. Y	
276	" "	Plant, H. B............	" " " "	G. H. Filley, ag't, New York.
277	" "	Lamarche, Hyacinthe	" " " "	....
279	" 28	Iselin, A. & Co	" " " "	....
279½	" 31	Iselin, A. & Co., agents	" " " "	....
A. 307ᴬ	" 30	Moran Bros............	" " " "	....
B. 307B.	" "	Moran Bros. *et als*.....	" " " "	....
311	" 31	Plock & Co., ag'ts for owners.	" " " "	....
314	" "	Farmers & Merchants' Loan & Trust Co.	Norfolk, Virginia	H. C. Hardy, ag't, New York
317	" "	Thomas, George	Utica, New York	....
320	" "	Mackenzie, Alexander	New York City, N. Y	....
321	Sept. 1	Darling, A. B	" " " "	....
322	" "	Evans, Mrs. John W ..	Linden, Vermont...........	A. B. Darling, ag't, New York
323	" "	J. L. Farrell, A. Rossiter *et als.*		F. W. Dunton, " "
329	" "	Bartlett, Levi.........	Skaneatels, Onandago Co., N. Y.	....
335	" 2	Sistare, George R	New York City, N. Y	....
343	" 4	Wardwell, Wm. W ...	Rome, Oneida Co., N. Y	....
345	" "	Van Dresar, Ezekiel ..	" " "	....
349	" "	Southwick, Augustus B	" " "	....
350	" "	Isabel, S. A	" " "	....
97				
352	Sept. 4	Nock, Thos. G	Rome, Oneida Co., N. Y	....
354	" "	Scudder, Samuel O ...	" " "	....
356	" "	Spencer, Harvey D....	" " "	....
357	" "	Lynch, George H	" " "	....
358	" "	Petrie, C	" " "	....
362	" "	Barton, John M	" " "	....
363	" "	Westfeldt, Mary E ...	Claymont, Delaware	....
366	" 7	Barnum, Jas. H	Salisbury, Conn	....
367	" "	Cromwell, Caroline L .	Skaneatels, New York...	....
386	" 15	Hays, Wm. H	New York City, " ...	....
387	" "	Hays, Wm. H., agt. for owners.	" " " " ...	....
390	" "	Morss, Dwight F	Syracuse, New York	....
399	" 19	Shepard, Sydney	New Haven, Conn	....
400	" "	Denis, Israel	Rome, Oneida Co., New York	....
403	" 25	Duncan, Alexander ...	England	Geo. A. Leets, agt., Providence, R. I.
408	" 22	McClellan, Charles	Philadelphia, Pa	Chas. M. Clemens, agt ......

*May 1, 1875.

†25 May 1, & 25 Nov. 1, 1874.

‡12 " 12 " "

§ 6 " 6 " "

**24 " 24 " "

***interest arrearage and funded interest, &c.*—Continued.**

Bonds.			Coupons.						
Number.	Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.	Grand total.	Number of coupons to become due to——	Amount.
1	" F_1	500 00	4	80 00	......	......	580 00	......	......
33	" F	33,000 00	132	5,280 00					
13	" F_1	6,500 00	52	1,040 00	......	......	45,820 00	......	......
2	Arrearage F_1	2,000 00	8	320 00					
2	" F_2	1,000 00	8	160 00					
1	Funded F_1	500 00	4	80 00	......	......	4,060 00	......	......
1	" F	1,000 00	4	160 00	......	......	1,160 00	......	......
	" F_1	......	......	......	*1	20 00	20 00	......	......
4	" F_1	2,000 00	16	320 00	......	......	2,320 00	......	......
30	" F	30,000 00	120	4,800 00					
1	" F_1	500 00	4	80 00	......	......	35,380 00	......	......
11	" F_1	5,500 00	44	880 00					
1	" F	1,000 00	4	160 00	......	......	7,540 00	......	......
5	" F	5,000 00	20	800 00	......	......	5,800 00	......	......
4	" F_1	2,000 00	16	320 00	......	......	2,320 00	......	......
3	" F_1	1,500 00	12	240 00					
1	Arrearage F_1	1,000 00	4	160 00	......	......	2,900 00	......	......
1	Funded F	1,000 00	4	160 00	......	......	1,160 00	......	......
1	" F_1	500 00	4	80 00	......	......	580 00	......	......
5	" F	5,000 00	20	800 00					
2	" F_1	1,000 00	8	160 00	......	......	6,960 00	......	......
3	" F_1	1,500 00	12	240 00	......	......	1,740 00	......	......
1	" F	1,000 00	4	160 00					
5	" F_1	2,500 00	20	400 00	......	......	4,060 00	......	......
1	" F	1,000 00	4	160 00	......	......	1,160 00	......	......
7	" F_1	3,500 00	28	560 00					
1	" F	1,000 00	4	160 00	......	......	5,220 00	......	......
2	" F_1	1,000 00	8	160 00					
4	" F	4,000 00	16	640 00	......	......	5,800 00	......	......
1	" F_1	500 00	4	80 00	......	......	580 00	......	......
189		$152,000 00	755	$24,300 00	1	$20 00	$176,320 00		
7	Funded F	7,000 00	28	1,120 00					
2	" F_1	1,000 00	8	160 00	......	......	9,280 00	......	......
7	" F_1	3,500 00	28	560 00					
3	" F	3,000 00	12	480 00	......	......	7,540 00	......	......
3	" F	3,000 00	12	480 00	......	......	3,480 00	......	......
5	" F_1	2,500 00	20	400 00	......	......	2,900 00	......	......
1	" F_1	500 00	4	80 00					
1	" F	1,000 00	4	160 00	......	......	1,740 00	......	......
9	" F	9,000 00	36	1,440 00					
5	" F_1	2,500 00	20	400 00	......	......	13,340 00	......	......
2	" F_1	1,000 00	8	160 00	......	......	1,160 00	......	......
1	" F	1,000 00	4	160 00					
1	" F_1	500 00	4	80 00	......	......	1,740 00	......	......
1	" F_1	500 00	4	80 00	......	......	580 00	......	......
13	" F	13,000 00	52	2,080 00					
10	" F_1	5,000 00	40	800 00	......	......	20,880 00	......	......
2	" F	2,000 00	8	320 00					
16	" F_1	8,000 00	64	1,280 00	......	......	11,600 00	......	......
10	" F	10,000 00	40	1,600 00					
2	" F_1	1,000 00	8	160 00	......	......	12,760 00	......	......
2	" F_1	1,000 00	8	160 00	......	......	1,160 00	......	......
4	" F_1	2,000 00	16	320 00	......	......	2,320 00	......	......
	Arrearage F_1	......	......	......	†50	2,000 00			
	" F_2	......	......	......	‡24	480 00			
	" F_3	......	......	......	§12	144 00			
	" F_4	......	......	......	**48	192 00			
	Funded F	......	......	......	††950	38,000 00			
	" F_1	......	......	......	‡‡733	14,660 00	55,476 00	......	......
1	" F	1,000 00	4	160 00	......	......	1,160 00	......	......

†† 9 Nov. 1, '73, 473 May 1. & 468 Nov. 1, '74.
‡‡ 16 " 359 " 358 " "

EXHIBIT C.—*Schedule four of master's report.—First-mortgage*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
410	Sept. 25	Nave, Mary B	St. Louis, Mo	
416	Oct. 14	Mason, Alfred	Bath, Somerset Co., England	
424	" "	Terrill George	Newport, Rhode Island	
464	" 19	Lake, Bros	Grenada, Miss	M. G. Hudson, agt., Mobile
465	" 21	Solomon, David, est. of	New York City, N. Y	Wm. Salomon, executor
466	" 23	Sebert, W'm F	Brooklyn, New York	
	1877.			
478	Jan'y 19	Daingerfield, M'rs Margaret B.	Alexandria, Va	
480	" 26	McCarthy, Maurice	Mobile, Ala	

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RECAPITU

Number.	Bonds.	
	Series.	Amount.
21	Arrearage F_1	21,000 00
9	" F_2	4,500 00
5	" F_3	1,500 00
15	" F_4	1,500 00
274	Funded F	274,000 00
234	" F_1	117,000 00
Total, 558		$419,500 00

Page 1 ....
" 2 ....
" 3 ....
" 4 ....

interest arrearage and funded interest bonds and coupons, &c.—Continued.

Bonds.			Coupons.				Grand total.	Number of coupons to become due to——	Amount.
Number.	Series.	Amount.	Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.			
1	Arrearage F¹..	1,000 00	4	160 00	......	......	1,160 00	......	......
1	Funded F₁.....	500 00	4	80 00	......	......	580 00	......	......
1	" F.....	1,000 00	3	120 00					
2	" F₁.....	1,000 00	7	140 00	......	......	2,260 00	......	......
4	" F.....	4,000 00	......	......	......	......	4,000 00	......	......
1	" F₁.....	500 00	4	80 00	......	......	580 00	......	......
1	" F₁.....	500 00	4	80 00	......	......	580 00	......	......
2	Funded F.....	2,000 00	8	320 00	......	......	2,320 00	......	......
8	" F.....	8,000 00	32	1,280 00					
15	" F₁.....	7,500 00	60	1,200 00	......	......	17,980 00	......	......
144		$105,000 00	558	$16,100 00	1,817	$35,476 00	$176,576 00	......	......

LATION.

Coupons.				Grand total.
Number of coupons attached unpaid to Nov. 1, 1876.	Amount.	Number of coupons detached unpaid to Nov. 1, 1876.	Amount.	
84	3,360 00	50	2,000 00	26,360 00
36	720 00	24	480 00	5,700 00
20	240 00	12	144 00	1,884 00
60	240 00	48	192 00	1,932 00
1,072	43,120 00	958	38,320 00	355,440 00
940	18,800 00	734	14,680 00	150,480 00
2,218	$66,480 00	1,826	$55,816 00	$541,796 00
......	......	......	......	$78,652 00
......	......	......	......	110,248 00
......	......	......	......	176,320 00
......	......	......	......	176,576 00
				$541,796 00

EXHIBIT C.—*Schedule five of master's report.—Tennessee substitution bonds and cou-*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
311	Aug. 31	Various owners		Plock & Co., ag'ts, N. Y. City
403	Sept. 25	Duncan, Alexander		Geo. A. Leete, att'y, Providence, R. I.
417	Oct. 14	Riggenbach, Jean	Basle, Switzerland	Max Ruckgaber, ag't, N. Y. City
435	" "	Gott, John, & Son	Frankfort o. M., Germany	Jos. Roll, ag't, same place
436	" "	Kern, George, jr	" " "	
437	" "	Bank, Verein	" " "	John Boeckler, ag't
438	" "	Vereins Bank	" " "	Johann Fisher, ag't
439	" "	Vereins Bank	" " "	John Binderwald, ag't
440	" "	Vereins Bank	" " "	Jacob Stein, ag't
441	" "	C. Zwicki	Mollis Glarus, Switzerland	L. Wolff, ag't
442	" "	Erlangen & Son	Frankfort o. M., Germany	Jacob Hanstein, ag't
443	" "	Koettreuter, Felix, & Co.	St. Gallen, Switzerland	L. Wolff, ag't
444	" "	Dreyfuss & Deidels	Frankfort o. M., Germany,	Geo. Thenteberg, ag't
445	" "	Müller, Siegmund	" " "	
446	" "	——— Rankonbusch	Darmstadt, Germany	Geo. Gräfe, ag't Frankfort
447	" "	Vascrook, S	Lausanne, Switzerland	Carl Schmidt, ag't "
448	" "	Neumann, Emil	Frankfort o. M., Germany	
449	" "	Regensburger, Seigmund.	" " "	
450	" "	Wertheimer, L. C	" " "	Albert Stiebel, ag't
451	" "	Benjaman, Albert	Wiesbaden, Germany	
452	" "	Benjaman, Moritz	" "	
453	" "	Mezbach, A	Frankfort o. M., Germany	Johann Ruprecht, ag't
454	" "	Hess, Adolph	Mainz, Germany	
455	" "	Von Rau, D'r Ludwig	Hohenheim, near Frankfort o. M.	
456	" "	Goldschmidt, S. & H	Frankfort o. M	Amandus Kiel, ag't
457	" "	Van der Muhle & Son	" "	F. Lenhard, agent
459	" "	De Neufeville, J	" "	R. Loffler, agent
460	" "	De Neufeville, Dan Jacob.	" "	" " "
468	" "	Various owners		Plock & Co., agents, per Fred. Müller, cl'k, N. Y. City.

*1 Jan'y 1 and 1 July 1, 1873; 5 Jan'y 1 & 1,667 *pons of the Mobile and Ohio Railroad Company, presented and proved to the special master*

Bonds.			Coupons.						
Number.	Series.	Amount.	Number of coupons attached unpaid to Jan'y 1, 1877.	Amount.	Number of coupons detached unpaid to Jan'y 1, 1877.	Amount.	Grand total.	Number of coupons to become due to ——.	Amount.
18	......	18, 000 00	68	2, 380 00	....	....	20, 380 00	......	......
......	......	....	......	....	*2, 160	75, 600 00	75, 600 00	......	......
13	......	13, 000 00	40	1, 400 00	....	....	14, 400 00	......	......
13	......	13, 000 00	52	1, 820 00	....	....	14, 820 00	......	......
3	......	3, 000 00	12	420 00	....	....	3, 420 00	......	......
3	......	3, 000 00	12	420 00	....	....	3, 420 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
2	......	2, 000 00	8	280 00	....	....	2, 280 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
3	......	3, 000 00	12	420 00	....	....	3, 420 00	......	......
3	......	3, 000 00	12	420 00	....	....	3, 420 00	......	......
1	......	1, 000 00	3	105 00	....	....	1, 105 00	......	......
3	......	3, 000 00	12	420 00	....	....	3, 420 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
2	......	2, 000 00	8	280 00	....	....	2, 280 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
1	......	1, 000 00	4	140 00	....	....	1, 140 00	......	......
4	......	4, 000 00	16	560 00	....	....	4, 560 00	......	......
5	......	5, 000 00	20	700 00	....	....	5, 700 00	......	......
4	......	4, 000 00	16	560 00	....	....	4, 560 00	......	......
5	......	5, 000 00	20	700 00	....	....	5, 700 00	......	......
2	......	2, 000 00	8	280 00	....	....	2, 280 00	......	......
3	......	3, 000 00	12	420 00	....	....	3, 420 00	......	......
4	......	4, 000 00	16	560 00	....	....	4, 560 00	......	......
20	......	20, 000 00	80	2, 800 00	....	....	22, 800 00	......	......
120	......	$120, 000 00	463	$16, 205 00	2, 160	$75, 600 000	$211, 805 00	......	......

July 1, 1874 ; 486 Jan'y 1, 1875.

100 EXHIBIT C.—*Schedule six of master's report.—Second-mortgage bonds and coupons of*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
5	1876. May 18	Bienville Lodge No. 348	Mobile, Alabama	W'm F. Stoutz, f'r warden
18	" 22	Hamilton, Tho's A	" "	
21	" 23	Muldon, Ellen	" "	Dan'l McNeil, att'y & ag't
22	" "	Muldon, Rebecca A	" "	" " "
39	June 12	Bright, Henry	Northampton, Mass	Tho's A. Hamilton, Mobile
40	" "	Weiler, Haas & Kraus	Aberdeen, Miss	Sam Haas, of firm
46	" 27	Emanuel, M'r's Isabella H	Mobile, Alabama	Edw. C. Emanuel
47	" 28	McDearman, J. A., est. of	Trenton, Gibson Co., Tenn	J. C. McDearman, adm
50	July 1	Philips, Philip	Washington, D. C	W'm Boyles, ag't, Mobile
54	" 3	Gannett, Alfred W	Washington, D. C., (Treas. Dept).	
55	" 5	Trabue, George W	Nashville, Tenn	W'm D. Dunn, ag't, Mobile
58	" 11	Crawford, Walsh, Smith & Co., bankrupts.	Mobile, Alabama	Barnewall & Gagnon, assignees.
66	" 18	Murdock, M'r's G. A	Columbus, Miss	G. W. Cox, att'y & ag't
74	" "	Columbus Ins. & Bank'g Co.	" "	N. E. Goodwin, cash'r
76	" "	Sykes, T. M. & W. E. (minors).	" "	G. W. Cox, guardian
78	" "	Sims, W'm H	" "	
104	Aug. 12	Uetley, David	Rome, Oneida Co., N. Y	
105	" 14	Owens, M. D. & Sallie G	Louisville, Ky	
112	" 22	Munroe, Hugh	Mobile, Alabama	
114	" "	Richardson, Lydia M	Bridgeport, Conn	
139	Sept. 28	Higgins, P. H., et al	Meridian, Miss	Cha's E. Rushing, ag't, Mobile.
143	Oct. 3	Hazard, Harriet P	Mobile, Alabama	Ja's B. Hazard, trustee
147	" 4	Garnett, W'm A	" "	
162	" 9	Guesnard, M'r's Lea	" "	Theo. Guesnard, ag't
163	" "	Rogers, Thomas	M't Vernon, Ala	
166	" 10	Murdock, Abram	Columbus, Miss	B. F. Rogers, ag't, Mobile
101				
172	1876. Oct. 11	Allen, M'r's A. R	Mobile, Alabama	
174	" 12	Brown, W'm Smith	Westchester, N. Y	W. H. Day, ag't, N. Y. City
196	" 14	Bank of Winterthur	Winterthur, Switzerland	Alfred Merian, ag't, N. Y. City.
198	" "	Sherman, M'r's Sarah M. G.	New York City	W'm W. Sherman, ag't
199	" "	Various owners		W'm Simms, att'y & ag't, Belfast, Ireland.
201	Aug. 9	Hunsicker & Co	Aavan, Switzerland	Fred. Probst & Co., ag'ts, N. Y. City.
216	" 14	Sewall, M'r's Joanna W	New York City	

the Mobile and Ohio Railroad Company, presented and proved to the special master.

Bonds.			Coupons.				Grand total.	Number of coupons to become due to——.	Amount.
Number.	Series.	Amount.	Number of coupons attached unpaid to M'ch 1, 1877.	Amount.	Number of coupons detached unpaid to M'ch 1, 1877.	Amount.			
1	U.	100 00	3	24 00	....	....	124 00	......	......
4	T.	1,200 00	8	192 00	....	....	1,392 00	......	......
1	T.	300 00	3	72 00	....	....	372 00	......	......
1	R.	1,000 00	3	240 00	....	....	1,612 00	......	......
1	T.	300 00	3	72 00					
......	Rr.	....	....	....	*4	320 00	384 00	......	......
	T.	....	....	....	*2	48 00			
	U.	....	....	....	*2	16 00			
1	Ss.	500 00	3	120 00	....	....	620 00	......	......
1	Ss.	500 00	3	120 00	....	....	868 00	......	......
2	Uu.	200 00	6	48 00					
2	S.	1,000 00	6	240 00	....	....	1,240 00	......	......
3	T.	900 00	9	216 00	....	....	1,116 00	......	......
2	S.	1,000 00	6	240 00	....	....	1,240 00	......	......
2	S.	1,000 00	6	240 00	....	....	1,240 00	......	......
7	S.	3,500 00	21	840 00	....	....	8,680 00	......	......
3	Rr.	3,000 00	9	720 00					
1	Ss.	500 00	3	120 00					
1	Ss.	500 00	2	80 00	....	....	928 00	......	......
3	Uu.	300 00	6	48 00					
1	U.	100 00	3	24 00	....	....	1,364 00	......	......
2	S.	1,000 00	6	240 00					
2	Uu.	200 00	4	32 00	....	....	232 00	......	......
1	R.	1,000 00	2	160 00	....	....	1,160 00	......	......
16	Rr.	16,000 00	48	3,840 00	....	....	24,800 00	......	......
4	R.	4,000 00	12	960 00					
4	Rr.	4,000 00	12	960 00	....	....	5,580 00	......	......
1	Ss.	500 00	3	120 00					
2	S.	1,000 00	6	240 00	....	....	4,216 00	......	......
7	T.	2,100 00	21	504 00					
2	U.	200 00	6	48 00					
1	Uu.	100 00	3	24 00					
5	Rr.	5,000 00	10	800 00	....	....	6,380 00	......	......
1	S.	500 00	2	80 00					
2	Uu.	200 00	6	48 00	....	....	1,736 00	......	......
4	T.	1,200 00	12	288 00					
2	Uu.	200 00	6	48 00	....	....	248 00	......	......
17	U.	1,700 00	51	408 00	....	....	5,828 00	......	......
2	Uu.	200 00	6	48 00					
6	T.	1,800 00	18	432 00					
2	S.	1,000 00	6	240 00					
1	T.	300 00	3	72 00	....	....	372 00	......	......
2	S.	1,000 00	6	240 00	....	....	1,488 00	......	......
1	U.	100 00	3	24 00					
1	Uu.	100 00	3	24 00					
......	Rr.	....	....	....	†5	400 00	440 00	......	......
		....	....	....	†1	40 00			
125	....	59,300 00	358	$13,536 00	14	$824 00	$73,660 00	......	......
1	T.	300 00	3	72 00	....	....	372 00	......	......
9	U.	900 00	27	216 00	....	....	1,116 80	......	......
8	S.	4,000 00	24	960 00	....	....	5,084 00	......	......
1	U.	100 00	3	24 00					
1	S.	500 00	3	120 00	....	....	5,952 00	......	......
1	U.	100 00	3	24 00					
4	T.	1,200 00	12	288 00					
3	R.	3,000 00	9	720 00					
7	T.	2,100 00	14	336 00	....	....	2,668 00	......	......
2	U.	200 00	4	32 00					
4	S.	2,000 00	12	480 00	....	....	8,680 00	......	......
5	R.	5,000 00	15	1,200 00					
1	R.	1,000 00	3	240 00	....	....	1,240 00	......	......

* March 1, 1875.
* " "
* " "

† March 1, 1875.
† " "

EXHIBIT C.—*Schedule sixof master's report—Second mortgage bonds*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
225	1876. Aug. 17	Duncan, Sherman & Co., bankrupts.	New York City	W. D. Shipman, assignee
228	" 18	Warner, Miss Georgie	College Point, Long I'd	John Graham, ag't
229	" "	Morgan, Junius S	London, England	Drexel, Morgan & Co., ag'ts & att'ys, N. Y. City.
231	" 19	Phelps, Samuel F	New York City	W. B. Duncan, ag't, N. Y. City
232	" 21	Randall, Francis	Orange, New Jersey	
242	" 22	Stutzer, Herman	New York City	
246	" 23	Sistare, W. H. M	" " "	
247	" "	Marshal, M'r's Ann	" " "	Rob't Marshal, ag't
254	" 24	Elridge, Oliver	San Francisco, Cal	Brown, Bro's & Co., N. Y. City.
262	" 26	Stutzer, Ferdinand	New York City	
264	" "	Knox, J. C	Brooklyn, N. Y	
270	" 28	Whitney, A. & Co	Philadelphia, Pa	Geo. Whitney of firm
279	" "	Iselin, A. & Co	New York City	
279½	" 31	Various owners		A. Iselin & Co., ag'ts, N. Y. City
280	" 28	Iselin, Adrian	" " "	
281	" "	Bank Commerciale	Basle, Switzerland	A. Iselin & Co., ag'ts, N. Y. City
102				
284	1876. Aug. 28	Iselin, W'm & Co	Havre, France	A. Iselin & Co., ag'ts, N. Y. City
291	" "	Massa, Peter	New York City	" " "
292	" 30	Horner, E. J	Wilmington, Delaware	J. S. Rogers, ag't, N. Y. City
293	" "	Potts, W'm F	Philadelphia, Pa	" " "
294	" "	Rogers Locomotive & Machine Works.	Paterson, N. J	" " "
295	" "	Edwards, John	" "	" " "
296	" "	Whiton, A. S	New York City	" " "
297	" "	Ganse, T. J	Wilmington, Del	" "

and coupons of the Mobile and Ohio Railroad Company, &c.—Continued.

Bonds.			Coupons.						
Number.	Series.	Amount.	Number of coupons attached unpaid to M'ch 1, 1877.	Amount.	Number of coupons detached unpaid to M'ch 1, 1877.	Amount.	Grand total.	Number of coupons to become due to——.	Amount.
14	S.	7,000 00	42	1,680 00	......	......	15,250 00	......	......
3	U.	300 00	9	72 00					
3	R.	3,000 00	9	720 00					
2	Rr.	2,000 00	6	480 00					
1	R.	1,000 00	3	240 00	......	......	3,100 00	......	......
3	S.	1,500 00	9	360 00					
2	R.	2,000 00	6	480 00	......	......	4,092 00	......	......
2	S.	1,000 00	6	240 00					
3	U.	300 00	9	72 00					
16	R.	16,000 00	48	3,840 00	......	......	21,080 00	......	......
2	S.	1,000 00	6	240 00					
7	T.	2,100 00	21	504 00	......	......	3,968 00	......	......
1	U.	100 00	3	24 00					
1	Rr.	1,000 00	3	240 00					
4	Rr.	4,000 00	12	960 00	......	......	6,200 00	......	......
2	S.	1,000 00	6	240 00					
2	R.	2,000 00	6	480 00	......	......	2,480 00	......	......
2	R.	2,000 00	6	480 00	......	......	2,480 00	......	......
2	T.	600 00	6	144 00	......	......	992 00	......	......
2	U.	200 00	6	48 00					
3	Rr.	3,000 00	9	720 00	......	......	3,720 00	......	......
10	T.	3,000 00	30	720 00	......	......	12,400 00	......	......
7	R.	7,000 00	21	1,680 00					
17	R.	17,000 00	51	4,080 00	......	......	30,008 00	......	......
14	S.	7,000 00	42	1,680 00					
2	U.	200 00	6	48 00					
4	Rr.	4,000 00	12	960 00	......	......	4,960 00	......	......
......	T.	......	......	......	*47	1,128 00	......	......	......
......	U.	......	......	......	† 8	64 00	......	......	......
......	S.	......	......	......	‡50	2,000 00	......	......	......
......	R.	......	......	......	§39	3,120 00	......	......	......
7	Rr.	7,000 00	21	1,680 00	......	......	9,052 00	......	......
3	Uu.	300 00	9	72 00					
2	R.	2,000 00	6	480 00	......	......	2,480 00	......	......
190		$119,000 00	561	$28,376 00	144	$6,312 00	$153,688 00		
20	Rr.	20,000 00	60	4,800 00	......	......	24,800 00	......	......
10	Rr.	10,000 00	30	2,400 00	......	......	12,400 00	......	......
4	R.	4,000 00	36	2,880 00	......	......	9,460 00	......	......
3	S.	1,500 00	27	1,080 00					
9	R.	9,000 00	27	2,160 00	......	......	22,568 00	......	......
11	S.	5,500 00	33	1,320 00					
3	Rr.	3,000 00	9	720 00					
1	Ss.	500 00	3	120 00					
2	Uu.	200 00	6	48 00					
49	R.	49,000 00	147	11,760 00	......	......	86,428 00	......	......
35	S.	17,500 00	105	4,200 00					
1	T.	300 00	3	72 00					
11	U.	1,100 00	33	264 00					
1	Rr.	1,000 00	3	240 00					
1	Ss.	500 00	3	120 00					
3	Uu.	300 00	9	72 00					
5	R.	5,000 00	15	1,200 00	......	......	13,268 00	......	......
2	Rr.	2,000 00	6	480 00					
7	S.	3,500 00	21	840 00					
2	Uu.	200 00	6	48 00					
1	R.	1,000 00	3	240 00	......	......	9,548 00	......	......
1	Rr.	1,000 00	3	240 00					
8	S.	4,000 00	24	960 00					
2	T.	600 00	6	144 00					
1	Ss.	500 00	3	120 00					
3	Uu.	300 00	9	72 00					
3	U.	300 00	9	72 00					
5	R.	5,000 00	15	1,200 00	......	......	13,268 00	......	......
9	S.	4,500 00	27	1,080 00					
4	T.	1,200 00	12	288 00					

* 44 Mar. 1, '75. 3 Mar. 1, '76
† 7 " 1 "

‡47 Mar. 1, '75. 3 Mar. 1, '76.
§ 32 " 7 "

EXHIBIT C.—*Schedule six of master's report. Second-mortgage bonds and*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
104				
387	1876. Sept. 15	Various owners........	....	W'm H. Hays, ag't, N. Y. City
391	" 16	West, M. C..............	Rome, Oneida Co., N. Y ...	....
392	" "	Van Dreasar, Stewart...	Western, Oneida Co., N. Y.	....
393	" "	Van Dreasar Ezra	" " "	....
416	Oct. 14	Mason, Alfred	Bath, Somerset Co., England	....
426	" "	Clarke, Freeman........	Rochester, N. Y	....
428	" "	Evesque & Co	Lyons, France	A. Iselin, ag't, N. Y. City ....
434	" "	Gott, John & Son	Frankfort O. M., Germany ..	A. Wolff, ag't, Frankfort......
435	" "	Gott, John & Son	" " "	Jos. Roll, ag't, same place .....
458	" "	De Neufeville, D. & J ..	" " "	R. Löffler, ag't, same place ...
461	" "	Deutsche Effecten Wechsel Bank.	" " "	Frederich Leonhardt, ag't.....
463	" 18	Smith, John D..........	Henderson, Tenn	....
468	" 24	Various owners.........	....	Plock & Co., ag'ts, N. Y. City .
470	" 26	Cason, William	" "	C. M. Cason, ag't..............
473	Nov. 4	Jackson, Alexander	Jackson, Tenn	....
477	1877. Jan'y17	Moore, James...........	Moorefield, Cullybacky, Antrim Co., Ireland.	....

Coupons of the Mobile and Ohio Railroad Company, &c.—Continued.

Bonds.			Coupons.						
Number.	Series.	Amount.	Number of coupons attached unpaid to M'ch 1, 1877.	Amount.	Number of coupons detached unpaid to M'ch 1, 1877.	Amount.	Grand total.	Number of coupons to become due to ——.	Amount.
36	U	3,600 00	108	864 00	....	....	....	......	......
25	Uu	2,500 00	75	600 00	....	....	153,388 00	......	......
723	....	$370,100 00	2,153	$87,920 00	16	$592 00	$458,612 00	......	......
3	R.	3,000 00	9	720 00	....	....	33,852 00	......	......
21	Rr.	21,000 00	63	5,040 00					
2	S.	1,000 00	6	240 00					
1	Ss.	500 00	3	120 00					
4	T.	1,200 00	12	288 00					
4	U.	100 00	3	24 00					
5	Uu.	500 00	15	120 00					
1	Rr.	1,000 00	3	240 00	....	....	1,240 00	......	......
3	Uu.	300 00	9	72 00	....	....	372 00	......	......
1	S.	500 00	3	120 00	....	....	3,100 00	......	......
2	Rr.	2,000 00	6	480 00					
2	R.	2,000 00	6	480 00	....	....	7,316 00	......	......
6	S.	3,000 00	18	720 00					
1	Ss.	500 00	3	120 00					
1	U.	100 00	3	24 00					
3	Uu.	300 00	9	72 00					
2	Rr.	2,000 00	6	480 00	....	....	2,728 00	......	......
2	Uu.	200 00	6	48 00					
10	S.	5,000 00	20	800 00	....	....	11,600 00	......	......
5	R.	5,000 00	10	800 00					
10	R.	10,000 00	30	2,400 00	....	....	13,392 00	......	......
2	U.	200 00	6	48 00					
2	T.	600 00	6	144 00					
5	R.	5,000 00	5	400 00	....	....	11,316 00	......	......
17	T.	5,100 00	34	816 00					
10	R.	10,000 00	20	1,600 00	....	....	15,080 00	......	......
6	S.	3,000 00	12	480 00					
10	S.	5,000 00	20	800 00	....	....	5,800 00	......	......
2	Uu.	200 00	6	48 00	....	....	248 00	......	......
3	Rr.	3,000 00	9	720 00	....	....	27,156 00	......	......
4	Ss.	2,000 00	12	480 00					
7	R.	7,000 00	21	1,680 00					
2	S.	1,000 00	6	240 00					
28	T.	8,400 00	84	2,016 00					
5	U.	500 00	15	120 00					
4	T.	1,200 00	12	288 00	....	....	1,612 00	......	......
1	Uu.	100 00	3	24 00					
1	Rr.	1,000 00	2	160 00	....	....	1,624 00	......	......
4	Uu.	400 00	8	64 00					
1	R.	1,000 00	3	240 00	....	....	12,400 00	......	......
30	T.	9,000 00	90	2,160 00					
230		$122,900 00	617	$25,936 00			$148,836 00		

RECAPITU

Bonds.		
Number.	Series.	Amount.
401	R	401,000 00
167	Rr	167,000 00
363	S	181,500 00
38	Ss	19,000 00
351	T	105,300 00
164	U	16,400 00
104	Uu	10,400 00
1,588		900,600 00

Page 1
" 2
" 3
" 4
" 5

LATION.

Coupons.				Grand total.
Number of coupons attached unpaid to M'ch 1, 1877.	Amount.	Number of coupons detached unpaid to M'ch 1, 1877.	Amount.	
1, 191	95, 280 00	39	3, 120 00	499, 400 00
494	39, 520 00	9	720 00	207, 940 00
1, 080	43, 200 00	64	2, 560 00	227, 980 00
113	4, 520 00	....	....	23, 520 00
1, 026	24, 624 00	52	1, 248 00	131, 172 00
488	3, 904 00	10	80 00	90, 384 00
299	2, 392 00	....	....	12, 792 00
4, 691	$213, 440 00	174	$7, 728 00	$1, 121, 768 00
....	....	....	....	$73, 660 00
....	....	....	....	1 3, 688 00
....	....	....	....	266, 972 00
....	....	....	....	458, 612 00
....	....	....	....	148, 836 00
				$1, 121, 768 00

EXHIBIT C.—*Schedule seven of master's report.—Second mortgage (series L)* **bonds and**

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
23	May 24	Greenwood, Pauline	Baldwin County, Ala	W'm H. Gaeque, trustee, Daphne, Ala.
25	“ 26	Sampson, Mrs. Emeline M	Prarie Bluff, Wilcox Co., Ala	Jas. H. Rodgers, ag't, Mobile.
40	June 12	Haas, Samuel	Aberdeen, Miss	
47	“ 28	McDearmon, J. A., estate of.	Gibson County, Tenn	J. C. McDearmon, adm'r, Trenton, Tenn.
58	July 11	Crawford, Walsh, Smith & Co., bankrupts.	Mobile, Alabama	H. Barnewall & W. C. Gaynor, assignees.
74	“ 18	Columbus Ins., & Bank'g Comp'y.	Columbus, Mississippi	N. E. Goodwin, cashier
80	“ 21	Jane P. & Carrie Sterling, minors.	Jackson, Madison Co., Tenn	A. W. Campbell, guardian.
103	Aug. 12	Nichols, Mrs. Virginia P	Baltimore, Md	R. Inge Smith, Mobile
113	“ 22	Merrill, Daniel F	Washington, D. C	
117	“ 23	Brower, A. G	Utica, N. Y	
139	Sept. 28	Higgins, P. H. et als	Meridian, Miss	Cha's E. Rushing, Mobile.
147	Oct. 4	Garnett, W'm A	Mobile, Alabama	
163	“ 9	Rogers, Thomas	M't Vernon, Mobile Co., Ala.	
167	“ 10	Murdock, Abram	Columbus, Miss	B. F. Rogers, ag't, Mobile
168	“ “	Sampson, Mrs. Melinda, est. of.	Abr. Murdock, ex'r, Columbus, Miss.	B. F. Rogers, ag't, Mobile
172	“ 11	Allen, Mrs. A. R	Mobile, Alabama	
175	“ 12	Crawford, Mrs. Q. B	“ “	Rob't C. Crawford, ag't, Mobile.
225	Aug. 17	Duncan, Sherman & Co., bankrupts.	New York City	W. D. Shipman, assignee, per Jas. Collins, ag't.
229	“ 18	Morgan, Junius S	London, England	C. M. Cumming, cl'k for Drexel, Morgan & Co., ag'ts.
262	“ 26	Stutzer, Ferd	New York City	
294	“ 30	Rogers Locomotive & Machine Works.	Paterson, New Jersey	J. S. Rogers, ag't, N. Y. City.
299	“ “	Hooper & Townsend	Philadelphia, Pa	“ “ “ “
323	Sept. 1	Farwell, Jno., L. A. Rossiter et als.		F. W. Danton, ag't, N. Y. City.
341	“ 4	Kinney, George W. G	Rome, Oneida Co., N. Y	
350	“ “	Isbel, S. A	“ “ “	
386	“ 15	Hays, W'm H	New York City	
416	Oct. 14	Mason, Alfred	Bath, Somerset Co., England	
418	“ “	Keith, Jno. Y	Jackson, Tenn	
426	“ “	Clarke, J. Freeman	Rochester, Monroe Co., N. Y	
463	“ 18	Smith, John D	Henderson, Tenn	
472	Nov. 4	Luckey, Sam., est. of	Jackson, Tennessee	H. P. Luckey, adm'r
473	“ “	Jackson, Alex	Jackson, Madison Co., Tenn	
5	May 18	Bienville Lodge, 348, F. & A. M.	Mobile, Ala	W. F. Stoutz, j'r, warden.
55	July 5	Trabue, George W	Nashville, Tenn	W. D. Dunn, ag't, Mobile
387	Sept. 1	Various owners	W'm H. Hays, ag't, N. Y. City	

* March 1, 1869.

coupons of the Mobile and Ohio Railroad Company, presented and proved to the special master.

Bonds.				Coupons.								
Number and series.		Date of issue.	Amount.	Number of coupons attached unpaid to M'ch 1, 1877.		Amount.	Number of coupons detached unpaid to M'ch 1, 1877.		Amount.	Grand total.	Number of coupons to become due to ——.	Amount.
Old.	New.			Old.	New.		Old	New.				
....	2	Mar. 1, 1872	1,125 00	....	5	260 60	....	....	....	1,385 00	....	....
....	1	“ “ 1873	125 00	....	4	40 00	....	....	....	165 00	....	....
1	....	“ “ 1868	191 40	3	....	45 93	*1	....	33 00	270 33	....	....
..	14	“ “ 1873	8,950 00	....	42	2,148 00	....	....	....	11,098 00	....	....
5	....	“ “ 1867, 1868, 1870.	2,604 20	15	....	624 93	....	....	....	....	....	....
....	3	“ “ 1872, 1873	800 00	....	9	192 00	....	....	....	4,221 13	....	....
....	1	“ “ 1872	400 00	....	3	96 00	....	....	....	496 00	....	....
....	2	“ “ 1872	1,100 00	....	4	176 00	....	....	....	1,276 00	....	....
....	1	“ “ 1872	800 00	....	3	192 00	....	....	....	992 00	....	....
....	2	“ “ 1873	2,000 00	....	6	480 00	....	....	....	2,480 00	....	....
9	....	“ “ 1866, '7, '8	7,516 61	26	....	1,803 96	....	....	....	9,320 57	....	....
5	....	“ “ '67, '68, '69	1,645 72	15	....	394 95	....	....	....	....	....	....
....	2	“ “ '72, '73	1,100 00	....	6	264 00	....	....	....	3,404 67	....	....
1	....	“ “ 1870	1,000 00	3	....	240 00	....	....	....	....	....	....
....	1	“ “ 1872	575 00	....	3	138 00	....	....	....	1,953 00	....	....
1	....	“ “ 1868	800 00	3	....	192 00	....	....	....	992 00	....	....
2	....	“ “ '67, '68	1,376 35	6	....	330 30	....	....	....	....	....	....
....	4	“ “ '72, '73	1,637 50	....	12	393 00	....	....	....	3,737 15	....	....
....	4	“ “ 1873	1,675 00	....	12	402 00	....	....	....	2,077 00	....	....
....	1	“ “ 1872	125 00	....	3	30 00	....	....	....	155 00	....	....
2	....	“ “ 1868	1,012 11	6	....	242 85	....	....	....	1,254 96	....	....
....	1	“ “ 1872	500 00	....	3	120 00	....	....	....	620 00	....	....
....	1	“ “ “	350 00	....	3	84 00	....	....	....	434 00	....	....
....	3	“ “ “	2,250 00	....	9	540 00	....	....	....	2,790 00	....	....
....	23	“ “ 1873	21,500 00	....	69	5,160 00	....	....	....	26,660 00	....	....
....	1	“ “ 1872	825 00	....	3	198 00	....	....	....	1,023 00	....	....
....	4	“ “ '72, '73	2,092 80	....	12	502 26	....	....	....	....	....	....
4	....	Aug. 1, 1866, & Mar. 1, 1868.	2,148 30	12	....	515 55	....	....	....	5,258 91	....	....
....	1	1 Mar., 1872	100 00	....	2	16 00	....	....	....	116 00	....	....
....	1	“ “ 1872	1,000 00	....	3	240 00	....	....	....	1,240 00	....	....
....	1	“ “ “	100 00	....	3	24 00	....	....	....	....	....	....
9	....	“ “ '66, '67, '70	5,593 89	24	....	1,342 17	....	....	....	7,060 00	—	....
....	1	“ “ 1873	100 00	....	3	24 00	....	....	....	124 00	....	....
....	....	....	....	....	....	....	..	†2	88 00	88 00	....	....
....	....	....	....	....	....	....	*1	....	65 10	65 10	....	....
1	....	“ “ '67	750 00	3	....	180 00	....	....	....	930 00	....	....
....	3	“ “ 1873	3,000 00	....	9	720 00	....	....	....	3,720 00	....	....
....	1	“ “ “	1,000 00	....	2	160 00	....	....	....	1,160 00	....	....
....	1	“ “ “	210 00	....	3	50 40	....	....	....	260 40	....	....
3	....	....	2,260 80	9	....	542 58	....	....	....	2,803 38	....	....
....	1	....	450 00	....	3	108 00	....	....	....	558 00	....	....
43	81	....	$80,789 68	125	239	$19,212 88	2	2	$186 10	$100,188 66	....	....

† March 1, 1875.

107 **Exhibit C.**—*Schedule eight of master's report.—Convertible bonds and coupons of*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
	1876.			
4	May 18	Stoutz Bros	Mobile, Alabama	
12	" 20	McCarthy, James	" "	
15	" 22	Antomarchi, C. P., est. of.	" "	A. Philipi, executor
19	Aug. 26	Whiting, Nathan	" "	
21	May 23	Muldon, Ellen	" "	Daniel McNiel, att'y & ag't
22	" "	Muldon, Rebecca A	" "	" "
29	" 30	Herpin, Mary T	" "	E. P. Herpin, ag't
50	July 1	Philips, Philip	Washington, D. C	Wm. Boyles, ag't, Mobile
55	July 5	Trabue, George W	Nashville, Tenn	Wm. D. Dunn, ag't, Mobile
104	Aug. 12	Utley, David	Rome, Oneida Co., New York	
113	Aug. 22	Merrill, Daniel F	Washington, D. C	
118	" 25	Huntingdon, R. H	Adams, New York	
124	" 28	Allen, Wm. W	Mobile, Alabama	M. G. Hudson, ag't, &c
141	Sept. 29	Whilfield, Gains	Demopolis, Alabama	Chas. B. Whilfield, ag't
147	Oct. 4	Garnett, Wm. A	Mobile, Alabama	
149	" 5	Horton, Frank S	" "	
201	Aug. 9	Hunsiker & Co	Aaran, Switzerland	Fred. Robst & Co., ag'ts, N. Y
207	" 11	Marsh, Hester	Nanuet, Rockland Co., N. Y	
208	" 11	Cropsey, Mrs. Henrietta E.	" " " "	Hester Marsh, ag't, &c
210	" 14	Utley, Cath M., estate of.	Rome, Oneida Co., N. Y	Hester Marsh, ag't, Nanuet, Rockland Co., N. Y.
211	" "	Field, Mrs. Margaret	New York City, N. Y	
225	" 17	Duncan, Sherman & Co, bankrupts.	" " "	W. D. Shipman, assignee
231	" 19	Phelps, Samuel F		W. Butler Duncan, ag't, New York City.
239	" 22	Dade, Robt. E, est. of	Late of Mobile, Ala	Mary E. Reynolds, executrix, New York City.
108]				
	1876.			
251	Aug. 24	Levy & Borg	New York City	Eugene M. Cave, clerk
264	" 26	Knox, J. C	Brooklyn, New York	
265	" "	Seybert, Henry	Philadelphia, Pa	
275	" 29	Boyd, Geo. W	New York City, New York	
281	" 28	Banque Commerciale	Bale, Switzerland	A. Iselin & Co, ag'ts, New York
307	" 30	Moran Bros	New York City, N. Y	
311	" 31	Plock & Co., agents for owners.	" " "	
325	Sept. 1	Murphy, Samuel Jennings.	" " "	
338	" 2	Merrill, Elizabeth J	Exeter, N. H	Payson Merrill, ag't, New York
341	" 4	Keeney, Geo. W. G	Rome, Oneida Co., New York	
342	" "	Wardwell, Samuel	" " "	
343	" "	Wardwell, Wm. W	" " "	
345	" "	Van Dresar, Ezekiel	" " "	
346	" "	McChesney, Ellis M	" " "	
347	" "	Utley, Harmon G	" " "	
348	" "	Searles, James H	" " "	
352	" "	Nock, Thos. G	" " "	
353	" "	Smith, Chas. S	" " "	
355	" "	Williams, John F	" " "	
359	" "	Thomas, Francis H	" " "	
360	" "	Bond, George W	Adams, New York	
364	" "	Thomas, James S	Rome, Oneida Co., "	
380	" 18	Colgate, Jas. B., & Co	New York City, "	Wm. M. Whiteman, ag't
381	Sept. 18	Wardwell, Allen M	Ellisburgh, N. Y	
384	" 14	Closson & Hays	New York City, "	
385	" 15	Hays, Jacob	" " "	Wm. H. Hays, agent
386	" "	Hays, Wm. H	" " "	
391	" 16	West, M. C	Rome, Oneida Co., N. Y	
392	" "	Van Dresar, Stewart	Western, Oneida Co., N. Y	
394	" "	Van Dresar, Francis	" " "	
396	" "	Smith, Sam. S. F	Rome, Oneida Co., N. Y	
398	" "	Stryker, John	" " "	
400	" "	Denis, Israel	" " "	
402	" 18	Dorrance, Daniel G	Oneida Castle, Oneida Co., N. Y	
404	" 20	Wardwell, Chas. H	Ellisburgh, N. Y	
462	Oct. —	Green, Lewis, jr	Columbus, Miss	

the Mobile and Ohio Railroad Company, presented and proved to the special master.

Bonds.			Interest due to 1 Mar., 1877.		Rate per annum.	Amount.	Grand total.	Number of coupons to become due to——	Amount.
Number.	Series.	Amount.	Yrs.	Mos.					
1	....	250 00	2	3	8%	45 00	295 00	....	....
1	....	175 00	2	3	"	31 50	206 50	....	....
1	....	600 00	2	3	"	108 00	708 00	....	....
1	....	425 00	2	3	"	76 50	501 50	....	....
1	....	2, 375 00	2	3	"	427 50	2, 802 50	....	....
1	....	2, 375 00	2	3	"	427 50	2, 802 50	....	....
1	....	950 00	2	6	"	190 00	1, 140 00	....	....
1	....	700 00	2	3	"	126 00	826 00	....	....
1	....	2, 500 00	2	0	"	400 00	2, 900 00	....	....
2	....	21, 175 00	2	0	"	3, 388 00	24, 563 00	....	....
1	....	1, 375 00	2	0	"	220 00	1, 595 00	....	....
1	....	140 00	2	0	"	22 40	162 40	....	....
1	....	100 00	3	3	"	26 00	126 00	....	....
1	....	125 00	2	3	"	22 50	147 50	....	....
4	....	775 00	2	0	"	124 00	899 00	....	....
1	....	550 00	2	0	"	88 00	638 00	....	....
2	....	250 00	2	0	"	40 00	290 00	....	....
2	....	1, 875 00	2	0	"	300 00	2, 175 00	....	....
1	....	625 00	2	0	"	100 00	725 00	....	....
1	....	1, 875 00	2	0	"	300 00	2, 175 00	....	....
2	....	1, 900 00	2	0	"	304 00	2, 204 00	....	....
81	....	78, 925 00	2	0	"	12, 628 00	91, 553 00	....	....
4	....	3, 875 00	2	0	"	620 00	4, 495 00	....	....
1	....	550 00	2	0	"	88 00	638 00	....	....
114	....	$124, 465 00	......	......	....	$20, 102 90	$144, 567 90	....	....
1	....	850 00	2	0	8%	136 00	986 00	....	....
6	....	5, 000 00	2	0	"	800 00	5, 800 00	....	....
7	....	10, 000 00	2	0	"	1, 600 00	11, 600 00	....	....
1	....	200 00	2	0	"	32 00	232 00	....	....
8	....	3, 625 00	2	0	"	580 00	4, 205 00	....	....
1	....	1, 000 00	2	0	"	160 00	1, 160 00	....	....
16	....	7, 250 00	2	0	"	1, 160 00	8, 410 00	....	....
1	....	500 00	2	0	"	80 00	580 00	....	....
1	....	250 00	2	0	"	40 00	290 00	....	....
1	....	500 00	2	0	"	80 00	580 00	....	....
1	....	1, 625 00	2	0	"	260 00	1, 885 00	....	....
1	....	1, 250 00	2	0	"	200 00	1, 450 00	....	....
1	....	1, 250 00	2	0	"	200 00	1, 450 00	....	....
2	....	775 00	2	0	"	124 00	899 00	....	....
1	....	1, 250 00	2	0	"	200 00	1, 450 00	....	....
1	....	750 00	2	0	"	120 00	870 00	....	....
2	....	900 00	2	0	"	144 00	1, 044 00	....	....
1	....	1, 250 00	2	0	"	200 00	1, 450 00	....	....
1	....	250 00	2	0	"	40 00	290 00	....	....
1	....	250 00	2	0	"	40 00	290 00	....	....
1	....	750 00	2	0	"	120 00	870 00	....	....
1	....	375 00	2	0	"	60 00	435 00	....	....
2	....	5, 000 00	2	0	"	800 00	5, 800 00	....	....
6	....	3, 000 00	2	0	"	480 00	3, 480 00	....	....
4	....	10, 000 00	2	0	"	1, 600 00	11, 600 00	....	....
10	....	10, 000 00	2	0	"	1, 600 00	11, 600 00	....	....
21	....	77, 500 00	2	0	"	12, 400 00	89, 900 00	....	....
1	....	500 00	2	0	"	80 00	580 00	....	....
1	....	250 00	2	0	"	40 00	290 00	....	....
3	....	875 00	2	0	"	140 00	1, 015 00	....	....
1	....	1, 250 00	2	0	"	200 00	1, 450 00	....	....
1	....	250 00	2	0	"	40 00	290 00	....	....
1	....	250 00	2	0	"	40 00	290 00	....	....
1	....	1, 250 00	2	0	"	200 00	1, 450 00	....	....
1	....	625 00	2	0	"	100 00	725 00	....	....
1	....	100 00	3	3	"	26 00	126 00	....	....
111	....	$150, 700 00	......	......	....	$24, 122 00	$174, 822 00	....	....

RECAPIT

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
				Page 1 .... Page 2 ....
		Total	....	....

109 EXHIBIT C.—*Schedule nine of master's report.—Special mortgage, Gainesville Branch, special*

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—
403	1876. Sept. 8	Duncan, Alexander	England	Geo. A. Lecte, att'y, Providence, R. I.
		Total	....	....

Schedule ten.—

175	Oct. 12	Crawford, Mrs. Q. B	Mobile, Alabama	Rob't C. Crawford, ag't & att'y.
237	Aug. 21	Boyd, George William	New York City, N. Y	Rich'd A. Handcock, ag't & att'y.
482	Dec. 8	Estis, John W., estate of....	Madison Co., Tenn	W'm J. Crook, adm'r ......
		Total	....	....

ULATION.

Bonds.			Interest due to 1 Mar., 1877.	Rate per annum.	Amount.	Grand total.	Number of coupons to become due to——.	Amount.
Number.	Series.	Amount.						
114	....	$124, 465 00	....	....	$20, 102 90	$144, 567 90	....	....
111	....	150, 700 00	....	....	24, 122 00	174, 822 00	....	....
225	....	$275, 165 00	....	....	$44, 224 90	$319, 369 90	....	....

bonds and coupons of the Mobile and Ohio Railroad Company, presented and proved to the master.

Bonds.			Coupons.				Grand total.	Remarks.
Number.	Series.	Amount.	Number of coupons attached unpaid to—	Amount.	Number of coupons detached unpaid to—	Amount.		
...	...	....	....	....	106	4, 240 00	4, 240 00	53 due 1 May, 1874, & 53 due 1 Nov., 1874.
...	...	....	....	....	106	4, 240 00	$4, 240 00	

Income bonds.

....	N.	....	To maturity.	....	1	4 00	4 00	Due Sept. 1, 1861.
1	E.	500 00	2	40 00	....	580 00	1, 120 00	Issued 12 Aug., 1856; due July 1, 1862. The am't, $580, is interest since maturity of bond, from July 1, 1862, to Jan'y 1, 1877.
1	N.	100 00	12	48 00	....	76 00	224 00	Issued Sep. 1, 1857; payable 1 Sep., '67. The am't of $76.00 represents interest from maturity of bond; that is, from Sep. 1, 1867, to Mar. 1, 1877.
2		$600 00	14	$88 00	1	$660 00	$1, 348 00	

110 EXHIBIT C.— *of master's report.—Recapitulation of bonds and coupons of*

GRAND RECA

Number of schedule.	Series.	
		Number.
Schedule one	First mortgage, sterling	4,081
" two	First mortgage, sterling interest (B 676 & C 67)	743
	Total	4,824
Schedule three	First-mortgage ten-year interest (O. 463, P. 112, & Q. 328)	903
" four	First-mortgage interest arrearage & funded interest (arr'ge F_1 21, F_2 9, F_3 5, F_4 15. fund F. 274, F_1 234)	558
" five	Tennessee substitution	120
" six	Second mortgage (R. 401, RR. 167, S 363, Ss. 38, T. 351, U. 164, & UU. 104)	1,588
" seven	Second mortgage, series L (old 43 & new 81)	124
" eight	Convertible	225
	Totals	3,518
Schedule nine	Special mortgage, Gainesville Branch	....
" ten	Income bonds (1 E & 1 N.)	2
	Total	2
	Grand total	8,344

* NOTE.—The reduction of sterling interest bonds and of sterling coupons payable in London to United States.

the Mobile and Ohio Railroad Company, presented and proved to the special master.

PITULATION.

Bonds.		Coupons.		Grand total.	Amount in U. S. money.
Series.	Amount.	Amount coupons attached and detached.			
Bonds .	£918,225 0 0	Int. coupons to Nov. 1,'76	187,292 5 0	£1,105,517 5 0d.	Gold $4,992,457 73c
	$4,081,000 00c.		$911,457 73c.		
" .	141,900 0 0	" " "	26,652 0 0	168,552 0 0	" $820,258 31c
	$690,556 25c.		$129,701 96		
" .	£1,060,125 0 0d.		£213,944 5 0d.	£1,274,069 5 0d.	
Bonds .	$584,600 00	Int. to Nov. 1,'76.......	$158,404 00	$743,004 00	1,284,800 00
" .	419,500 00	" " "	122,296 00	541,796 00	
" .	120,000 00	" Jan'y 1,'76.......	91,805 00	211,805 00	Gold 211,805 00
" .	900,600 00	" M'ch 1,'77.......	221,168 00	1,121,768 00	1,221,956 66
" .	80,789 68	" " "	19,398 98	100,188 66	
" .	275,165 00	" " "	44,224 90	319,389 90	319,389 90
" .	$2,380,654 68		$657,296 88	$3,037,951 56c.	
....	....	Int. to Nov. 1,'74	4,240 00	4,240 00	4,240 00
Bonds .	600 00	" M'ch 1,'77.......	748 00	1,348 00	1,348 00
" .	$600 00		$4,988 00	$5,588 00	
Bonds .	$7,152,811 03c.		$1,703,444 57c.	....	$8,856,255 60c.

United States standard money is at the rate of $4.86\frac{65}{100}$ c., under section 3565 Revised Statutes of the

(Signed)

JAMES GILLETTE,
Special Master.

113 EXHIBIT E.—*Schedule* , *of master's report. Floating debt, miscellaneous the special*

When filed.	Owner or agent.	Address.	Presented by—
1876.			
June 22	Williams, John	Mobile, Alabama	Raphael Semmes, ag't & att'y
July 18	Norton & Co		Gardner, Gillespie & Co., Mobile.
Oct. 5	Wainwright, Wm. D		John Elliott, att'y, Mobile
" 11	City of Mobile		Dick Roper, tax-assessor
" 14	Brooks, John, & Keith, J. Y.	Jackson, Tenn	
" "	Brooks, John, et als	Jackson, Tenn., & St. Louis, Mo.	John Brooks, Jackson, Tenn
" 25	Keith, John Y	Jackson, Tenn	
" 14	Spivey, Calvin, estate of	Madison Co., Tenn	M. A. E. Spivey, executrix
" "	McClellan, I. Q. A.	" " "	
" 23	Gibbs, Felix G	" " "	
	Total		

unsecured claims against the Mobile and Ohio Railroad Company, presented and proved to master.

Description of debt.	Amount of principal.	Interest due from—	Amount of interest to March 1, 1877.	Rate per annum.	Amount, costs, &c.	Grand total.
Judg't cir. court, Mobile Co	75 00	May 19, '76	4 70	8%	87 90	167 60
Judg't cir. court, Lee Co., Miss	339 32	Nov. 28, '73	66 33	6%	....	406 65
Judg't cir. court, Mobile Co	230 11	Dec. 10, '74	40 95	8%	44 19	315 25
Tax-bill for 1875 & 1876	750 00	....	....	....	....	750 00
Judg't com. law ct., Madison Co., Tenn	2,002 45	Jan'y 11, '68	1,098 01	6%	39 20	3,139 66
" " " " " "	2,753 26	" " "	1,509 70	"	27 00	4,289 96
Auditors' warrants	1,742 03	Jan'y 1, '75	301 95	8%	....	2,043 98
Tax-certificates	926 99	....	....	....	....	926 99
Work & labor	580 69	Aug. 1, '58	299 05	6%	....	879 74
Tax-certificates	193 01	....	....	....	....	193 01
....	$9,592 86	....	$3,320 69	....	$198 29	$13,111 84

(Signed) **JAMES GILLETTE,**
Special Master.

					Bo
Number of claim.	When filed.	Owner or agent.	Address.	Presented by—	Description of deb
	1876.				
501	May 19	Ross, William H	Mobile, Alabama		Promissory note
502	" 23	Muldon, Rebecca A	" "	Dan. McNeil, Mobile	" "
503	" "	Muldon, Ellen		" " "	" "
504	June 8	Southern Bank of Alabama	" "	M. G. Hudson, cashier	" "
					" "
505	" 17	Heineman. Mildred F., adm'r of C. C. Heineman	Huntsville, Alabama	Lewis M. Stone, att'y, Mobile	" "
506	" 23	Overall, Gibson Y	Mobile, Alabama		" "
					" "
					" "
507	" 29	Pollock, J., & Co	" "	I. Pollock, of firm	" "
508	July 11	Crawford, Walsh, Smith & Co., bankrupts	" "	Barnewall & Gaynor, assignees	Certificates for inter
509	" 18	Columbus Ins. & Bank'g Comp'y	Columbus, Lowndes Co., Miss	N. E. Goodwin, cashier	Promissory note
					" "
					" "
					" "
					Certificate for intere
510	Aug. 19	Jones, William G	Mobile, Alabama		" "
511	" 31	City Bank of New York	New York City	Benj. Cartwright, cashier	Promissory note
512	" 22	Raynolds, John	" " "		" "
					" "
					" "
513	" 31	Iselin, A., & Co	" " "	Adrian Iselin, of firm	" "
514	Sept. 5	Shipman, W. D., assignee of Duncan, Sherman & Co.	" " "	Ja's R. Collins, att'y & ag't	" "
					" "
					" "
515	" "	" " "	" " "	" " "	Open account
516	" "	" " "	" " "	" " "	" "
517	Oct. 9	Conley, P. C	Mobile Co., Alabama		Promissory note
					" "
518	" 10	Grant, John	Mobile City, Alabama		" "
					" "
519	" "	Fire Dep't Association	" " "	T. M. English, sec'y	" "
					" "
520	" 12	Crawford, Mrs. Q. B	" " "	Rob't C. Crawford, att'y & ag't	Interest certificates
521	" 14	Donovan, Mrs. Winifred F	Mobile Co., Ala	Isaac Donovan, her husband	Promissory note
522	" "	Roberts, Mrs. C. E	Mobile, Alabama	Tho's H. Herndon, ag't & att'y	" "
523	" "	Hazard, James B	" "	" " "	" "
524	" "	Turner, Jarvis	" "	" " "	" "
					" "
					" "
					" "
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525	Oct. 14	Sadler, Elizabeth	Mobile, Alabama	Herndon & Smith, att'ys	" "
					" "
526	Sept. 25	Burnham, Parry, Williams & Co		" " "	" "
					" "
					" "
					" "
327	Oct. 14	Horton, W'm	Pleasant Ridge, Greene Co., Ala	" " "	" "
					" "
528	" "	Dreier, Henry	Galveston, Texas	" " "	" "
					" "
					" "
529	" "	Slaughter, A. J	Mobile, Alabama	" " "	" "
530	" "	Peoples' Savings Bank	" "	" " "	" "
					" "
					" "
					" "
					" "
					" "
					" "
531	" "	First National Bank	Tuscaloosa, Alabama	" " "	" "
					" "
					" "
532	" "	Tyree, Thomas T		" " "	" "
533	" "	Foster, Thomas R		" " "	" "
534	" "	Austin, Hiram B., adm'r		" " "	" "

RECAPITULATION

Page 1
" 2

Total

Promissory notes
Open accounts
Interest certificates

Total

REC. 879

Bonds.			Coupons.				
on of debt.	Amount of principal.	Interest due from—	Amount of interest to March 1, 1877.	Rate per annum.	Amount costs and protest fees.	Grand total.	Endorsed by, &c.—
note	1,250 00	Dec. 17, '74	220 55	8%	....	1,470 55	A. L. Willoughby, Mrs. W. H. Ross.
"	1,400 00	Jan. 14, '76	126 62	"	3 50	1,530 12	A. Murdock.
"	1,400 00	" " "	126 62	"	3 50	1,530 12	" "
"	2,000 00	Jan. 5, '76	184 66	"	......	......	W'm D. Dunn.
"	2,300 00	Jan. 19, '76	205 46	"	......	4,690 12	A. L. Willoughby.
"	2,000 00	Jan. 25, '76	176 00	"	3 50	2,179 50	W'm D. Dunn.
"	1,000 00	Dec. 16, '75	96 66	"	......	......	A. L. Willoughby, treas.
"	1,200 00	Jan. 16, '76	108 00	"	......	......	" " "
"	1,000 00	Feb. 16, '76	83 33	"	......	3,487 99	" " "
"	1,080 00	Dec. 10, '75	105 84	"	......	1,185 84	" " "
for interest	240 00	......	......	......	......	240 00	Convertible interest certificates entitling the holder to payment thereof in bonds, without interest, by resolutions of board of directors, when presented in sums of $500 or $1,000.
note	6,750 00	Dec. 3, '75	672 00	"	3 53	......	W'm D. Dunn & A. Murdock, by A. L. Willoughby, att'y.
"	5,850 00	Dec. 8, '75	575 90	"	......	......	A. Murdock, per A. L. Willoughby, att'y.
"	5,850 00	Jan. 16, '76	526 50	"	4 53	......	" " " " " " & W'm D. Dunn.
"	5,850 00	Jan. 22, '76	518 70	"	5 06	......	A. Murdock, W'm D. Dunn.
for interest	15 94	......	......	......	......	26,622 16	Entitles the holder to have this amount funded in the interest-arrearage bonds, &c.
" ..	73 33	......	......	......	......	73 33	This am't due owner for bal. of interest on exchange of income bonds. Sterling paid in exchange.
note	7,680 00	Dec. 1, '75	768 00	"	1 34	8,449 34	R. A. Handcock.
"	2,400 00	Dec. 15, '75	232 53	"	......	......	" " "
"	2,400 00	Jan. 9, '76	219 73	"	......	......	" " "
"	2,400 00	Feb. 23, '76	195 20	"	......	7,847 46	" " "
"	47,700 00	Dec. 30, '75	4,462 60	"	......	52,162 60	" " "
"	10,850 73	Dec. 22, '75	1,034 43	"	......	......	" " "
"	10,911 86 Gold.	Jan. 22, '76	967 51	"	......	......	" " "
"	10,972 98	Feb. 22, '76	899 78	"	......	35,637 29 gold	" " "
nt	19,325 31	July 22, '75	2,156 91	7%	......	21,482 22	Secured by collateral, as follows: 39 new-issue 2d-mortgage I. bonds, 1 second-mortgage T., 2 old-issue L.
......	9,740 00	" " "	1,087 09	"	......	10,827 09	Money paid for interest on convertible bonds.
note	1,500 00	Jan. 27, '76	131 33	8%	......	......	A. L. Willoughby, treas.
"	1,500 00	Feb. 11, '76	126 66	"	......	3,257 99	
"	960 00	Jan. 8, '76	88 10	"	......	......	A. Murdock, W'm D. Dunn, Jno. Grant.
"	960 00	Feb. 26, '76	77 86	"	4 50	2,090 46	" " " " " "
"	1,800 00	Jan. 19, '76	160 80	"	3 50	......	A. Willoughby, treas.
"	1,800 00	Feb. 19, '76	148 80	"	3 50	3,916 60	" " "
rtificates ..	146 94	......	......	......	......	146 94	Certificates payable in the company's bonds.
note	5,000 00	Dec. 7, '75	493 33	"	......	5,493 33	A. L. Willoughby, treas.
"	1,800 00	Dec. 4, '75	178 80	"	......	1,978 80	W'm D. Dunn.
"	5,632 00	Jan. 4, '76	521 89	"	......	6,153 89	A. L. Willoughby, Ja's B. Hazard.
"	1,100 00	Dec. 29, '75	103 15	"	......	......	W'm D. Dunn, A. Murdock.
"	1,100 00	Jan. 2, '76	102 42	"	......	......	" " " "
"	1,100 00	Jan. 12, '76	99 97	"	......	......	" " " "
"	1,100 00	Feb. 25, '76	68 20	"	......	4,773 74	" " " "
	$189,139 09		$18,051 93		$36 46	$207,227 48	
"	1,750 00	Dec. 26, '75	165 27	"	......	......	A. Murdock.
"	1,750 00	Jan. 26, '76	153 61	"	......	3,818 88	" " Mrs. E. Sadler.
"	8,000 00	May 21, '75	1,137 77	"	......	......	" "
"	8,000 00	May 31, '75	1,120 00	"	......	......	" "
"	8,500 00	June 21, '75	1,152 22	"	......	......	" "
"	8,000 00	June 24, '75	1,079 11	"	......	36,989 10	" "
"	19,680 30	Nov. 19, '75	2,020 51	"	......	......	A. Murdock, W'm D. Dunn.
"	7,940 50	" " "	815 22	"	......	30,456 53	" " " "
"	1,125 00	Dec. 14, '75	109 25	"	......	......	" " " "
"	1,125 00	Jan. 15, '76	101 50	"	......	......	" " " "
"	1,125 00	Feb. 23, '76	92 00	"	......	3,677 75	" " " "
"	1,339 30	Jan. 26, '76	117 56	"	......	1,456 86	" " " "
"	1,000 00	Dec. 4, '75	99 33	"	......	......	A. L. Willoughby.
"	960 00	Dec. 16, '75	92 80	"	......	......	" " "
"	1,000 00	Jan. 4, '76	92 66	"	......	......	" " "
"	960 00	Jan. 19, '76	85 76	"	......	......	" " "
"	875 00	Jan. 20, '76	77 97	"	......	......	" " "
"	875 00	Jan. 23, '76	77 38	"	......	......	" " "
"	960 00	Feb. 19, '76	79 30	"	......	7,235 20	
"	2,000 00	Dec. 22, '75	190 66	"	......	......	W. D. Dunn.
"	2,000 00	Jan. 22, '76	177 33	"	......	......	" " "
"	3,375 00	Jan. 29, '76	294 00	"	......	8,036 99	" " "
"	6,700 00 gold.	Dec. 4, '75	665 53	"	......	7,365 53 gold.	A. Murdock & W. D. Dunn.
"	2,700 00	Dec. 5, '75	267 60	"	......	2,967 60	" " " "
"	1,416 72 gold.	Dec. 10, '75	138 83	"	......	1,555 55 gold.	" " " "
	$93,156 82		10,403 17			103,559 99	

LATION.

....	189,139 09	....	18,051 93	...... 36 46	$207,227 48
....	93,156 82	....	10,403 17	....	103,559 99
....	282,295 91	....	28,455 10	36 46	310,787 47 c.
notes	$278,001 95	....	....	....	....
nts	32,309 31	....	....	Gold	$44,558 37
rtificates ..	476 21	....	....	Currency	266,229 10
....	$310,787 47 c.			Total	$310,787 47 c.

(Sg'd) JAMES GILLETTE,
Special Master.

114 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

A. D. Moran, a member of the firm of Moran Brothers, of the city of New York, No. 68 William st., being duly sworn and examined, deposes and says that said firm is the holder and legal possessor for themselves and other owners of thirty-one (31) several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as funded interest bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said Moran Bros., as principal, the sum of thirty thousand five hundred dollars, and for interest the sum of four thousand eight hundred and eighty dollars, from Nov. 1, 1874, to Nov. 1st, 1876, which interest is represented by one hundred & twenty-four coupons attached to said bonds and past due, together with interest on each coupon from the time it became due.

(Sign here.) A. D. MORAN.

Subscribed and sworn to before me this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

115 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal thirty-one bonds	$30,500
Interest 124 coupons attached, past due	4,880

116 *List of numbers of bonds.*

Nos.	Description of bonds and series	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
308 @ 336, 169 F, 276 F_1.	30 interest bonds of $1,000 each, being issued in lieu of first-mortgage coupons deposited in the Union Trust Comp'y, and one bond of $500, issued for same purpose.	1st November, 1868.	$30, 500	4 coupons on each being.... Coupons due 1st May, 1875. " " 1 " Nov., 1875. " " 1 " May, 1876. " " 1 " Nov., 1876.	$4, 880	Fourteen coupons attached to each bond not due.

117 (Indorsed:) Funded-interest bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. Wm. Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Bros., of New York City. Received and filed this 30th day of August, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

118 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER ELLIOT, trustees, complainants,
vs. } In equity.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

A. D. Moran, a member of the firm of Moran Brothers, of the city of New York, No. 68 William street, being duly sworn and examined, deposes and says that said firm is the holder and legal possessor for themselves and other owners of seven (7) several bonds of the Mobile and Ohio Railroad Company, secured by a second mortgage of said railroad, which several bonds are known as series R bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due and to become due unto deponent as principal the sum of seven thousand dollars ($7,000), and for interest, the sum of sixteen hundred and eighty dollars ($1,680), from March 1, 1874, to March 1, 1877, which interest is represented by twenty-one (21) coupons attached to said bonds and past due, together with interest on each coupon from the time it became due.

(Sign here.) A. D. MORAN.

Subscribed and sworn to before me this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

119 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 30th day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal seven bonds	$7,000 00
Interest 21 coupons attached, past due	1,680 00

120 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
106 to 110, 326, 327	Seven Mobile & Ohio R. R. Co. 2d mortg. 8 % bonds, series R.	1 March, 1867	$7,000 00	2 coupons of $80 each, being coupons due 1 March, 1875 & 1876.	*$1, 120 00	Principal & interest due March 1, 1877.

* Amended by adding coupons of March, 1877, making int. due to March 1, 1877, $1,680.

121 Indorsed: Second mortg. bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. Wm. Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Brothers, of New York City. Received and filed this 30th day of August, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

122 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs. } In equity.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

A. D. Moran, firm of Moran Brothers, of the city of New York, No. 68 William st., being duly sworn and examined, deposes and says that said firm is the holder and legal possessor of twelve several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as sterling bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto deponent as principal the sum of twenty-seven hundred pounds sterling, and for interest the sum of three hundred & twenty-four pounds sterling, from Nov. 1st, 1874, to November 1st, 1876, which interest is represented by forty-eight coupons attached to said bonds and past due; together with interest on each coupon from the time it became due.

(Sign here) A. D. MORAN.

Subscribed and sworn to before me this 8th day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

123 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the list of numbers of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal, twelve bonds £2,700
Interest forty-eight coupons attached, past due, Nov. 1, 1876... 324

124 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
3420	Sterling certificate.	November 1st, 1853.	£225	4	£27	Fourteen coupons attached to each bond not due.
4266			225	4	27	
4273			225	4	27	
4473			225	4	27	
5072			225	4	27	
5506			225	4	27	
5073			225	4	27	
5926			225	4	27	
1471	Sterling non certificate.		225	4	27	
4057			225	4	27	
4053			225	4	27	
4575			225	4	27	
			£2,700	48	324	

125 (Indorsed :) 1st mortg. sterling bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Brothers, of New York City. Received and filed this 8th day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5th day of April, 1877. N. W. Trimble, c'erk.

126 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs. } In equity.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

A. D. Moran, of the firm of Moran Brothers, of New York City, being duly sworn and examined, deposes and says that said firm is the holder and legal possessor of one several bonds of the Mobile and Ohio Railroad Company, secured by a consolidated mortgage of said railroad, which several bonds are known as convertible bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said Moran Brothers as principal the sum of one thousand dollars, and for interest the sum of one hundred & sixty dollars from March 1st, 1875, to March 1, 1877.

(Sign here) A. D. MORAN.

Subscribed and sworn to before me this 8th day of September, A. D. 1876.

JAMES GILLETTE,
Special Master.

120 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
106 to 110, 326, 327	Seven Mobile & Ohio R. R. Co. 2d mortg. 8 % bonds, series R.	1 March, 1867	$7,000 00	2 coupons of $80 each, being coupons due 1 March, 1875 & 1876.	*$1, 120 00	Principal & interest due March 1, 1877.

* Amended by adding coupons of March, 1877, making int. due to March 1, 1877, $1,680.

121 Indorsed: Second mortg. bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. Wm. Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Brothers, of New York City. Received and filed this 30th day of August, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

122 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

A. D. Moran, firm of Moran Brothers, of the city of New York, No. 68 William st., being duly sworn and examined, deposes and says that said firm is the holder and legal possessor of twelve several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as sterling bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto deponent as principal the sum of twenty-seven hundred pounds sterling, and for interest the sum of three hundred & twenty-four pounds sterling, from Nov. 1st, 1874, to November 1st, 1876, which interest is represented by forty-eight coupons attached to said bonds and past due; together with interest on each coupon from the time it became due.

(Sign here) A. D. MORAN.

Subscribed and sworn to before me this 8th day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

123 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the list of numbers of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal, twelve bonds	£2,700
Interest forty-eight coupons attached, past due, Nov. 1, 1876	324

124 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
3420	Sterling certificate.	November 1st, 1853.	£225	4	£27	Fourteen coupons attached to each bond not due.
4266			225	4	27	
4273			225	4	27	
4473			225	4	27	
5072			225	4	27	
5506			225	4	27	
5073			225	4	27	
5926			225	4	27	
1471	Sterling non certificate.		225	4	27	
4057			225	4	27	
4053			225	4	27	
4575			225	4	27	
			£2,700	48	324	

125 (Indorsed:) 1st mortg. sterling bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Brothers, of New York City. Received and filed this 8th day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5th day of April, 1877. N. W. Trimble, c'erk.

126 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

A. D. Moran, of the firm of Moran Brothers, of New York City, being duly sworn and examined, deposes and says that said firm is the holder and legal possessor of one several bonds of the Mobile and Ohio Railroad Company, secured by a consolidated mortgage of said railroad, which several bonds are known as convertible bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said Moran Brothers as principal the sum of one thousand dollars, and for interest the sum of one hundred & sixty dollars from March 1st, 1875, to March 1, 1877.

(Sign here) A. D. MORAN.

Subscribed and sworn to before me this 8th day of September, A. D. 1876.

JAMES GILLETTE,
Special Master.

127 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the list of numbers of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 8 day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal, one bonds	£1,000
Interest from March 1, 1875	160

128 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
175	Convertible	Dec. 1, 1873	$1,000	2 y'r int'st, from M'ch 1, 1875	$160	

129 (Indorsed:) Convertible bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Bro's, of 68 William st., N. Y. City. Received and filed this 8th day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5th day of April, 1877. N. W. Trimble, clerk.

130 In the circut court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, claimants,
vs.
THE MOBILE AND OHIO RAILROD COMPANY et als., defendants.
In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

A. D. Moran, of the firm of Moran Brothers, of the city of New York, No. 68 William street, being duly sworn and examined, deposes and says that said firm is the holder and legal possessor of four (4) several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as funded int., F. bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said Moran Brothers, as principal, the sum of two thousand dollars, and for interest the sum of three hundred & twenty dollars from Nov. 1, 1874, to November 1st, 1876, which interest is represented by sixteen coupons attached to said bonds and past due; together with interest on each coupon from the time it became due.

(Sign here) A. D. MORAN.

Subscribed and sworn to before me this 8th day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

131 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the list of numbers of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 8 day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal, four bonds	$2,000
Interest 16 coupons attached, past due	320

List of numbers of bonds.

132 Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
111	Funded interest, Series $\frac{\text{F}}{1}$	Nov. 1, 1868	500	4	80	14 coupons attached, past due, to each bond.
112			500	4	80	
312			500	4	80	
45			500	4	80	
			$2,000	......	$320	

133 (Indorsed:) Interest-bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Bro's, of New York City. Received and filed this 8th day of Sept., A. D. 1876. James Gillette, special master commissioner. Filed 5th day of April, 1877. N. W. Trimble, clerk.

134 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by said honorable circuit court in the above-entitled cause.

A. D. Moran, of the firm of Moran Brothers, of No. 68 William st., New York City, being duly sworn and examined, deposes and says, that said firm is the holder and legal possessor of three (3) several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as ten-year interest bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said Moran Brothers as and for interest the sum of four hundred & eighty dollars from Nov. 1, 1874, to Nov. 1, 1876, which interest is represented by twelve coupons attached to said bonds and past due; together with interest on each coupon from the time it became due.

(Sign here.) A. D. MORAN.

Subscribed and sworn to before me, this 8 day of September, A. D 1876.

JAMES GILLETTE,
Special Master.

135 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the list of numbers of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 8 day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Manager.

Amount proved.

Principal, 3 bonds	$3,000
Interest, 12 coupons attached, past due	480

List of numbers of bonds.

136

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
47	Ten-year interest, Series O	Nov. 1, 1866	$1,000	4	160	Principal & int. due Nov. 1, 1876.
48			1,000	4	160	
49			1,000	4	160	
					$480	

137 (Indorsed:) Ten-year interest bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Bro's, of New York City. Received and filed this 8th day of Sept., A. D. 1876. James Gillette, special master commissioner. Fled 5th day of April, 1877. N. W. Trimble, clerk.

138 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

A. D. Moran, a member of the firm of Moran Bro's, of the city of New York (No. 68 William street), being duly sworn and examined, deposes and says that said firm is the holder and legal possessor for themselves and other holders of eighty-one (81) several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as sterling bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto deponent, as principal, the sum of eighteen thousand two hundred & twenty-five pounds sterling, and for interest the sum of twenty-one hundred and eighty-seven pounds sterling, from November 1, 1874, to November 1st, 1876, which interest is represented by three hundred & twenty-four coupons attached to said bonds and past due, together with interest on each coupon from the time it became due.

(Sign here.) A. D. MORAN.

Subscribed and sworn to before me this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

139 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal, eighty-one bonds	£18, 225
Interest, 324 coupons attached, past due, to Nov. 1, 1876	2, 187

140 *List of number of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
5569–5656	81 first mortgage 6 % sterling bonds of £225 each, with certificate of M. & O. R. R. Co. attached, agreeing to pay 8 % per annum.	1st November, 1853.	£18, 225 s. 0 d. 0	4 coupons of £6 15s. each, on each bond, being Coupons due 1 May, 1875. " " 1 Nov., 1875. " " 1 May, 1876. " " 1 Nov., 1876.	£2, 187 s. 0 d. 0	
5688 to 5691						
5767–5769						
5771–620						
621–1911						
2601–2716						
2725–2743						
2847–3640						
3641–3642						
4268–4617						
5553–5575						
5622–5625						
5662–5684						
2030 to 2034						
3256–3308						
3309 to 3311						
5096–5153						
5143 to 5145						
5312–5263						
5440–5441						
5583 to 5586						
5590–5596						
5597–5598						
5606–5634						
5651–5862						
5922–5938						
2839–2841						
2844–3251						
3337–3519						
3520–4823						
5792–3950						
3960–4466						
4494–4856						
4878–5504						
2742–3588						
3780–3782						

141 (Indorsed:) First mortgage sterling bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Brothers, of New York City. Affidavit A. Received and filed this 30th day of August, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

142 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

A. D. Moran, a member of the firm of Moran Bro's, of the city of New York, No. 68 Williams street, being duly sworn and examined, deposes and says that said firm is the holder and legal possessor for themselves and for other owners of eighty-three (83) several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as sterling bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto deponent, as principal, the sum of eighteen thousand six hundred & seventy-five pounds sterling, and for interest the sum of two thousand two hundred and forty-one pounds sterling, from November 1st, 1874, to November 1st, 1876, which interest is represented by three hundred & thirty-two coupons attached to said bonds and past due, together with interest on each coupon from the time it became due.

(Sign here.) A. D. MORAN.

Subscribed and sworn to before me this 30th day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

143 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal eighty-three bonds	£18, 675
Interest 332 coupons attached, past due, to Nov. 1, 1876	2, 241

144 *List of number of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
1854-3817	83 first mortgage 6 % sterling bonds of £225 each, with certificate of M. & O. R. R. Co. attached, agreeing to pay 8 % per annum.	1st November, 1873.	£18,675 s. 0 d. 0	4 coupons of £6 15s. each, on each bond, being Coupons due 1 May, 1875. " " 1 Nov., 1875. " " 1 May, 1876. " " 1 Nov., 1876.	£2,241 0 0	
3883 to 3826						
5069-5916						
5146-5147						
1765-2736						
3837-3988						
4826-5160						
5620-2833						
3658-4304						
4307-4858						
4860-605						
606-795						
1375-1413						
2730-2761						
2267-3390						
3394-3565						
3585-3587						
3606 to 3612						
3659-3812						
5051-5074						
5075-5081						
5095-5173						
5265-5266						
5548 to 5551						
5940-3586						
3596-4264						
1832-1965						
2611-2644						
2691-3354						
3530-3562						
3947-5589						
5600-5681						
5702 to 5704						
5761-5915						
2735-5603						
5320-5324						
5626						

145 (Indorsed:) First mortgage sterling bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. the Mobile and Ohio Railroad Company et als. Proof of claim of Moran Brothers, of New York City. Affidavit B received and filed this 30th day of August, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

146 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

A. D. Moran, of the city of New York (68 William st.), a member of the firm of Moran Brothers, being duly sworn and examined, deposes and says, that said firm is the holder and legal possessor, for themselves and other owners, of seventy-three several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as sterling bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto the deponent as principal the sum of sixteen thousand four hundred and twenty-five pounds sterling, and for interest the sum of nineteen hundred and seventy-one pounds sterling, from November 1, 1874, to November 1, 1876, which interest is represented by two hundred & ninety-two coupons attached to said bonds and past due, together with interest on each coupon from the time it became due.

(Sign here.) A. D. MORAN.

Subscribed and sworn to before me this 30 day of August, A. D. 187 6

JAMES GILLETTE,
Special Master.

147 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal seventy-three bonds	£16,425
Interest 292 coupons attached past due	1,971

148 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
613-646	73 first mortgage 6 % sterling bonds, of £ 225 each, with certificate of M. & O. R. R. Co. attached, agreeing to pay 8 % per annum.	November 1, 1853.	s. d. £16,425 0 0	4 coupons, of £6 15s. each on each bond Coupons due 1st May, 1875. " " 1 Nov., 1875. " " 1 May, 1876. " " 1 Nov., 1876.	s. d. £1,971 0 0	Fourteen coupons attached to each bond, not due.
740-1419						
1752-1822						
1930-1931						
1939-1942						
1995-2144						
2550-2648						
2699-2798						
2817-2818						
3262-3294						
3298-3299						
3312-3339						
3404-3410						
3423-3548						
3568-3576						
3599-3601						
3661 to 3663						
3766-3769						
3770-3879						
3906-3907						
3909-3910						
3959-4116						
4130-4187						
4381-4383						
4385-4476						
4477 to 4479						
4497-4494						
4882-4883						
5017-5028						
5029 to 5031						
5070-5248						
5270-5284						
5412-5413						
5430-5469						
5524-5560						

149 (Indorsed:) 1st mortg. sterling bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. Wm. Butler Duncan and A. Foster Elliot, trustees, *vs.* the Mobile and Ohio Railroad company et als. Proof of claim of Moran Brothers, of New York City. Affidavit C. Received and filed this 30th day of August, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

150 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

William Butler Duncan and A. Foster Elliot, trustees, complainants,
vs. } In equity.
The Mobile and Ohio Railroad Company et als., defendants.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

A. D. Moran, a member of the firm of Moran Bros., of the city of New York, No. 68 William st., being duly sworn and examined, deposes and says, that said firm is the holder and legal possessor, for themselves and other owners, of thirty-one (31) several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as sterling bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto deponent as principal the sum of six thousand nine hundred and seventy-five pounds sterling, and for interest, the sum of eight hundred & thirty-seven pounds sterling, from November 1, 1874, to November 1, 1876, which interest is represented by 124 coupons, attached to said bonds past due, together with interest on each coupon from the time it became due.

(Sign here.) A. D. MORAN.

Subscribed and sworn to before me this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

151 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal thirty-one bonds	£6,975
Interest 124 coupons attached past due, to Nov. 1, 1876	837

152 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
5188–4384…… 742–1821…… 1376–1537…… 1751–1753…… 3295–3296…… 3335–3681…… 3912–3957…… 4880–5009…… 5271–5649…… 5881–5897…… 5900–5910…… 738–739…… 1459–4482…… 5260–5464…… 5465–5950…… No. 2604……	31 first mortgage 6 % sterling bonds of £225 each, with certificate attached, of Mobile & Ohio Railroad Co., agreeing to pay 8 % per annum.	November 1st, 1853.	£6, 975 0 0	4 coupons of £6 15s each on each bond, being Coupons due 1 May, 1875 " " 1 Nov., 1875 " " 1 May, 1876 " " 1 Nov., 1876	£837 0 0	Fourteen coupons attached to each bond not due, except on bond 2604,* on which there are thirteen.

*This bond has the coupon due 1 Nov., 1883, missing.

153 (Indorsed:) 1st mort'g sterling bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliott, trustees, vs. The Mobile and Ohio Railroad Company, et als. Proof of claim of Moran Brothers, of New York City. Affidavit D. Received and filed this 30th day of August, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

154 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliott, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

A. D. Moran, a member of the firm of Moran Brothers of the city of New York (No. 68 William street), being duly sworn and examined, deposes and says, that said firm is the holder and legal possessor for themselves and other owners of ninety-eight (98) several bonds of the Mobile and Ohio Railroad Company, secured by first mortgage of said railroad, which several bonds are known as sterling bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto deponent as principal the sum of twenty-two thousand and fifty pounds sterling, and for interest the sum of twenty-six hundred & forty-six pounds sterling, from November 1, 1874, to November 1, 1876, which interest is represented by three hundred &

ninety-two coupons attached to said bonds and past due; together with interest on each coupon from the time it became due.

(Sign here.) A. D. MORAN.

Subscribed and sworn to before me, this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

155 I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in his possession.

Witness my hand and seal this 30 day of August, A. D. 1876.

JAMES GILLETTE,
Special Master.

Amount proved.

Principal ninety-eight bonds	£22, 050
Interest 392 coupons attached past due	2, 646

156 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Date of issue.	Amount.	No. of coupons due.	Amount coupons due.	Remarks.
1472 to 1476	98 first mortgage 6% sterling bonds of £225 each.	1st November, 1853.	s. d. £22, 050 0 0	4 coupons of £6 15s. each on each bond, being— Coupons due 1st May, 1875. " " 1st Nov., 1875. " " 1st May, 1876. " " 1st Nov., 1876.	£2, 646 0 0	Fourteen coupons attached to each bond not due.
4501 to 4503						
4935–4962						
4983 to 4986						
5736 to 5740						
5744 to 5748						
953–1298						
3491–2215						
4054–4193						
4494 to 4496						
4514–4518						
4520–4640						
4894–2112						
3487–4247						
703 to 705						
4229–4238						
4239–4686						
1257-1258						
2981–4023						
4025–4063						
4192–4240						
4242–4517						
535–2135						
2214–2571						
2934–3000						
3469–3470						
4510–4633						
4636–4637						
4687–4992						
2971–2972						
1477 @ 1500						

157 (Indorsed:) 1st mortg. sterling bonds. Claim number 307. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. Wm. Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Moran Brothers of New York City. Affidavit E. Received and filed this 30th day of August, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

158 (Copy.)

Know all men by these presents that I, Alexander Duncan, formerly of the city of Providence, State of Rhode Island, now of No. 7 Prince's Gate, in the city of London, England, have made, constituted, and appointed, and by these presents do make, constitute, and appoint George A. Leete, of Providence, Rhode Island, who has heretofore acted, by my authority, for me in relation to my claim against the Mobile and Ohio Railroad Company, my true and lawful attorney, for me and in my name, place, and stead, to act for me in relation to my claim or demand which I may have against the Mobile and Ohio Railroad Company, or the property of said company, or the receivers thereof, either as a bondholder or creditor thereof in any way, and to collect, sue for, and recover any such claims or demands now due me, or which may become due to me, or which I may hereafter hold or possess, or be entitled to, and to
159 compound, compromise, and settle the same; and to take and institute and prosecute all such action or actions and legal proceedings in my name, or otherwise, as may be necessary or proper in reference to the same, and in my name to enter into any agreement, and to make, execute, and deliver all and every paper and instrument in respect to any bonds or securities of said Mobile and Ohio Railroad Company held by or belonging to me, or to which I may be entitled, which he may deem necessary or expedient in the course of the proceedings pending for the foreclosure of said railroad, or in regard to the receivership thereof, or any proceedings in regard thereto, which may be hereafter instituted, or in relation to the reorganization of said company, and generally to act for me in all matters relating to, and to protect my interests in, the said Mobile and Ohio Railroad and the property thereof, or in regard to a sale or purchase thereof, or the formation of any new
160 company to take the property of said Mobile and Ohio Railroad Company on a foreclosure and sale or reorganization of said company, or on any organization of the bondholders or creditors of said company, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do, if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal the 22nd day of May, in the year one thousand eight hundred and seventy-six.

(S'g'n'd) ALEX. DUNCAN.

Sealed and delivered in presence of—

(S'g'n'd) HENRY P. BUTLER.

161 STATE OF NEW YORK,
Southern District of New York,
City and County of New York:

Be it known that on the 23rd day of May, one thousand eight hundred and seventy-six, before me, a commissioner of the U. S. circuit court for the southern district of New York, duly commissioned and sworn, dwelling in the said district, personally came and appeared Alexander Duncan, to me personally known, and known to me to be the same person described in and who executed the within power of attorney, and the said Alexander Duncan duly acknowledged the within power of attorney to be his own act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

[SEAL.] (S'g'n'd) HENRY P. BUTLER.
U. S. Commissioner for Southern District of New York.

162 I certify that the foregoing is a true copy of the original "power of attorney" exhibited to me this 8th day of September, 1876.

(S'gn'd) JAMES GILLETTE,
Special Master & U. S. Com's'r.

¶(Endorsed:) Certified copy. Filed with claim of Alexander Duncan, Sept. 8, 1876. (S'gn'd) James Gillette, special master. United States circuit court southern district of Alabama. Filed 5th day of Apr., 1877. (S'gn'd) N. W. Trimble, clerk.

163 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

William H. Hays, of the city of New York, chairman of the committee of reorganization of the Mobile & Ohio Railroad, being duly sworn and examined deposes and says, that said committee is the holder and legal possessor of 19,664 detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by the first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as sterling 1st mortgage, interest arrearage, funded int., sinking fund gold bonds, &c., &c., bonds of said company, and said detached coupons are numbered according to the list of numbers annexed to proof of same made by Alexander Duncan, and that there is due unto deponent the sum mentioned in said proof made before the special master by Alexander Duncan, together with interest on each coupon
164,165 from the time it became due. The coupons are the same coupons proved by said Alexander Duncan, but the ownership & legal possession of the same has been transferred to this committee, & I beg to notify you of such transfer & that the legal possession is now in us.

(S'gn'd) W. H. HAYS.

Subscribed and sworn to before me this 17th day of January, A. D. 1877.

(S'gn'd) JOSEPH GUTMAN, JR.,
United States Commissioner Southern District of New York.

(Endorsed:) Received Jan'y 23, 1877. (S'gn'd) James Gillette, special master. United States circuit court southern district of Alabama, Filed 5 day of Apr., 1877. (S'gn'd) N. W. Trimble, clerk.

166, 167 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of six (6) detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first-mortgage of said railroad, which several bonds to which said detached coupons pertain 168 are known as first-mortgage sterling (non-certificate) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of forty pounds ten shillings, (£40 *s*10 *d*0), together with interest on each coupon from the time it became due, to wit, from May 1st, 1873. And deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Atty. in fact for Alex. Duncan.

Subscribed and sworn to before me this first day of September, A. D. 1876.

[SEAL.] (Signed) WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal six coupons detached past due, sterling, £40 *s*10.
Interest to be added May 1, 1873.

I further certify that I have carefully inspected and separately 169 examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in his possession.

Witness my hand and seal this 8th day of September, A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

First mortgage, £6 15*s*., non-certificate coupons, May, 1873. 6 coupons, £6 15*s*. stg., each, amounting to £40 10 0, with interest from May 1st, 1873.

2051 4275 4443 4795 4796 5180

170 (Indorsed:) Sterling non-certificate bonds. Detached coupons. Alexander Duncan, of England. Received and filed this 8th day

of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of Apr., 1877. (Signed) N. W. Trimble, clerk.

171 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

William Butler Duncan and A. Foster Elliott, trustees, complainants,
vs.
The Mobile and Ohio Railroad Company et al., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is the agent and attorney for Alexander Duncan, of England, who is the holder and possessor of ninety-seven (97) detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as first mortgage sterling (non-certificate) bonds of said company, and said detached coupons are numbered according to
172 the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of six hundred and fifty-four pounds and fifteen shillings, together with interest on each coupon from the time it became due, to wit, from November 1st, 1873. And deponent further says that he is authorized by *by* his principal to make this deposition.

GEORGE A. LEETE,
Atty. in fact for Alex. Duncan.

Subscribed and sworn to before me this first day of September, A. D. 1876.

W'M W. DOUGLAS,
U. S. Commissioner for the Dis't of Rhode Island.

Amount proved.

	£	s.
Principal ninety-seven detached, past due, sterling	654	15

Interest (to be added) from Nov. 1, 1873.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said de-
173 ponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

First mortgage £6 15*s.* non-certificate coupons, November, 1873. 97 coupons, £6 15*s.* st'g each, amounting to £654 15*s.* 0, with interest from November, 1873.

174

1291
2
3
1815
6
7
8
69
70
1910
61
7
8
2016
50
1
3
4
5
70
2168
2202
2508
9
10
21
2
3
4
5
6
7
8
42
7
88
9
2685
2701
45
6
2820
61
86
7
8
2900
3336
3434
3704
5
3898
9
3917
44
52
3
4
83
4027
83
4117
30
4218
19
22
75
95
4386
4443
5
74
4795
6
4851
5010
11
5180
99
5202
5301
11
18
21
85
5476
5571
9
5619
22
5709
10
11
34
5867
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175 (Endorsed:) Sterling non-certificate bonds. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliott, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5th day of April, 1877. N. W. Trimble, clerk.

176 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER
Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of five (5) detached coupons of the several bonds
177 of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as first-mortgage sterling (certificated) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan as principal the sum of two hundred dollars ($200), together with interest on each coupon from the time it became due, to wit, from May 1st, 1873, and deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me this first day of September, A. D. 1876.

[SEAL.] (Signed) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal five coupons detached past due, currency, $200.
Interest (to be added) from May 1, 1873.

178 I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

First mortgage. £6 15*s*. Certificates coupons, May, 1873. 5 coupons, $40.00, c'cy, each, amounting to $200.00, with interest from May 1st, 1873.

2916 3045 3046 3479 5340

179 (Indorsed:) Sterling certificate bonds. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of April, 1877. (Signed) N. W. Trimble, clerk.

180 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendant.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

181 George A. Leete, of the city of Providence, Rhode Island, being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of five (5) detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as first-mortgage sterling (certificated) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of two hundred dollars, together with interest on each coupon from the time it became due, to wit, from November 1st, 1873. And deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this first day of September, A. D. 1876.

[SEAL.] (Signed) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile 182 and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in his possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

First mortgage. £6 15*s*. Certificates coupons, November, 1873. 5 coupons, $40.00 c'cy each, amounting to $200.00, with interest from November 1st, 1873.

2916 3045 3046 3479 5340

183 (Indorsed:) Sterling certificate bonds. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of April, 1877. (Signed) N. W. Trimble, clerk.

184 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY *et als.*, defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is the agent or attorney of Alexander Duncan, who is the holder and legal possessor of two thousand four hundred and sixty-seven detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as first-mortgage sterling 185 (certificate) bond of said company, and said detached coupons are numbered according to the list of numbers hereto annexed; and that there is due unto the said Alexander Duncan the sum of ninety-eight thousand six hundred and eighty dollars ($98,680), together with interest on each coupon from the time it became due, to wit, from May 1st, 1874.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this 18th day of September, A. D. 1876.

W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 2467—coupons detached past due, currency, $98,680.
Interest (to be added) from May 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and
find the numbers of said detached coupons to correspond with
186 the "list of numbers" of said coupons here following, and certify
the same to be in possession.

Witness my hand and seal this 25th day of Sept., A. D. 1876.
(Signed) JAMES GILLETTE,
Special Master.

First mortgage. £6 15*s*. Sterling coupons. Certificates May, 1874. 2467. Coupons, $40 c'cy, each amounting to $98,680, with interest from May 1st, 1874.

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204 (Endorsed:) Sterling certificate bonds. Proof of claim. Detached coupons of Alexander Duncan, of London, England. Received and filed this 25 day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of Apr., 1877. (Signed) N. W. Trimble, clerk.

205 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is agent and attorney for Alexander Duncan, of the of , who is the holder and legal possessor of three thousand one hundred and seventy-four detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as sterling (non-certificate) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan as principal the sum of twenty-one thousand four hundred and twenty-four pounds ten shillings sterling (£21,424.10), together with interest on each coupon from the
206 time it became due, to wit, from May 1st, 1874.

GEO. A. LEETE,
Attorney in fact for ALEX. DUNCAN.

Subscribed and sworn to before me this 18th day of September, A. D. 1876.

W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, coupons detached past due, sterling, £21,424 10s.
Interest (to be added) from May 1st, 1874.

I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in possession.

Witness my hand and seal this 25th day of September, A. D. 1876.

JAMES GILLETTE,
Special Master.

207 First mortgage. £6.15. Sterling coupons, non-certificates, May, 1874. 3174 coupons, £6.15 st'g each, amounting to £21,424.10.0, with interest from May 1, 1874.

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230 (Endorsed:) Sterling, non-certificate, number . Circuit court 231 of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim, by agent or attorney, of detached coupons of Alexander Duncan, London, England. Received and filed this 25th day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

232 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants, *vs.* THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.	In equity.

Proof of claim.

Before the special master commissioner, appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of two thousand four hundred & eighty-one detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage by said railroad, which several bonds to which said detached coupons pertain, are known as first mortgage sterling (certificate) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed; and that there is due unto said Alexander Duncan, as principal, the sum of ninety-nine thousand two hundred & forty dollars ($99,240), together with interest on each coupon from the time it became due, to wit, 233 from November 1, 1874.

GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this first day of September, A. D. 1876.

WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, 2,481 coupons detached, past due, $99,240.00.
Interest on coupons (to be added) from Nov. 1, 1874.

I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of September, A. D. 1876.

JAMES GILLETTE,
Special Master.

234 First mortgage £6 15 sterling coupons certificates, November, 1874; 2481 coupons, $40 currency each, amounting to $99,240.00, with interest from November 1, 1874.

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[252]

253 (Indorsed:) Sterling certificate, number . Circuit court of the United States, fifth judicial circuit and southern district of Alabama. Wm. Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim, by agent or attorney. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5 of April, 1877. N. W. Trimble, clerk.

254 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of three thousand one hundred & twenty-nine detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as first-mortgage sterling (non-certificate) bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan as principal the sum of twenty-one thousand one hundred & twenty pounds fifteen shillings (£21,120 15), together
255 with interest on each coupon from the time it became due, to wit, from November 1, 1874.

GEO. A. LEETE,
Att'y in fact for Alexander Duncan.

Subscribed and sworn to before me this 18th day of September, A. D 1876.

W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

	£.	s.
Principal, 3,129 coupons detached past due, sterling	21,120	15

Interest on coupons (to be added) from Nov. 1, 1874.

I further certify that I have carefully inspected and separately examined the several bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said bonds to correspond with the "list of numbers" of bonds here following, and certify the same to be in possession.

Witness my hand and seal this 25 day of September, A. D. 1876.

JAMES GILLETTE,
Special Master.

256 First-mortgage £6 15 sterling coupons, non-certificates, November, 1874; 3,129 coupons, £6 15 each, amounting to £21,120 15, with interest from November, 1874.

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[278]

[279] (Indorsed:) Sterling non-certificate, number . Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, *vs.* The Mobile and Ohio Railroad Company et als. Proof of claim, by agent or attorney, detached coupons of Alexander Duncan, of London, England. Received and filed this 25 day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

280 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendant.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

GEORGE A. LEETE, of the city of Providence, Rhode Island, being duly sworn and examined, deposes and says that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal
281 possessor of one (1) detached coupon of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as first mortgage sterling (non-certificate) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed; and that there is due unto said Alexander Duncan, as principal, the sum of six pounds fifteen shillings, together with interest on each coupon from the time it became due, to wit, from November 1, 1874; and deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me this first day of September, A. D. 1876.

[SEAL.] WM. W. DOUGLASS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, one coupon detached, past due, sterling, £6 15*s.*

282 I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said de-

ponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D., 1876.

(Signed) JAMES GILLETTE,
Special Master.

First mortgage £6 15*s*. non-certificate coupons of November, 1874, one duplicate coupon @ £6 15*s*. sterling, amounting to £6 15*s*. sterling, with interest from November, 1874.

5754.

283 (Indorsed:) Sterling non-certificate bonds. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of April, 1877. (Signed) N. W. Trimble, clerk.

284 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, Rhode Island, being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of eight (8) detached coupons of the several bonds of the
285 Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as first mortgage sterling (non-certificate) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan as principal the sum of fifty-four pounds sterling (£54), together with interest on each coupon from the time it became due, to wit, from May 1st, 1875; and deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me, this first day of September, A. D. 1876.

[SEAL.] (Signed) W'M W. DOUGLAS,
U. S. Commissioner for the District of Rhode Island.

Amount proved.

Principal, eight coupons detached, past due, sterling, £45.
Interest (to be added).

286 I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of September, A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

First mortgage £6 15*s.* non-certificate coupons of May, 1875, 8 coupons £6 15*s.* each, amounting to £54, with interest from May, 1875.

4120
4121
4755
4800
4802
4955
4956
5961

287 (Indorsed:) Sterling non certificate bonds. Proof of claim. Detached coupons of Alexander Duncan of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master, commissioner. Filed 5th day of April, 1877. (Signed) N. W. Trimble, Clerk.

288 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainant',
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendant.
} In equity.

Proof of claim.

Before the special master commissioner, appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan of England, who is the holder and legal possessor of one detached coupon of the several bonds of the 289 Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain, are known as first mortgage sterling (certificate) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of forty dollars or six pounds & fifteen shillings, together with interest on each coupon from the time it became due, to wit, from May 1, 1875, and deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Attorney in fact for Alex'r Duncan.

Subscribed and sworn to before me this first day of September, A. D. 1876.

[SEAL.] W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal one coupons detached past due, sterling, £6 15*s*, or $40. Interest (to be added).

290 I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

First mortgage. £6 15*s*, certificate coupon of May, 1875; one coupon, £6 15*s*, or $40, amounting to $40, with interest from May , 1875.

1534

291 (Indorsed:) First-mortgage sterling certificate. Proof of claim. Detached coupons, Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master, commissioner. Filed 5th day of April, 1877. (Signed) N. W. Trimble, clerk.

292 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master, commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the agent and attorney of Alexander Duncan, who is the holder and legal possessor of seventeen detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said 293 railroad, which several bonds to which said detached coupons pertain are known as ten-year interest (series O) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto the said Alexander Duncan the sum of six hundred and eighty dollars currency, together with interest on each coupon, from the time it became due, to wit, from November 1st, 1873.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me this fifth day of September, A. D. 1876.

[SEAL.] (Signed) W'M. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, seventeen coupons, detached, past due, currency, $680.
Interest (to be added) from Nov. 1, 1873.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of Mobile and Ohio Railroad Company, in the hands and possession of said deponent,
294 and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

O. $40.00, coupons, November, 1873. 8% interest bonds. 17 coupons, $40.00 each, amounting to $680, with interest from November 1st, 1873.

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147
185
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446
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623
624

295 (Indorsed:) Interest bonds, series O. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master, commissioner. Filed 5th day of April, 1877. (Signed) N. W. Trimble, clerk.

296. In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
In equity.

Proof of claim:

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is the agent attorney of Alexander Duncan, who is the holder and legal possessor of six hundred and thirty-eight detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached cou-
297 pons pertain are known as ten-year interest (series O) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto the said Alexander Duncan the sum of twenty-five thousand five hundred and twenty dollars, currency, together with interest on each coupon from the time it became due, to wit: from May 1st, 1874.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me, this fifth day of September, A. D. 1876.

[SEAL.] (Signed) W'M W. DOUGLAS,
U. S. Commissioner for the dist. of Rhode Island.

Amount proved.

Principal, 638 coupons detached, past due, currency, $25,520.
Interest to be added from May 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with
298 the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special master.

O. $40.00 coupons May, 1874, 8% arrearage interest bonds. 8% interest bonds. 638 coupons $40.00 each, amounting to $25,520.00, with interest from May, 1874.

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304 (Endorsed:) Ten year interest series O. Proof of claim. Detached coupons of Alexandria Duncan, of England. Received and filed this 8th day of September, A. D. 1876. Signed, James Gillette, special master, commissioner. Filed 5th day of April, 1877. (Signed) N. W. Trimble, clerk.

305 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

William Butler Duncan and A. Foster Elliot, trustees, complainants,
vs.
The Mobile and Ohio Railroad Company et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is the agent and attorney of Alexander Duncan, who is the holder and legal possessor of six hundred & thirty-five detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first 306 mortgage of said railroad, which several bonds to which said detached coupons pertain are known as ten-year interest-bonds, series "O" bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto the said Alexander Duncan the sum of twenty-five thousand four hundred dollars, currency, together with interest on each coupon from the time it became due, to wit, from November 1st, 1874.

(Signed) GEO. A. LEETE,
Attorney in fact for Alex'r Duncan.

Subscribed and sworn to before me this fifth day of September, A. D. 1876.

[SEAL.] (Signed) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 635 coupons detached past due, currency $25,400.
Interest (to be added) from Nov. 1st, 1874.

I further certify that I have carefully inspected and separately 307 examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

O. $\$40\frac{00}{100}$ coupons November, 1874. 8 % interst bonds. 635 coupons $\$40\frac{00}{100}$ each, amounting to $25,400.00, with interest from November 1st, 1874.

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(Endorsed:) Interest bonds, series O. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special marster commissioner. Filed 5th day of April, 1877. (Signed) N. W. Trimble, clerk.

313 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the agent or attorney of Alexander Duncan, who is the holder and legal possessor of four detached coupons of the several bonds of the Mobile and
314 Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as ten-year-interest (series P) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto the said Alexander Duncan the sum of eighty dollars, currency, together with interest on each coupon from the time it became due, to wit, from November 1, 1873.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me this fifth day of September, A. D. 1876.

[SEAL.] (Signed) WM. W. DOUGLAS,
U. S. Commissioner, Dist. of Rhode Island.

Amount proved.

Principal, four coupons detached, past due, currency, $80.
Interest (to be added) from Nov. 1, 1873.

I further certify that I have carefully inspected and separately
315 examined the several detached coupons of the bonds of the Mobile & Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

P. $20.00 coupons, $20.00 each, amounting to $80.00, with interest from November 1st, 1873.

37 76 103 106

316 (Endorsed:) Interest bonds, P. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of Apr., 1877. (Signed) N. W. Trimble, clerk.

317 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner, appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is the agent or attorney of Alexander Duncan, who is the holder and legal possessor of one hundred & forty-two detached coupons of the several 318 bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as ten-year interest (series P) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto deponent the sum of two thousand eight hundred and forty dollars currency, together with interest on each coupon from the time it became due, to wit, from May 1, 1874.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me this fifth day of September, A. D. 1876.

[SEAL.] (Signed) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, 142 coupons detached past due, currency, $2,840.
Interest (to be added) from May 1, 1874.

319 I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

P. $20.00 coupons, May, 1874. 8% interest bonds. 142 coupons, $20.00 each, amounting to $2,840, with interest from May, 1874.

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321 (Endorsed:) Interest bonds P. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of Apr., 1877. (Signed) N. W. Trimble, clerk.

322 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the agent and attorney of Alexander Duncan, of who is the holder
323 and legal possessor of one hundred and forty-one detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as ten-year interest (series P) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto the said Alexander Duncan the sum of two thousand eight hundred and twenty dollars, currency, together with interest on each coupon from the time it became due to wit, November 1, 1874.

(S'gd) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this 18th day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'gd) WM' W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

324 *Amount proved.*

Principal 141 coupons detached past due, currency, $2,820.
Interest (to be added) from Nov. 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 25 day of Sept., A. D. 1876.

(S'gd) JAMES GILLETTE,
Special Master.

325 P. $20.00 coupons, November, 1874. 8% interest bonds. 141 coupons, $20.00 each, amounting to $2,820.00, with interest from November 1, 1874.

326 P. $20. Nov., 1874.

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327 (Endorsed:) Ten-year interest. Series P. Proof of claim. Detached coupons of Alexander Duncan, of London, England. Received and filed this 25th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.)

328 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the agent and attorney of Alexander Duncan, of , who is the holder

329 and legal possessor of six detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as ten-year interest (Series Q) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan the sum of forty-eight dollars, currency, together with interest on each coupon from the time it became due, to wit, from Nov. 1, 1873.

(S'g'd) GEO. A. LEETE,
Att'y in Fact for Alex. Duncan.

Subscribed and sworn to before me this fifth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

330 *Amount proved.*

Principal six coupons detached past due, currency, $48.
Interest (to be added) from Nov. 1, 1873.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company, in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd.) JAMES GILLETTE,
Special Master.

331 Q. $8.00 coupons, November, 1873. 8% interest bonds. 6 coupons, $8.00 each, amounting to $48.00, with interest from Nov. 1, 1873.

106 114 410 411 412 434.

332 (Endorsed:) Interest bonds, series Q. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd.) James Gillette, special master commissioner. Filed 5th day of April, 1877. N. W. Trimble, clerk.

333 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island,
being duly sworn and examined, deposes and says, that he is the
334 agent and attorney for Alexander Duncan, of the of ,
England, who is the holder and legal possessor of four hundred
and fifty-seven detached coupons of the several bonds of the Mobile and
Ohio Railroad Company, secured by a first mortgage of said railroad,
which several bonds to which said detached coupons pertain are known
as ten-year interest (series Q) bonds of said company, and said detached
coupons are numbered according to the list of numbers hereto annexed,
and that there is due unto said Alexander Duncan, as principal, the
sum of three thousand six hundred and fifty-six dollars, currency, together
with interest on each coupon from the time it became due, to
wit, from May 1st, 1874; and deponent further says that he is
335 authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this 18th day of September, A. D. 1876.

[SEAL OF U. S. COM'R.]

(S'g'd) WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 457 coupons detached past due, currency, $3,656.
Interest (to be added) from May 1st, 1874.

I further certify that I have carefully inspected and separately examined
the several detached coupons of the bonds of the Mobile and
Ohio Railroad Company in the hands and possession of said de-
336 ponent, and find the numbers of said detached coupons to cor-
respond with the "list of numbers" of said coupons here following,
and certify the same to be in possession.

Witness my hand and seal this 25 day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

Q. $8.00 coupons, May, 1874. 8% interest-bonds. 457 coupons, $8.00 each, amounting to $3,656.00, with interest from May 1st, 1874.

337 (Q.) $8, of May, 1874.

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340 (Endorsed:) Ten year interest, series Q. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of

London, England. Received and filed this 25 day of Sept., A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

341 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN and A. Foster Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO Railroad Company et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner, appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the 342 agent and attorney of Alexander Duncan of , who is the holder and legal possessor of four hundred and fifty-three detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain, are known as ten year interest (series Q) bonds of said company; and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto the said Alexander Duncan the sum of three thousand six hundred and twenty four dollars ($3,624) currency, together with interest on each coupon from the time it became due, to wit, from November 1st, 1874.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

343 Subscribed and sworn to before me this 18th day of September, A. D. 1876.

[SEAL OF U. S. COM'R]. (S'g'd) WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 453 coupons detached past due, currency, $3,624.
Interest (to be added) from Nov'r 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same 344 to be in possession.

Witness my hand and seal this 25th day of Sept., A, D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

Q. $8.00. Coupons, November, 1874. 8% interest bonds. 453 coupons, $8.00 each, amounting to $3,624.00, with interest from November 1st, 1874.

[345] Q. $8. Nov., 1874.

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348 (Endorsed:) Ten year interest. Series Q. Proof of claim. Detached coupons of Alexander Duncan, of London, England. Received and filed this 25th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

349 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the 350 agent and attorney for Alexander Duncan, of the , of England, who is the holder and legal possessor of twenty-five detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as interest arrearage (series F 1) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of one thousand dollars (currency), together with interest on each coupon from the time it became due, to wit, from May 1st, 1874; and deponent further says that he is authorized by his principal to make this deposition.

(S'g'd) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

351 Subscribed and sworn to before me this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 25 coupons detached past due, currency, $1,000.
Interest (to be added) from May 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the
352 same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

Interest arrearage. F 1. $40.00 coupons, May, 1874. Arrearage interest bonds. 25 coupons, @ $40.00 each, amounting to $1,000.00, with interest from May 1st, 1874.

353 F 1. $40. May, 1874.

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354 (Endorsed:) Interest arrearage. Series F 1. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

355 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is the
356 agent and attorney for Alexander Duncan, of the of England, who is the holder and legal possessor of twenty-five detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as interest arrearage series F. 1 bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan as principal the sum of one thousand dollars (currency), together with interest on each coupon from the time it became due, to wit, from November 1, 1874; and deponent further says that he is authorized by his principal to make this deposition.

(S'g'd), GEO. A. LEETE,
Att'y in fact for Alex. Duncan

357 Subscribed and sworn to before me, this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM.] (S'g'd) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 25 coupons detached past due, currency, $1,000.
Interest (to be added) from Nov. 1, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the
358 same to be in possession.

(S'g'd) JAMES GILLETTE,
Special Master.

Interest arrearage. F 1. $\$40\frac{00}{100}$ coupons November, 1874. Arrearage interest bonds. 25 coupons, $\$40\frac{00}{100}$ each, amounting to $1,000.00, with interest from November 1st, 1874.

359 F 1. $40. Nov., 1874.

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360 (Endorsed:) Interest arrearage bonds, F 1. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan of England. Received and filed this 8th day of September, A. D. 1876. (Sg'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (Sg'd) N. W. Trimble, clerk.

361 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the
362 agent and attorney for Alexander Duncan, of the of , England, who is the holder and legal possessor of twelve detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as interest-arrearage (series F 2) bonds of said company, and said detached

coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of two hundred and forty dollars, currency, together with interest on each coupon from the time it became due, to wit, from May 1st, 1874.

And deponent further says that he is authorized by his principal to make this deposition.

363 (Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) W'M W. DOUGLAS,
U. S. Commissioner for the dist. of Rhode Island.

Amount proved.

Principal twelve coupons detached past due, currency, $240.
Interest (to be added) from May 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and
364 Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.
(S'g'd) JAMES GILLETTE,
Special Master.

F 2 $20.00 coupons, May, 1874; arrearage interest bonds; 12 coupons $20.00 each, amounting to $240.00, with interest from May, 1874.

365 F 2 $20.00, May, 1874.
2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.

366 (Endorsed:) Interest arrearage, F 2 series. Proof of claim by agent or attorney; detached coupons of Alex. Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master, commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

367 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs. **In equity.**
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.

Proof of claim.

Before the special master, commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the
368 agent and attorney for Alexander Duncan, of the of England, who is the holder and legal possessor of twelve detached

coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as interest arrearage (series F 2) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan as principal the sum of two hundred and forty dollars currency, together with interest on each coupon from the time it became due, to wit: from Nov'r 1st, 1874; and deponent
369 further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (Signed) WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal twelve coupons, detached, past due, currency, $240.
Interest (to be added) from Nov. 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and
370 Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.
(S'g'd) JAMES GILLETTE,
Special Master.

F 2. $20.00 coupons November, 1874, arrearage interest bonds. 12 coupons $20.00 each, amounting to $240.00, with interest from November 1st, 1874.

371 F 2. $20, Nov., 1874.

2	5	7	9	11	13
4	6	8	10	12	14

372 (Endorsed:) Interest arrearage series F 2. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of , England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master, commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

373 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master, commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the

374 agent and attorney for Alexander Duncan, of the of England, who is the holder and legal possessor of six detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as interest arrearages (series F 3) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed; and that there is due unto said Alexander Duncan, as principal, the sum of seventy-two dollars currency, together with interest on each coupon from the time it became due, to wit, from May 1st, 1874; and deponent further
375 says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal six coupons, detached, past due, currency, $72.
Interest (to be added) from May 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile
376 and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

F 3.—$12.00 coupons, May, 1874.—Arrearage interest bonds.—6 coupons $12.00 each, amounting to $72.00, with interest from May, 1874.

377 F 3. $12 of May, 1874.
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378 (Endorsed:) Interest arrearage series F 3. Proof of claim by agent or attorney, detached coupons of Alexander Duncan, of , England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master, commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

379 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode
380 Island, being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of the

of , England, who is the holder and legal possessor of six detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as interest arrearage, series F 3, bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of seventy-two dollars currency, together with interest on each coupon from the time it became due, to wit, from Nov'r 1st, 1874; and deponent further says that he is authorized by his principal to make 381 this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me, this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal six coupons detached past due, currency, $72.
Interest (to be added) from Nov. 1, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile 382 and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

F 3 $12.00 coupons November, 1874, arrearage interest bonds. 6 coupons, $12.00 each, amounting to $72.00, with interest from November 1st, 1874.

383 F 3 $12 of Nov'r, 1874.

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384 (Endorsed:) Interest arrearage series F 3. Proof of claim, by agent or attorney, detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

385 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode 386 Island, being duly sworn and examined, deposes and says that he is agent and attorney for Alexander Duncan, of the of , England, who is the holder and legal possessor of twenty four detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as interest-arrearage (series F 4) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of ninety-six dollars currency, together with interest on each coupon from the time it became due, to wit, from May, 1874.

387 And deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (Signed) W'M W. DOUGLAS,
U. S. Commissioner for the Dis't of Rhode Island.

Amount proved.

Principal 24 coupons detached, past due, currency, $96.
Interest (to be added) from May 1, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile

388 and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspondwith the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

F 4. $4.00. Coupons May, 1874. Arrearage interest bonds. 24 coupons $4.00 each, amounting to $96.00, with interest from May, 1874.

389 F 4. $4. May, 1874.

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390 (Endorsed:) Interest arreage, series F 4. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of April 1877. (S'g'd) N. W. Trimblle, clerk.

391 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendant'.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is agent
392 and attorney for Alexander Duncan of the of England, who is the holder and legal possessor of twenty-four detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as interest-arrearage (series F 4) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan as principal the sum of ninety-six dollars currency, together with interest on each coupon from the time it became due, to wit, from November 1st, 1874; and deponent further says that he is authorized by his principal to make
393 this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this seventh day of September, A. D. 1876.

[SEAL OF U. S. COM.] S'g'd) WM. W. DOUGLAS,
U. S. Commissioner for the Dis't of Rhode Island.

Amount proved.

Principal twenty-four coupons, detached, past due, currency
Interest (to be added) from November 1, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and
394 Ohio Railroad Company in the hands and possession of said deponent and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.
(S'g'd) JAMES GILLETTE,
Special Master.

F 4. $4.00 coupons November, 1874. Arrearage interest bonds. 24 coupons $4.00 each, amounting to $96.00, with interest from November 1st, 1874.

395 F 4. $4. Nov'r 1874.

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396 (Endorsed:) Interest arrearage. Series F. 4. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of Sept., A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

397 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs. } In equity.
THE MOBILE AND OHIO RAILROAD COMPANY et als, defendants.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor
398 of nine detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons are numbered according to the list of numbers hereto annexed; and that there is due to said Alexander Duncan as principal the sum of three hundred and sixty dollars, currency, together with interest on each coupon from the time it became due, to wit: June, Nov. 1st, 1873; and deponent further says that he is authorized by his principal to make this deposition.

(S'gn'd) GEO. A. LEETE,
Attorney in fact for Alex'd'r Duncan.

Sworned and subscribed to before me, this fourth day of September, A. D. 1876.

(S'gn'd) W'M W. DOUGLASS,
U. S. Commissioner for the district of Rhode Island.

Amount proved.

Principal, nine coupons, detached, past due, currency, $360.00.
399 Interest (to be added) from Nov. 1st, 1873.

I further certify that I have carefully inspected and seperately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the list of numbers of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of September, A. D. 1876.

(S'gn'd) JAMES GILLETTE,
Special Master.

$40\frac{00}{100}$. Coupons, November, 1873. Arrearage interest; bonds, 9 coupons, $40.00 each, amounting to $360.00, with interest from November 1st, 1873.

400 192 194 307 399 460
193 267 373 428

(Endorsed:) Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of England Received and filed this 8th day of September, A. D. 1876. (S'gn'd) James Gillette, special matter commissioner, United States circuit court southern district Alabama. Filed 5 day of April, 1877. (S'gn'd) N. W. Trimble, clerk.

401 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliott, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of four hundred and seventy-three detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad; which several bonds to which said detached coupons pertain are known as funded-interest (series F)
402 bonds of said company; and said detached coupons are numbered according to the list of numbers hereto annexed; and that there is due unto said Alexander Duncan, as principal, the sum of eighteen thousand nine hundred and twenty dollars (currency), together with interest on each coupon from the time it became due, to wit, from May 1st, 1874; and deponent further says that he is authorized by his principal to make this deposition.

GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 474 coupons detached, past due, currency, $18,920.
Interest (to be added) from May 1st, 1874.

I further certify that I have carefully inspected and seperately
403 examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

F. **$40.00 coupons. May, 1874. Arrearage interest bonds. 473 coupons, $40.00 each, amounting to $18,920.00 with interest from May 1st, 1874.**

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407 (Endorsed:) Funded-interest bonds, series F. Proof of claim. By agent or attorney of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5th day of April, A. D. 1877. N. W. Trimble, clerk.

408 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the agent and attorney of Alexander Duncan, who is the holder and legal possessor of four hundred & sixty-eight detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured 409 by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as funded-interest (series F) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto the said Alexander Duncan the sum of eighteen thousand seven hundred and twenty dollars currency, together with interest on each coupon from the time it became due, to wit, from November 1st, 1874.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me this 18th day of September, A. D. 1876.

[SEAL.] (Signed) WM W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, 468 coupons, detached, past due, currency, $18,720.
Interest (to be added) from Nov. 1st, 1874.

I further certify that I have carefully inspected and separately
410 examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 25th day of Sept., 1876.

(Signed) JAMES GILLETTE,
Special Master.

F. $40.00. Coupons November, 1874. Arrearage-interest bonds. 468 coupons, $40.00 each, amounting to $18,720.00, with interest from November 1st, 1874.

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(Endorsed:) Funded-interest, series, F. Proof of claim. Detached coupons of Alexander Duncan, of London, received and filed this 25th day of Sept., A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of Apr., 1877. (Signed) N. W. Trimble, clerk.

415 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, Rhode Island, being duly sworn and examined, deposes and says that he is agent and attorney

for Alexander Duncan, of England, who is the holder and legal possessor of sixteen detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of
416 said railroad, which several bonds to which said detached coupons pertain are known as funded-interest bonds (series F 1) *bonds* of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of three hundred and twenty dollars, currency, together with interest on each coupon from the time it became due, to wit, from November 1st, 1873; and deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact.
For ALEX'R DUNCAN.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

(Signed) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 16 coupons detached, past due, currency, $320.
Interest (to be added) from Nov. 1, 1873.

417 I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of September, A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

F. $20.00. Coupons November, 1873. Arrearage interest bonds; 16 coupons, $20.00 each, amounting to $320.00, with interest from November 1st, 1873.

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(Endorsed:) Funded interest, series F. 1. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of Apr., 1877. (Signed) N. W. Trimble, clerk.

419 **In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.**

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of three hundred and fifty-nine detached coupons of the several bonds of the Mobile and Ohio Railroad Company, 420 secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as funded interest (series F. 1) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of seven thousand and one hundred and eighty dollars currency, together with interest on each coupon from the time it became due, to wit, from May 1st, 1874; and deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

(Signed) W'M M. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal 359 coupons, detached, past due, currency, $7,180.
Interest (to be added) from May 1st, 1874.

421 I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupon here following, and certify the same to be in * * * possession.

Witness my hand and seal this 8th day of September, A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

F. $20.00. Coupons May, 1874. Arearage interest bonds. 359 coupons, $20.00 each, amounting to $7,180.00, with interest from May, 1874.

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(Endorsed:) Funded interest F. 1. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of Apr., 1877. (Signed) N. W. Trimble, clerk.

425 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner, appointed by the said honorable circuit court, in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of three hundred & fifty-eight detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured
426 by a first mortage of said railroad, which several bonds, to which said detached coupons pertain, are known as funded-interest (series F 1) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan as principal the sum of seven thousand one hundred and sixty dollars, currency, together with interest on each coupon from the time it became due, to wit, from November 1st, 1874; and deponent further says that he is authorized by his principal to make this deposition.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex'r Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

(Signed) WM. W. DOUGLAS,
[SEAL.] *U. S. Commissioner for the Dist. of Rhode Island.*

427 *Amount proved.*

Principal, 358 coupons detached, past due, currency, $7,160.
Interest (to be added) from Nov. 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the list of number' of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of September, A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

F.—$\$20\frac{00}{100}$ coupons, November, 1874. Arrearage interest bonds, 358 coupons, $\$20\frac{00}{100}$ each, amounting to $7,160.00, with interest from November 1st, 1874.

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(Endorsed:) Funded interest, series F 1. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Signed) James Gillette, special master commissioner. Filed 5th day of Apr., 1877. (Signed) N. W. Trimble, clerk.

431 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he 432 is the agent and attorney for Alexander Duncan, who is the holder and legal possessor of seven hundred and sixty-four detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as sterling interest (Series B) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto deponent the sum of four thousand five hundred and eighty-four pounds sterling, together with interest on each coupon from the time it became due, viz: May 1st, 1874.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

433 Subscribed and sworn to before me, this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (Sg'd) WM. W. DOUGLAS,
U. S. Commissioner for the Dis't of Rhode Island.

Amount proved.

Principal, 764 coupons detached, past due, sterling, £4,584.
Interest (to be added) from May 1, 1874.
Principal coupons detached past due, currency.
Interest (to be added).

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile 434 and Ohio Railroad Company, in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D., 1876.

(Sg'd) JAMES GILLETTE,
Special Master.

B. £6. Sterling coupons, May, 1874. Arrearage interest bonds. 764 bonds, £6 stg. each, amounting to £4,584, with interest from May 1, 1874.

435 Letter B. £6. May, 1874.

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441 (Endorsed:) Sterling interest, series B. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (Sgd.) James Gillette, special master commissioner. Filed 5th day of April, 1877. (Sgd.) N. W. Trimble, clerk.

442 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode 443 Island, being duly sworn and examined, deposes and says that he is the agent and attorney for Alexander Duncan, who is the holder and legal possessor of seven hundred and sixty-four (764) detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as sterling interest (series B) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto deponent the sum of four thousand five hundred and eighty-four pounds sterling, together with interest on each coupon from the time it became due, to wit, from November 1, 1874.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

444 Subscribed and sworn to before me, this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, 764 coupons detached, past due, sterling £4,584.
Interest (to be added) from Nov. 1, 1874.
Principal, coupons detached, past due, currency.
Interest (to be added).

I further certify that I have carefully inspected and separately 445 examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

B. £6 sterling coupons November, 1874. Arrearage interest bonds. 764 coupons, £6 st'g each, amounting to £4,584, with interest from November, 1874.

446 Letter B.—£6, of Nov., 1874.

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451 (Endorsed:) Sterling interest, series B. Proof of claim. Detached coupons of Alexander Duncan of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd.) N. W. Trimble, clerk.

452 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

William Butler Duncan and A. Foster Elliot, trustees, complainants,
vs.
The Mobile and Ohio Railroad Company et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says, that he is the
453 agent and attorney for Alexander Duncan, who is the holder and legal possessor of seventy-six detached coupons of the several bonds of the Mobile and Ohio *and Ohio* Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as sterling interest (series C) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto deponent the sum of two hundred and twenty-eight pounds sterling, together with interest on each coupon from the time it became due, to wit, from May 1st, 1874.

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

454 Subscribed and sworn to before me, this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (Signed) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, 76 coupons detached, past due, sterling, £228.
Interest (to be added) from May 1, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company, in the hands and possession of said deponent, and
find the numbers of said detached coupons to correspond with the
455 "list of numbers" of said coupons here following, and certify the
same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

C.—£3 sterling coupons, May, 1874, arrearage interest bonds. 76 coupons, £3 st'g each, amounting to £228 0 0 st'g, with interest from May 1st, 1874.

456 Letter C.—£3, of May, 1874.

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457 (Endorsed:) Sterling interest. Series C. Proof of claim. Detached coupons of Alexander Duncan of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

458 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER
Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
et als., defendants.
In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island,
459 being duly sworn and examined, deposes and says, that he is the
agent and attorney for Alexander Duncan, who is the holder and

legal possessor of seventy-six detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds, to which said detached coupons pertain, are known as sterling interest (series C) bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto deponent the sum of two hundred and twenty-eight pounds sterling, together with interest on each coupon from the time it became due, to wit, from November 1st, 1874.

(S'g'd) GEO. A. LEETE,

Att'y in fact for Alex. Duncan.

460 Subscribed and sworn to before me, this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) W'M W. DOUGLAS,

U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, 76 coupons detached past due, sterling £228.
Interest (to be added) from Nov. 1, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the
461 "list of numbers" of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE.

Special Master.

C.—£3 sterling coupons, November, 1874. Arrearage interest bonds. 76 coupons, £3 st'g each, amounting to £228 0 0, st'g, with interest from November 1st, 1874.

462 Letter C.—£3, of Nov., 1874.

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463 (Endorsed:) Sterling interest. Series C. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April. 1877. (S'g'd) N. W. Trimble, clerk.

464 In the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

William Butler Duncan and A. Foster Elliot, trustees, complainants,
vs.
The Mobile and Ohio Railroad Company et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, 465 being duly sworn and examined deposes and says, that he is the agent and attorney for Alexander Duncan, of England, who is the holder and legal possessor of one (1) detached coupon of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as Tennessee substitution bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan the sum of thirty-five dollars (gold), together with interest on each coupon from the time it became due, to wit, from January 1, 1873.

(S'g'd) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

466 Subscribed and sworn to before me this fourth day of September, A. D. 1876.

[SEAL OF U. S. COMM'R.] (S'g'd) WM. W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, one coupon detached, past due, gold, $35, gold.
Interest (to be added) from Jan'y 1, 1873.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the 467 "list of numbers" of said coupons here following, and certify the same to be in his possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

$\$35\frac{00}{100}$ gold coin coupons January, 1873. One coupon $\$35\frac{00}{100}$ gold each, amounting to $35.00 with interest from January 1st, 1873. $\$35\frac{00}{100}$ gold coin, coupon Jan'y, 1873.

1508.

468 (Endorsed:) Tennessee substitution. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

469 **In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.**

William Butler Duncan and A. Foster Elliot, trustees, complainants,
vs.
The Mobile and Ohio Railroad Company et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode
470 Island, being duly sworn and examined, deposes and says that he
is agent and attorney for Alexander Duncan, of the of
, England, who is the holder and legal possessor of one detached coupon of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as Tennessee substitution bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of thirty-five dollars, gold, together with interest on said coupon from the time it became due, to wit, from July 1st, 1873, and deponent further says that he is authorized by his principal to make this deposition.

(S'g'd) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

471 Subscribed and sworn to before me this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal one coupon detached, past due, gold, $35.
Interest (to be added) from July 1st, 1873.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio
Railroad Company in the hands and possession of said deponent, and
find the numbers of said detached coupons to correspond with
472 the "list of numbers" of said coupons here following, and certify
the same to be in his possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

Tennessee substitution bonds, $\$35\frac{00}{100}$ gold coin coupons, July, 1873. One coupon $\$35\frac{00}{100}$ gold, each amounting to $35.00, with interest from July 1st, 1873. $35 coupons, July 1st, 1873.

1508.

473 (Endorsed:) Tennessee substitution. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of ,

received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

474 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is
475 agent and attorney for Alexander Duncan, of the of
England, who is the holder and legal possessor of five detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as Tennessee substitution-bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of one hundred and seventy-five dollars gold, together with interest on each coupon from the time it became due, to wit, from January, 1874; and deponent further says that he is authorized by his principal to make this deposition.

(S'g'd) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

476 Subscribed and sworn to before me this fourth day of September, A. D. 1876.

[SEAL OF U. S. COM'R.] (S'g'd) W'M W. DOUGLAS,
U. S. Commissioner for the Dist. of Rhode Island.

Amount proved.

Principal, five coupons, detached, past due, gold, $175.
Interest (to be added) from January 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company, in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the
477 "list of numbers" of said coupons here following, and certify the same to be in his possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

$\$35\frac{00}{100}$ gold-coin coupons, January, 1874. 5 coupons, $\$35\frac{00}{100}$ gold each, amounting to $175.00, with interest from January, 1874. $35 gold-coin coupons, Jan'y, 1874.

514 1221 1223 1508 1586

478 (Endorsed;) Tennessee substitution. Proof of claim by agent or attorney. Detached coupons by Alexander Duncan, of England. Received and filed this 8th day of September, A. D 1876. (S'g'd) James Gillette, United States commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

479 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER
Elliott, trustees, complainants,
vs. } In equity.
THE MOBILE AND OHIO RAILROAD COMPANY
et al., defendants.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island, being duly sworn and examined, deposes and says that he is the agent and attorney of Alexander Duncan, who is the holder and legal possessor of sixteen hundred and sixty-seven detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as Tennessee substitution bonds
of said company, and said detached coupons are numbered ac-
480 cording to the list of numbers hereto annexed, and that there is
due the said Alexander Duncan the sum of fifty-eight thousand, three hundred and forty-five dollars, gold, together with interest on each coupon from the time it became due, to wit: July 1st, 1874.

GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this 18th day of September, A. D. 1876.

W'M W. DOUGLAS,
U. S. Commissioner for the Dis't of Rhode Island.

Amount proved.

Principal, 1,667 coupons, detached, past due, gold, 58,345.
Interest (to be added) from July 1st, 1874.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with

481 the list of numbers of said coupons here following, and certify the same to be in possession.

Witness my hand and seal this 25th day of Sept., A. D. 1876.

JAMES GILLETTE,
Special Master.

'$35.00 gold-coin coupons, July, 1874; 1,667 coupons, $35.00 gold each, amounting to $58,345.00, with interest from July 1st, 1874.

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tached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as Tennessee substitution bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of seventeen thousand and ten dollars, gold, together with interest on each coupon from the time it became due, to wit, January, 1875; and deponent further says that he is authorized to make this deposition. 496

(Signed) GEO. A. LEETE,
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

(S'g'd) WM. W. DOUGLAS,
[SEAL OF U. S. COM'R.] *U. S. Commissioner for the Dist. of Rhode Island.*

Amount proved.

Principal, 486 coupons detached, past due, gold, $17,010.
Interest (to be added) from January, 1875.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the list of numbers of said coupons here following, and certify the same to be in possession. 497

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) JAMES GILLETTE,
Special Master.

$35.00 gold-coin coupons, January, 1875. 486 coupons, $35.00 gold, each, amounting to $17,010.00, with interest from January 1st, 1875.

498 $35 gold-coin coupons, Jan'y, 1875.

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4	87	128	216	265	283	300
8	89	129	217	266	284	302
9	90	146	218	267	285	303
13	91	154	219	268	286	304
15	93	155	222	269	287	305
16	94	156	223	270	288	309
20	95	157	224	271	289	311
55	96	167	237	272	290	319
56	98	173	248	273	291	334
7	105	180	249	274	292	335
8	110	191	250	275	293	345
[illegible]	115	193	255	276	294	350
[illegible]	117	194	259	277	295	351
[illegible]	118	195	260	278	296	352
[illegible]	119	196	261	279	297	353
	121	213	262	280		

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493 (Endorsed:) Proof of claim. Detached coupons of Alexander Duncan, of London, England. Received and filed this 25th day of September, A. D. 1876. James Gillette, special master commissioner. Filed 5th day of Apr., 1877. N. W. Trimble, clerk.

494 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

George A. Leete, of the city of Providence, State of Rhode Island,
495 being duly sworn and examined, deposes and says, that he is agent and attorney for Alexander Duncan, of the of England, who is the holder and legal possessor of four hundred and eighty-six de-

tached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as Tennessee substitution bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto said Alexander Duncan, as principal, the sum of seventeen thousand and ten dollars, gold, together with interest on each coupon from the time it became due, to wit, January, 1875; and deponent further says that he is authorized to make this deposition. 496

(Signed) **GEO. A. LEETE,**
Att'y in fact for Alex. Duncan.

Subscribed and sworn to before me this fourth day of September, A. D. 1876.

(S'g'd) **WM. W. DOUGLAS,**
[SEAL OF U. S. COM'R.] *U. S. Commissioner for the Dist. of Rhode Island.*

Amount proved.

Principal, 486 coupons detached, past due, gold, $17,010.
Interest (to be added) from January, 1875.

I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the list of numbers of said coupons here following, and certify the same to be in possession. 497

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(Signed) **JAMES GILLETTE,**
Special Master.

$35.00 gold-coin coupons, January, 1875. 486 coup d, each, amounting to $17,010.00, with interest

498 $35 gold-coin coupons

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502 (Endorsed:) Tennessee substitution. Proof of claim by agent or attorney. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (S'gd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'gd) N. W. Trimble, clerk.

503 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

William Butler Duncan and A. Foster Elliot, trustees, complainants,
vs.
The Mobile and Ohio Railroad Company et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

George A. Leete, of the city of Providence, State of Rhode
504 Island, being duly sworn and examined, deposes and says, that he is the agent and attorney of Alexander Duncan, of who is the holder and legal possessor of fifty-three detached coupons of the several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds to which said detached coupons pertain are known as Gainesville Branch bonds of said company, and said detached coupons are numbered according to the list of numbers hereto annexed, and that there is due unto deponent the sum of two thousand one hundred and twenty dollars currency, together with interest on each coupon from the time it became due, to wit, from May 1, 1874.

(S'g'd) GEO. A

Att'y

505 Subscribed and sworn
ber, A. D. 1876.
[SEAL OF U. S. COM'R

Gainesville branch. $40.00 coupons May, 1874. 53 coupons, $40.00 each, amounting to $2,120.00, with interest from May, 1874. Secured by first mortgage on Gainesville branch.

507 Gainesville branch of May, 1874, $40.

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508 (Endorsed:) Gainesville branch. Proof of claim. Detached coupons of Alexander Duncan, of England. Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

509 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
In equity.

Proof of claim.

commissioner appointed by the said honor-
tled cause.
Providence, State of Rhode
deposes and says, that
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Amount proved.

Principal, fifty-three coupons detached, past due, currency, $2,120. Interest (to be added) from Nov. 1, 1874.

512 I further certify that I have carefully inspected and separately examined the several detached coupons of the bonds of the Mobile and Ohio Railroad Company in the hands and possession of said deponent, and find the numbers of said detached coupons to correspond with the "list of numbers" of said coupons here following, and certify the same to be in his possession.

Witness my hand and seal this 8th day of Sept., A. D. 1876.

(S'g'd) JAMES GILLETTE,
Special Master.

Gainesville branch. $40.00 coupons, November, 1874. 53 coupons $40.00 each, amounting to $2,120.00, with interest from November, 1874.

513 Gainesville branch, Nov., 1874, $40.

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514 (Endorsed:) Gainesville branch. Proof of claim. Detached coupons of Alexander Duncan, of . Received and filed this 8th day of September, A. D. 1876. (S'g'd) James Gillette, special master commissioner. Filed 5th day of April, 1877. (S'g'd) N. W. Trimble, clerk.

515 In the circuit court of th
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WILLIAM BUTLE
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interest the sum of one hundred & sixty-two pounds sterling, from November 1st, 1874, to November 1st, 1876, which interest is represented by twenty-four coupons attached to said bonds and past due; together with interest on each coupon from the time it became due.

(Sign here) LOUIS J. BELLONI.

Subscribed and sworn to before me this 28th day of October, A. D. 1876.

[SEAL.] HENRY P. BUTLER,

U. S. Commissioner for the Southern Dist. of New York.

516

517 *List of numbers of bonds.*

Nos.	Description of bonds and series.	Amount.	No. of coupons due.	Amount coupons due.
5768	Sterling	£225	4	£27
4859	do	" 225	4	" 27
5765	do	" 225	4	" 27
2620	do	" 225	4	" 27
5762	do	" 225	4	" 27
2715	do	" 225	4	" 27
		£1,350	....	£162

518 (Indorsed:) First mortgage sterling bonds. Claim number 471. Circuit court of the United States, fifth judicial circuit and southern district of Alabama. Wm. Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of Louis J. Belloni, jr., of New York City. Received and filed this 1st day of November, A. D. 1876. James Gillette, special master commissioner. Filed 5 day of April, 1877. N. W. Trimble, clerk.

519, 520 In the circuit court of the United States for the fifth judicial uit and southern district of Alabama.

A. FOSTER }

} In equity.

due, together with interest on each coupon from the time it became due; and deponent further says that he is authorized by to make this deposition. Many of these bonds and coupons have been proved before the special master by the parties whose names are appended to the list herewith, but the legal possession thereof has been transferred to the committee, & I hereby notify you of such transfer and of such legal possession being in said committee.

(Sign here) W. H. HAYS.

Subscribed and sworn to before me this 17 day of January, A. D. 1877.

[SEAL.] JOSEPH GUTMAN,

U. S. Commissioner, Southern District of New York.

521, 522 (Indorsed:) Sterling int. B bonds. Number . Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of W'm H. Hays, chairman of committee of reorganization. Rec'd Jan'y 23d, 1877. James Gillette, special master.

523 *Arrearage interest sterling.*

B	271	£200	C. M. Lampson & Co.; C. H. Clark, ag't.		285	£200	C. M. Lampson & Co.; C. H. Clark, ag't.
	272	200	" "		341	200	" "
	273	200	" "		342	200	" "
	274	200	" "		343	200	" "
	275	200	" "		344	200	" "
	276	200	" "		345	200	" "
	277	200	" "		346	200	" "
	278	200	" "		347	200	" "
	279	200	" "		348	200	" "
	280	200	" "		349	200	" "
	281	200	" "		350	200	" "
	282	200	" "		351	200	" "
	283	200	" "		352	200	" "
	284	200	" "		353	200	" "

524

	354	£200	C. H. Lampson & Co.; C. H. Clark, ag't.		368		
	355	200	" "				
	356	200	" "				
	357	200	" "				
	358	200	" "				
	359	200	"				
	360	200					
	361	200					
	362	200					
	363						
	364						

526

B	1	£200	Robert T. Crawshay.	16	£200	Robert T. Crawshay.
	2	200	" "	17	200	" "
	3	200	" "	18	200	" "
	4	200	" "	19	200	" "
	5	200	" "	20	200	" "
	6	200	" "	21	200	" "
	7	200	" "	22	200	" "
	8	200	" "	23	200	" "
	9	200	" "	24	200	" "
	10	200	" "	25	200	" "
	11	200	" "	26	200	" "
	12	200	" "	27	200	" "
	13	200	" "	28	200	" "
	14	200	" "	29	200	" "
	15	200	" "	30	200	" "

527

B	31	£200	Robert T. Crawshay.	46	£200	Robert T. Crawshay.
	32	200	" "	47	200	" "
	33	200	" "	48	200	" "
	34	200	" "	49	200	" "
	35	200	" "	50	200	" "
	36	200	" "	51	200	" "
	37	200	" "	52	200	" "
	38	200	" "	53	200	" "
	39	200	" "	54	200	" "
	40	200	" "	55	200	" "
	41	200	" "	56	200	" "
	42	200	" "	57	200	" "
	43	200	" "	58	200	" "
	44	200	" "	59	200	" "
	45	200	" "	60	200	" "

528

B	61	£200	Robert T. Crawshay.	76	£200	Robert T. Crawshay.
	62	200	" "	77	200	" "
	63	200	" "	78	200	" "
	64	200	" "	79	200	" "
	65	200	" "	80	200	" "
			" "	81	200	" "
				82	200	" "
				83	200	" "
				84	200	" "
				85	200	" "
					200	" "
					200	" "
						" "
						" "
						" "

530

B	121	£200	Robert T. Crawshay.	136	£200	Robert T. Crawshay.
	122	200	" "	137	200	" "
	123	200	" "	138	200	" "
	124	200	" "	139	200	" "
	125	200	" "	140	200	" "
	126	200	" "	141	200	" "
	127	200	" "	142	200	" "
	128	200	" "	143	200	" "
	129	200	" "	144	200	" "
	130	200	" "	145	200	" "
	131	200	" "	146	200	" "
	132	200	" "	147	200	" "
	133	200	" "	148	200	" "
	134	200	" "	149	200	" "
	135	200	" "	150	200	" "

531

B	151	£200	Robert T. Crawshay.	166	200	Robert T. Crawshay.
	152	200	" "	167	200	" "
	153	200	" "	168	200	" "
	154	200	" "	169	200	" "
	155	200	" "	170	200	" "
	156	200	" "	171	200	" "
	157	200	" "	172	200	" "
	158	200	" "	173	200	" "
	159	200	" "	174	200	" "
	160	200	" "	175	200	" "
	161	200	" "	176	200	" "
	162	200	" "	177	200	" "
	163	200	" "	178	200	" "
	164	200	" "	179	200	" "
	165	200	" "	180	200	" "

532

B	181	£200	Robert T. Crawshay.	196	200	Robert T. Crawshay.
	182	200	" "	197	200	" "
	183	200	" "	198	200	" "
	184	200	" "	199	200	" "
	185	200	" "	200	200	" "
	186	200	" "	201		"
	187	200	" "			
	188	200	" "			
	189	200	" "			
	190	200	" "			
	191	200	" "			
	192	200	" "			
	193	200	"			
	194	200				
	195	200				

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B	241	£200	**Robert T. Crawshay.**	256	200	**Robert T. Crawshay.**
	242	200	" "	257	200	" "
	243	200	" "	258	200	" "
	244	200	" "	259	200	" "
	245	200	" "	260	200	" "
	246	200	" "	261	200	" "
	247	200	" "	262	200	" "
	248	200	" "	263	200	" "
	249	200	" "	264	200	" "
	250	200	" "	265	200	" "
	251	200	" "	266	200	" "
	252	200	" "	267	200	" "
	253	200	" "	268	200	" "
	254	200	" "	269	200	" "
	255	200	" "	270	200	" "

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B	613	£200	**Joseph Maynard.**	628	200	**Joseph Maynard.**
	614	200	" "	629	200	" "
	615	200	" "	630	200	" "
	616	200	" "	631	200	" "
	617	200	" "	632	200	" "
	618	200	" "	745	£200	**John E. Bartlett.**
	619	200	" "	746	200	" "
	620	200	" "	747	200	" "
	621	200	" "	286	£200	**Sir Curtis M. Lampson.**
	622	200	" "	287	200	" "
	623	200	" "	288	200	" "
	624	200	" "	289	200	" "
	625	200	" "	290	200	" "
	626	200	" "	291	200	" "
	627	200	" "	292	200	" "

536

B	293	£200	**Sir Curtis M. Lampson.**	401	200	**Sir Curtis M. Lampson.**
	294	200	" "	402	200	" "
	295	200	" "	403	200	" "
	296	200	" "	404	200	" "
	297	200	" "	405	200	" "
	391	[illegible]	" "	406	200	" "
			"	407	200	" "
				408	200	" "
				409	200	" "
				410	200	" "
				[illegible]	200	" "
					200	" "
					200	**C. M. Lampson & Co.**
						" "
						" "

538

B	416	£200	Sir Curtis M. Lampson.	431	200	Sir Curtis M. Lampson.
	417	200	" "	432	200	" "
	418	200	" "	433	200	" "
	419	200	" "	434	200	" "
	420	200	" "	435	200	" "
	421	200	" "	436	200	" "
	422	200	" "	437	200	" "
	423	200	" "	438	200	" "
	424	200	" "	439	200	" "
	425	200	" "	440	200	" "
	426	200	" "	441	200	" "
	427	200	" "	442	200	" "
	428	200	" "	443	200	" "
	429	200	" "	444	200	" "
	430	200	" "	445	200	" "

539

B	446	£200	Sir Curtis M. Lampson.	461	200	Sir Curtis M. Lampson.
	447	200	" "	462	200	" "
	448	200	" "	463	200	" "
	449	200	" "	464	200	" "
	450	200	" "	465	200	" "
	451	200	" "	466	200	" "
	452	200	" "	467	200	" "
	453	200	" "	468	200	" "
	454	200	" "	469	200	" "
	455	200	" "	470	200	" "
	456	200	" "	471	200	" "
	457	200	" "	472	200	" "
	458	200	" "	473	200	" "
	459	200	" "	474	200	" "
	460	200	" "	475	200	" "

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B	476	£200	Sir Curtis M. Lampson.	491	200	Sir Curtis M. Lampson.
	477	200	" "	492	200	" "
	478	200	" "	493	200	" "
	479	200	" "	494	200	" "
	480	200	" "	495	200	" "
	481	200	" "	496	200	" "
	482	200	" "	497	200	" "
	483	200	" "	498		"
	484	200	" "			
	485	200	" "			
	486	200	" "			
	487	200	" "			
	488	200	" "			
	489	200	" "			
	490	200	" "			

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B	659	£200	Sir Curtis M. Lampson.	B	675	200	Sir Curtis M. Lampson.
	660	200	" "		676	200	" "
	661	200	" "		677	200	" "
	662	200	" "		678	200	" "
	663	200	" "		679	200	" "
	664	200	" "		680	200	" "
	665	200	" "		681	200	" "
	666	200	" "		682	200	" "
	667	200	" "		683	200	" "
	668	200	" "		684	200	" "
	669	200	" "		685	200	" "
	670	200	" "		686	200	" "
	671	200	" "		687	200	" "
	672	200	" "		688	200	" "
	673	200	" "		751	200	" "
	674	200	" "				

543

B	298	£200	Curtis H. Clark, agent for Sir Curtis M. Lampson, Bar't.	B	327	200	Curtis H. Clark, agent for Sir Curtis M. Lampson, Bar't.
	299	200	" "		328	200	" "
	300	200	" "		329	200	" "
	301	200	" "		330	200	" "
	302	200	" "		231	200	" "
	303	200	" "		332	200	" "
	304	200	" "		333	200	" "
	305	200	" "		334	200	" "
	306	200	" "		335	200	" "
	307	200	" "		336	200	" "
	321	200	" "		337	200	" "
	322	200	" "		338	200	" "
	323	200	" "		339	200	" "
	324	200	" "		340	200	" "
	325	200	" "				
	326	200	" "			£124, 800	

544 (Endorsed:) Interest arearage B. £124,800 0 0. United States circuit court, southern district of Alabama. Filed 5 day of April, 1877. N. W. Trimble, clerk.

545 the United States for the fifth judicial cir-

istrict of Alabama.

bers hereto annexed; and that there is due unto deponent as principal, the sum of six hundred & forty-seven thousand four hundred dollars, and for interest from November 1, 1874, which interest is represented by coupons attached to said bonds and past due; together with interest on each coupon from the time it became due. Many of these bonds & coupons have been proved before the special master by the parties whose names are appended to the list herewith, but the legal possession thereof has been transferred to the committee, & I hereby notify you of such transfer and of such legal possession being in said committee.

(Sign here) W'M H. HAYS.

Subscribed and sworn to before me this 17th day of January, A. D. 1877.

[SEAL.] · JOSEPH GUTMAN, JR.,
United States Commissioner Southern District of New York.

546

547

548 (Endorsed:) Interest arrearage bonds, number . Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim of W'm H. Hays, chairman committee of reorganization M. & O. R. R. Rec'd Jan'y 23, 1877. James Gillette, special master.

549 *Arrearage interest.*

O	148	$1,000	Cha's H. Wardwell.		137	1,000	T. B. Baldwin, trustee for estate of Robert J. Dillon, dec'd.
	151	1,000	" "				
F 1	275	500	Victor Jacob, ex'r.				
	248	500	W. T. Williams.		138	1,000	" "
	249	500	" "	Q	19	200	A. Simpson.
O	559	1,000	Cha's P. Chouteau.		277	200	"
	560	1,000	" "		278	200	"
	561	1,000	" "		279	200	"
F	123	1,000	T. B. Baldwin, trustee for estate of Robert J. Dillon, dec'd.		280	200	"
				O	204	1,000	A. M. Wardwell.
					205	1,000	" "
	124	1,000	" "		418	1,000	Jacob Hunt.
	125	1,000	" "	F	163	1,000	Henrietta E. Cropsey, Hester Marsh, ag't.
	126	1,000	" "				
	127	1,000	" "		465	1,000	Lydia H. Soule.
	128	1,000	" "		466	1,000	" "
	129	1,000	" "				
	130	1,000	" "			$23,500	

550

		$23,500			137	200	Alfred W. Gannett.
F	67	1,000	Alfred W. Gannett.		216	200	" "
	68	1,000	" "	F	176	1,000	Hester Marsh.
	69	1,000	" "		177	1,000	" "
	85	1,000	" "	F^1	18	500	" "
	86	1,000	" "	O	550	1,000	Margaret Fisher.
	87	1,000	" "	F^1	20	500	" "
	219	1,000	" "		195	500	" "
	220	1,000	" "	F	236	1,000	Henrietta Raymer.
O	332	1,000	" "	O	3	1,000	H. G. Utley.
F^1	272	500	" "		5	1,000	"
F^2	14	500	" "		547	1,000	do & Sam'l Wardwell.
P	112	500	" "				
Q	22	200	" "		637	1,000	Sam'l F. Phelps, j'r.
	52	200	" "				
	99	200	" "			$44,500	

551

		$44, 500	
O	4	1, 000	Sam'l Wardwell.
	6	1, 000	" "
	305	1, 000	D. J. Sprague.
	447	1, 000	" "
	471	1, 000	" "
	56	1, 000	
	67	1, 000	A. Somarindyck, by S. F. Phelps.
	68	1, 000	" "
	71	1, 000	" "
	72	1, 000	" "
	91	1, 000	" "
	145	1, 000	" "
	156	1, 000	" "
	201	1, 000	" "
	320	1, 000	" "
	625	1, 000	Sam'l F. Phelps, in trust.
	628	1, 000	" "
	629	1, 000	" "
F	94	1, 000	Sam'l F. Phelps, in trust for Mrs. M. L. Lyman.
	95	1, 000	" "
	96	1, 000	" "
	97	1, 000	" "
	98	1, 000	" "
O	69	1, 000	Sam'l F. Phelps.
	456	1, 000	" "
	634	1, 000	" "
Q	23	200	G. W. G. Kinney.
T	436	1, 000	W. W. Wardwell.
		$71, 700	

552

		$71, 700	
O	306	1, 000	Martha E. Dickerman.
	307	1, 000	" "
	625	1, 000	" "
	115	1, 000	Benj. Cartwright.
	117	1, 000	" "
	139	1, 000	" "
	229	1, 000	" "
	572	1, 000	" "
	569	1, 000	Geo. Terrill.
P	129	500	"
Q	403	200	"
	404	200	"
	405	200	"
	406	200	"
F	203	1, 000	"
F¹	33	500	Geo. Terrill.
	283	500	"
O	15	1, 000	Delia T. S. Parnell.
	70	1, 000	" "
	157	1, 000	" "
	340	1, 000	A. S. Gage.
Q	429	200	Drexel, Morgan & Co.
F¹	139	500	S. A. Isbell.
O	203	1, 000	Christopher C. Reid.
F	435	1, 000	C. Petrie.
F¹	46	500	"
O	616	1, 000	Isabella C. Kissam.
	617	1, 000	" "
		$93, 200	

553

		$93, 200	
O	186	1, 000	Tho's G. Nock.
	213	1, 000	" "
	500	1, 000	" "
	501	1, 000	" "
	512	1, 000	" "
	559	1, 000	" "
F¹	42	500	" "
	341	500	" "
F	390	1, 000	" "
	392	1, 000	" "
	407	1, 000	" "
	408	1, 000	" "
	409	1, 000	" "
	410	1, 000	" "
	198	1, 000	" "
	413	1, 000	H. D. Spencer.
	414	1, 000	" "
	415	1, 000	" "
P	2	500	Estate of N. F. Vedder, A. G. Brower, exec't'r.
	32	500	" "
	36	500	" "
	38	500	" "
	45	500	" "
	47	500	" "
	49	500	" "
	50	500	" "
	51	500	" "
	141	500	" "
		$115, 200	

554

		$115, 200	
O	330	1, 000	City Nat'l Bank, Cairo, Ill's.
	362	1, 000	" "
	363	1, 000	" "
	364	1, 000	" "
	365	1, 000	" "
	640	1, 000	Gallatin National Bank.
	641	1, 000	" "
	643	1, 000	" "
	644	1, 000	" "
	645	1, 000	" "
	646	1, 000	" "
	647	1, 000	" "
	648	1, 000	" "
	649	1, 000	" "
	650	1, 000	" "
	642	1, 000	Gallatin National Bank.
	651	1, 000	" "
	652	1, 000	" "
	653	1, 000	" "
	654	1, 000	" "
	655	1, 000	" "
	656	1, 000	" "
	657	1, 000	" "
	658	1, 000	" "
	659	1, 000	" "
	660	1, 000	" "
	661	1, 000	" "
	662	1, 000	" "
	663	1, 000	" "
		$144, 200	

555

		$144, 200			679	1, 000	Gallatin National Bank
O	664	1, 000	Gallatin Nat'l Bank.		443	1, 000	Caroline T. Smith.
	665	1, 000	" "		468	1, 000	" "
	666	1, 000	" "	F^1	266	500	" "
	667	1, 000	" "		267	500	" "
	668	1, 000	" "		297	500	" "
	669	1, 000	" "	Q	171	200	James B. Merritt.
	670	1, 000	" "	F^1	32	500	W'm E. Howe.
	671	1, 000	" "	O	308	1, 000	Lydia M. Richardson.
	672	1, 000	" "		377	1, 000	" "
	673	1, 000	" "		378	1, 000	" "
	674	1, 000	" "		379	1, 000	" "
	675	1, 000	" "		455	1, 000	" "
	676	1, 000	" "				
	677	1, 000	" "			$169, 400	
	678	1, 000	" "				

556

		$169, 400			275	1, 000	Elizabeth H. White.
F^1	117	500	Addison Day.		469	1, 000	" "
	118	500	" "		273	1, 000	James Brown.
	119	500	" "		345	1, 000	" "
	184	500	" "		422	1, 000	" "
	185	500	" "		521	1, 000	" "
	186	500	" "		611	1, 000	" "
	187	500	" "		622	1, 000	" "
	190	500	" "		618	1, 000	H. L. White & Ja's Brown,
O	344	1, 000	M'r's Jane Henshaw.				ex'rs of Eliza Coy, dec'd.
	359	1, 000	" "		619	1, 000	" "
	361	1, 000	" "		22	1, 000	W'm H. Haya.
	411	1, 000	" "		522	1, 000	James Littlejohn.
	412	1, 000	" "		523	1, 000	" "
	413	1, 000	" "				
	427	1, 000	" "			$194, 400	
	434	1, 000	" "				

557

		$194, 400		P	77	500	Geo. H. Lynch.
P	117	500	James Littlejohn.	F^1	202	500	" "
F	364	1, 000	" "		204	500	" "
F^1	293	500	" "		200	500	" "
O	88	1, 000	H. G. Utley.		209	500	" "
	90	1, 000	" "		318	500	" "
P	6	500	" "	F	159	1, 000	Ezekiel Van Dressar.
Q	29	200	" "	F^1	90	500	" "
	40	200	" "		120	500	" "
	41	200	" "		121	500	" "
	45	200	" "		196	500	" "
	65	200	" "		199	500	" "
	82	200	" "		299	500	" "
	85	200	" "		327	500	" "
	86	200	" "				
	87	200	" "			$208, 200	

558

		$208, 200			68	200	David Utley.
O	97	1, 000	Ezekiel Van Dressar.		70	200	" "
P	4	500	" "		83	200	" "
Q	24	200	" "		84	200	" "
	25	200	" "		118	200	" "
	26	200	" "		126	200	" "
	46	200	" "		127	200	" "
	47	200	" "		128	200	" "
F^1	81	500	Israel Denis.		129	200	" "
	89	500	" "		135	200	" "
	217	500	" "		136	200	" "
	298	500	" "		164	200	" "
P	34	500	" "		192	200	" "
O	335	1, 000	W'm Nicholson.		275	200	" "
	337	1, 000	" "				
Q	66	200	David Utley.			$218, 200	

559

		$218,200			197	200	David Utley.
Q	274	200	David Utley.		194	200	" "
	273	200	" "		308	200	" "
	265	200	" "		359	200	" "
	264	200	" "		360	200	" "
	263	200	" "		361	200	" "
	256	200	" "		400	200	" "
	255	200	" "		413	200	" "
	252	200	" "		418	200	" "
	251	200	" "		419	200	" "
	250	200	" "		420	200	" "
	249	200	" "		424	200	" "
	222	200	" "		440	200	" "
	208	200	" "		441	200	" "
	200	200	" "				
	198	200	" "			$224,000	

560

		$224,000			165	1,000	David Utley.
Q	442	200	David Utley.		169	1,000	" "
	443	200	" "		168	1,000	" "
	444	200	" "		170	1,000	" "
	446	200	" "		171	1,000	" "
	451	200	" "		172	1,000	" "
	455	200	" "		175	1,000	" "
O	65	1,000	" "		176	1,000	" "
	66	1,000	" "		177	1,000	" "
	118	1,000	" "		178	1,000	" "
	119	1,000	" "		180	1,000	" "
	143	1,000	" "		181	1,000	" "
	144	1,000	" "		196	1,000	" "
	160	1,000	" "		198	1,000	" "
	163	1,000	" "				
	164	1,000	" "			$248,200	

561

		$248,200			503	1,000	David Utley.
O.	189	1,000	David Utley.		504	1,000	" "
	326	1,000	" "		505	1,000	" "
	232	1,000	" "		506	1,000	" "
	327	1,000	" "		507	1,000	" "
	341	1,000	" "		508	1,000	" "
	342	1,000	" "		510	1,000	" "
	343	1,000	" "		630	1,000	" "
	360	1,000	" "		631	1,000	" "
	220	1,000	" "		632	1,000	" "
	414	1,000	" "	F¹.	192	500	" "
	419	1,000	" "		193	500	" "
	451	1,000	" "		198	500	" "
	498	1,000	" "		205	500	" "
	499	1,000	" "				
	502	1,000	" "			$275,200	

562

		$275,200			10	500	David Utley.
F.	99	1,000	David Utley.		11	500	" "
	100	1,000	" "		12	500	" "
	162	1,000	" "		14	500	" "
	178	1,000	" "		16	500	" "
	179	1,000	" "		17	500	" "
	405	1,000	" "		25	500	" "
	412	1,000	" "		27	500	" "
	416	1,000	" "		28	500	" "
	417	1,000	" "		30	500	" "
	418	1,000	" "	O.	41	1,000	Plock & Co.
	419	1,000	" "		42	1,000	" "
	420	1,000	" "		43	1,000	" "
	421	1,000	" "		551	1,000	" "
P.	5	500	" "				
	7	500	" "			$298,200	

563

		$298, 200	
F.	60	1, 000	Edward C. Boynton.
	80	1, 000	" "
	81	1, 000	" "
	82	1, 000	" "
	215	1, 000	" "
P.	8	500	Plock & Co.
Q.	27	200	"
	374	200	"
F^{1}.	34	500	Plock & Co.
F.	206	1, 000	"
	348	1, 000	Wm. Butler Duncan in trust for Miss L. H. Leclerc.
	387	1, 000	M. F. Van Vranken.
	406	1, 000	" "
	197	500	" "
	201	500	" "

O.	30	1, 000	Peter Marié.
	37	1, 000	" "
	77	1, 000	" "
	78	1, 000	" "
	79	1, 000	" "
	80	1, 000	" "
	81	1, 000	" "
	82	1, 000	" "
	83	1, 000	" "
	84	1, 000	" "
	85	1, 000	" "
	87	1, 000	" "
	98	1, 000	" "
	99	1, 000	" "
		$323, 600	

564

		$323, 600	
O.	100	1, 000	Peter Marié.
	101	1, 000	" "
	102	1, 000	" "
	103	1, 000	" "
	104	1, 000	" "
	105	1, 000	" "
	106	1, 000	" "
	107	1, 000	" "
	149	1, 000	" "
	190	1, 000	" "
	346	1, 000	" "
F^{1}.	140	500	Geo. Thomas.
	161	500	" "
	162	500	" "
	281	500	" "

P.	91	500	Sidney Shepard.
F^{1}.	8	500	" "
	307	500	" "
Q.	13	200	" "
	15	200	" "
	324	200	" "
O.	7	1, 000	" "
	8	1, 000	" "
	9	1, 000	" "
	10	1, 000	" "
	17	1, 000	" "
	18	1, 000	" "
	19	1, 000	" "
	20	1, 000	" "
		$346, 700	

565

		$346, 700	
O.	38	1, 000	Sidney Shepard.
	135	1, 000	" "
	136	1, 000	" "
	137	1, 000	" "
	138	1, 000	" "
	167	1, 000	" "
	207	1, 000	" "
	208	1, 000	" "
	209	1, 000	" "
	212	1, 000	" "
	225	1, 000	" "
	226	1, 000	" "
	227	1, 000	" "
	228	1, 000	" "
	229	1, 000	" "

	230	1, 000	Sidney Shepard.
	231	1, 000	" "
	233	1, 000	" "
	238	1, 000	" "
	239	1, 000	" "
	243	1, 000	" "
	245	1, 000	" "
	247	1, 000	" "
	248	1, 000	" "
	250	1, 000	" "
	253	1, 000	" "
	254	1, 000	" "
	255	1, 000	" "
	256	1, 000	" "
		$375, 700	

566

		$375, 700	
O.	258	1, 000	Sidney Shepard.
	259	1, 000	" "
	260	1, 000	" "
	261	1, 000	" "
	262	1, 000	" "
	263	1, 000	" "
	264	1, 000	" "
	265	1, 000	" "
	266	1, 000	" "
	267	1, 000	" "
	268	1, 000	" "
	269	1, 000	" "
	270	1, 000	" "
	271	1, 000	" "
	272	1, 000	" "

	276	1, 000	Sidney Shepard.
	298	1, 000	" "
	313	1, 000	" "
	316	1, 000	" "
	323	1, 000	" "
	356	1, 000	" "
	368	1, 000	" "
	369	1, 000	" "
	370	1, 000	" "
	371	1, 000	" "
	372	1, 000	" "
	373	1, 000	" "
	376	1, 000	" "
	398	1, 000	" "
		$404, 700	

567

		$404,700			570	1,000	Sidney Shepard.
O.	400	1,000	Sidney Shepard.		571	1,000	“ “
	401	1,000	“ “		575	1,000	“ “
	403	1,000	“ “		577	1,000	“ “
	405	1,000	“ “		581	1,000	“ “
	407	1,000	“ “		92	1,000	Henry Birkner.
	408	1,000	“ “		93	1,000	“ “
	409	1,000	“ “		95	1,000	“ “
	410	1,000	“ “		96	1,000	“ “
	428	1,000	“ “		152	1,000	“ “
	429	1,000	“ “		153	1,000	“ “
	433	1,000	“ “		214	1,000	“ “
	435	1,000	“ “		241	1,000	“ “
	458	1,000	“ “	Q.	175	200	“ “
	459	1,000	“ “				
	460	1,000	“ “			$432,900	

568

		$432,900			116	500	H. B. Plant, trustee.
Q.	176	200	Henry Birkner.		250	500	“ “
	296	200	“ “		284	500	“ “
	338	200	“ “		285	500	“ “
F^1.	235	500	H. B. Plant, trustee.		321	500	“ “
	344	500	“ “		370	500	“ “
	2	500	“ “	F.	448	1,000	“ “
	47	500	“ “		469	1,000	“ “
	51	500	“ “		18	1,000	“ “
	52	500	“ “		19	1,000	“ “
	53	500	“ “		20	1,000	“ “
	54	500	“ “		26	1,000	“ “
	70	500	“ “		27	1,000	“ “
	97	500	“ “		30	1,000	“ “
	98	500	“ “				
	99	500	“ “			$450,500	

569

		$450,500	H. B. Plant, trustee.				
F	37	1,000			400	1,000	H. B. Plant, trustee.
	43	1,000	“ “		429	1,000	“ “
	45	1,000	“ “		430	1,000	“ “
	46	1,000	“ “		432	1,000	“ “
	49	1,000	“ “		433	1,000	“ “
	50	1,000	“ “		434	1,000	“ “
	55	1,000	“ “		444	1,000	“ “
	56	1,000	“ “		446	1,000	“ “
	88	1,000	“ “		445	1,000	“ “
	160	1,000	“ “		447	200	“ “
	161	1,000	“ “	Q	100	200	“ “
	207	1,000	“ “		329	200	“ “
	233	1,000	“ “		473	200	“ “
	234	1,000	“ “				
	243	1,000	“ “			$477,100	
	244	1,000	“ “				

570

		$477,100					
Q	474	200	H. B. Plant, trustee.		459	200	H. B. Plant, trustee.
	288	200	“ “		460	200	“ “
	331	200	“ “		472	200	“ “
	335	200	“ “		34	200	“ “
	391	200	“ “		108	200	“ “
	392	200	“ “		109	200	“ “
	407	200	“ “		209	200	“ “
	408	200	“ “		210	200	“ “
	409	200	“ “		211	200	“ “
	414	200	“ “		285	200	“ “
	415	200	“ “		286	200	“ “
	416	200	“ “	P	143	500	“ “
	417	200	“ “		142	500	“ “
	456	200	“ “				
	457	200	“ “			$483,500	
	458	200	“ “				

571

		$483, 500					
P	138	500	H. B. Plant, trustee.		69	500	H. B. Plant, trustee.
	132	500	" "		72	500	" "
	131	500	" "		83	500	" "
	125	500	" "		88	500	" "
	119	500	" "		96	500	" "
	109	500	" "		98	500	" "
	108	500	" "		102	500	" "
	9	500	" "	O	300	1, 000	" "
	3	500	" "		108	1, 000	" "
	40	500	" "		58	1, 000	" "
	55	500	" "		57	1, 000	" "
	56	500	" "		162	1, 000	" "
	57	500	" "		639	1, 000	" "
	61	500	" "				
	65	500	" "			$501, 000	
	67	500	" "				

572

		$501, 000					
O	24	1, 000	H. B. Plant, trustee.		367	1, 000	H. B. Plant, trustee.
	26	1, 000	" "		382	1, 000	" "
	121	1, 000	" "		416	1, 000	" "
	123	1, 000	" "		430	1, 000	" "
	124	1, 000	" "		431	1, 000	" "
	210	1, 000	" "		432	1, 000	" "
	211	1, 000	" "		445	1, 000	" "
	218	1, 000	" "		448	1, 000	" "
	242	1, 000	" "		449	1, 000	" "
	302	1, 000	" "		450	1, 000	" "
	314	1, 000	" "		525	1, 000	" "
	319	1, 000	" "		533	1, 000	" "
	324	1, 000	" "		553	1, 000	" "
	339	1, 000	" "				
	354	1, 000	" "			$530, 000	
	366	1, 000	" "				

573

		$530, 000			73	500	W'm H. Hays.
O.	596	1, 000	H. B. Plant, trustee.		78	500	" "
	600	1, 000	" "		125	500	" "
	605	1, 000.	" "		126	500	" "
	638	1, 000	" "		127	500	" "
F^1	63	500	E. M. Roberts.		128	500	" "
	65	500	" "		218	500	" "
	123	500	" "		221	500	" "
	124	500	" "	F	131	1, 000	" "
	342	500	" "		132	1, 000	" "
	358	500	" "		133	1, 000	" "
F	347	1, 000	R. T. Wilson & Co.		134	1, 000	" "
O	387	1, 000	" "		136	1, 000	" "
	234	1, 000	" "		168	1, 000	" "
F^1	71	500	W'm H. Hays.				
	72	500	" "			$551, 000	

574

		$551, 000		F	222	1, 000	F. Randall.
F	170	1, 000	Wm. H. Hays.		223	1, 000	"
	172	1, 000	" "		224	1, 000	"
	208	1, 000	" "	Q	217	200	Sarah A. Lucas by F. Randall.
	274	1, 000	" "				
	275	1, 000	" "		162	200	" "
	399	1, 000	" "		332	200	" "
	373	1, 000	" "	F1	337	500	F. E. Mather.
	439	1, 000	John R. Griffith.	F2	2	500	" "
	440	1, 000	" "	Q	51	200	" "
O	28	1, 000	" "		55	200	" "
	195	1, 000	" "		56	200	" "
P	140	500	" "		89	200	" "
F^1	296	500	" "		382	200	" "
	329	500	" "				
Q	309	200	" "			$570, 300	
O	94	1, 000	F. Randall.				

575

		$570, 300			367	200	W'm H. Hays.
Q	385	200	W'm H. Hays.	O	612	1, 000	" "
	386	200	" "		613	1, 000	" "
	341	200	" "		614	1, 000	" "
	342	200	" "		120	1, 000	" "
	244	200	" "		146	1, 000	" "
	245	200	" "	P	114	500	" "
	193	200	" "		118	500	" "
	141	200	" "		122	500	" "
	121	200	" "	F	180	1, 000	W'm H. Hays, att'y for Mary C. Tompkins.
	117	200	" "				
	107	200	" "		345	1, 000	" "
	102	200	" "	F1	28	500	" "
	91	200	" "		29	500	" "
	90	200	" "				
	58	200	" "			$583, 200	
	57	200	" "				

576

		$583, 200			281	200	Geo. K Sistare.
F^1	279	500	W'm H. Hays, attorney for Mary C. Tompkins.		282	200	" "
					283	200	" "
	280	500	" "		298	200	" "
	356	500	" "		299	200	" "
	357	500	" "		232	200	" "
O	375	1, 000	George K. Sistare.	P	43	500	" "
	423	1, 000	" "		44	500	" "
	424	1, 000	" "		45	500	" "
	425	1, 000	" "	O	438	1, 000	Frankfurter Bankverein.
	437	1, 000	" "	Q	284	200	" "
	465	1, 000	" "		300	200	" "
	467	1, 000	" "		301	200	" "
F	205	1, 000	" "		302	200	" "
Q	103	200	" "				
	119	200	" "			$598, 100	

577

		$598, 100					
F^1	107	500	Rev. Sam'l Kettlewell.	F^1	101	500	James Stables.
	108	500	" "		102	500	" "
	256	500	" "		103	500	" "
F	249	1, 000	" "		104	500	" "
	250	1, 000	" "		105	500	" "
	263	1, 000	" "		106	500	" "
	346	1, 000	" "	P	144	500	Mrs. Ann G. Scott.
	106	1, 000	James Stables.		1	500	John A. C., Betsey C., and Mary C. Mason.
	107	1, 000	" "				
	108	1, 000	" "	Q	1	200	" "
	109	1, 000	" "		2	200	" "
	110	1, 000	" "		246	200	" "
	111	1, 000	" "		247	200	" "
	112	1, 000	" "	O	86	1, 000	Mrs. Henrietta C. Lay.
	113	1, 000	" "				
	114	1, 000	" "			$619, 400	
	115	1, 000	" "				

578

		$619, 400					
F	29	1, 000	W'm H. Harbeck.	F^1	170	500	Plock & Co.
	35	1, 000	" "		171	500	" "
	36	1, 000	" "		172	500	" "
	38	1, 000	" "		173	500	" "
	39	1, 000	" "		174	500	" "
	40	1, 000	" "		175	500	" "
	41	1, 000	" "		176	500	" "
	44	1, 000	" "		177	500	" "
	48	1, 000	" "		178	500	" "
	52	1, 000	" "		181	500	" "
	54	1, 000	" "	O	578	1, 000	W'm H. Hays, att'y for Mary V. E. Hays.
O	299	1, 000	Joseph Birdseye.				
	328	1, 000	" "		568	1, 000	" "
	333	1, 000	" "		534	1, 000	" "
	336	1, 000	" "				
		$634, 400				$642, 400	

579

		$642, 400					
F^1	131	500	W'm H. Hays, att'y for Mary V. E Hays.		345	500	W'm H Hays, att'y for Mary V. E. Hays.
	122	500	" "		91	500	W'm H. Hays, att'y for Ella Hays.
	109	500	" "				
	44	500	" "		92	500	" "
	314	500	" "				
	286	500	" "			$647, 400	
	352	500	" "				

580 (Indorsed:) Interest-arrearage. O. P. Q. F. F^1. F^2. F^3. F^1. $647 400. United States circuit court southern district of Alabama. Filed 5 day of April, 1877. N. W. Trimble, clerk.

581, 582 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

William Butler Duncan and A. Foster Elliott, trustees, complainants,
vs.
The Mobile and Ohio Railroad Company et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

William H. Hays, of the city of New York, chairman of the committee of reorganization of the Mobile & Ohio R. R. Co., being duly sworn and examined, deposes and says, that said committee is the holder and legal possessor of 2,220 several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as sterling bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said committee as principal the sum of four hundred & ninety-nine thousand five hundred pounds sterling, and for interest from November 1st, 1874, to November 1st, 1876, which interest is represented by coupons attached to said bonds and past due; together with interest on each coupon from the time it became due.

Many of these bonds and coupons have been proved before the special master by the parties whose names are appended to the list herewith, but the legal possession thereof has been transferred to the committee, and I hereby notify you of such transfer and of such legal possession being in said committee.

(Sign here) W. H. HAYS.

Subscribed and sworn to before me, this 17 day of January, A. D. 1877.
JOSEPH GUTMAN, Jr.,
U. S. Commissioner Southern District of New York.

583, 584 (Indorsed:) First mortgage sterling bonds. Number . Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliott, trustees, *vs.* the Mobile and Ohio Railroad Company, et als. Proof of claim of W'm H. Hays, as chairman of the committee of reorganization of the Mobile & Ohio Railroad Company. Rec'd this 23d day of January, 1877. James Gillette, special master. Filed 5 day of April, 1877. N. W. Trimble, clerk.

585

Sterling.

3258	£225	Victor Jacob, ex'r, by A. Iselin & Co.	767	£225	Cha's P. Chouteau.
3670	£225	" "	768	£225	" "
4879	£225	" "	769	£225	" "
4488	£225	" "	770	£225	" "
5222	£225	" "	2081	£225	Bory & Hollard, by A. Iselin & Co.
5757	£225	" "	2122	£225	" "
5758	£225	" "	2884	£225	" "
5829	£225	" "	2967	£225	" "
5932	£225	" "	2968	£225	" "
5933	£225	" "	2969	£225	" "
5934	£225	" "	2970	£225	" "
5935	£225	" "	2982	£225	" "
531	£225	W'm T. Russell.	3801	£225	Alfred H. Powell, g'd'n, of children of B. Lee Powell, dec'd.
4623	£225	Cha's P. Chouteau.			
766	£225	" "			

586

4066	£225	Bory & Hollard, by A. Iselin & Co.	61	£225	A. M. Wardwell.
4752	£225	" "	624	£225	" "
5515	£225	T. B. Baldwin, trustees for estate of Robert J. Dillon.	1430	£225	" "
5517	£225	" "	3244	£225	" "
4853	£225	" "	3472	£225	" "
4861	£225	" "	3476	£225	" "
4862	£225	" "	3647	£225	" "
4863	£225	" "	4080	£225	" "
4864	£225	" "	4311	£225	" "
4865	£225	" "	5256	£225	" "
4866	£225	" "	1098	£225	C. M. Lampson & Co., C. H. Clark, ag't.
4867	£225	" "	1099	£225	" "
1820	£225	Benj'n Richmond.	1100	£225	" "
			1101	£225	" "
			1102	£225	" "

587

2401	£225	Estate of Geo. Peabody.	2416	£225	Estate of Geo Peabody.
2402	£225	" "	2417	£225	" "
2403	£225	" "	2418	£225	" "
2404	£225	" "	2419	£225	" "
2405	£225	" "	2420	£225	" "
2406	£225	" "	2421	£225	" "
2407	£225	" "	2422	£225	" "
2408	£225	" "	2423	£225	" "
2409	£225	" "	2424	£225	" "
2410	£225	" "	588	£225	" "
2411	£225	" "	600	£225	" "
2412	£225	" "	723	£225	" "
2413	£225	" "	724	£225	" "
2414	£225	" "	727	£225	" "
2415	£225	" "			

588

753	£225	Estate of Geo. Peabody.	5386	£225	Estate of Geo. Peabody.
754	£225	" "	5387	£225	" "
755	£225	" "	3499	£225	" "
756	£225	" "	3500	£225	" "
864	£225	" "	5735	£225	" "
1341	£225	" "	5952	£225	" "
1342	£225	" "	00	00	
1343	£225	" "	610	£225	James Cropsey, trustee.
1344	£225	" "	4148	£225	" "
1345	£225	" "	1767	£225	Margaret Field.
1346	£225	" "	2925	£225	" "
1347	£225	" "	4355	£225	" "
1349	£225	" "	5197	£225	Alice J. Rowland.
3240	£225	" "			

589

1766	£225	Henrietta E. Cropsey; Hester Marsh, agt.	3667	225	Henrietta E. Cropsey; Hester Marsh, ag't.
2063	225	" "	3668	225	" "
2156	225	" "	3669	225	" "
2821	225	" "	3622	225	" "
2920	225	" "	3867	£225	Mary H. Perry.
3253	225	" "	5037	225	" "
3289	225	" "	2121	£225	Lydia H. Soule.
3313	225	" "	2123	225	" "
3388	225	" "	2124	225	" "
3528	225	" "	4534	£225	M. C. West.
3529	225	" "	4753	225	" "
3531	225	" "	5127	£225	P. V. Rogers.
3535	225	" "	5563	225	" "
3598	225	" "	4871	£225	Plock & Co.

590

2921	£225	Hester Marsh.	5567	225	Hester Marsh.
2922	225	" "	5640	225	" "
2923	225	" "	5632	225	" "
2924	225	" "	5827	225	" "
3533	225	" "	4202	£225	D. G. Drummond.
3534	225	" "	4835	225	" "
5001	225	" "	219	£225	E. B. Havens.
5126	225	" "	2133	225	" "
5181	225	" "	2134	225	" "
5193	225	" "	2914	225	" "
5195	225	" "	2915	225	" "
5238	225	" "	2052	£225	Mrs. C. S. Dwight.
5247	225	" "	5552	225	" "
5299	225	" "	5760	225	" "

591

109	£225	Association financière, Geneva.	125	225	Association, financière. Geneva.
110	225	" "	126	225	" "
111	225	" "	227	225	" "
112	225	" "	118	225	" "
113	225	" "	119	225	" "
114	225	" "	2962	225	" "
115	225	" "	2963	225	" "
116	225	" "	2964	225	" "
117	225	" "	2965	225	" "
120	225	" "	2966	225	" "
121	225	" "	5361	225	" "
122	225	" "	1757	£225	Benoit La Roche.
123	225	" "	4646	£225	Plock & Co.
124	225	" "	4979	£225	Saml. F. Phelps, jr.

592

689	£225	Geo. T. Bonner & Co.	4370	225	Geo. T. Bonner & Co.
1461	225	" "	4372	225	" "
1824	225	" "	4487	225	" "
1825	225	" "	4495	225	" "
1826	225	" "	5065	225	" "
1827	225	" "	4414	225	" "
2018	225	" "	4572	225	" "
3317	225	" "	5295	£225	Heirs Sig'd Marcel by A. Iselin & Co.
3332	225	" "	5578	225	" "
3333	225	" "	2610	£225	Geo. W. Dillaway.
3671	225	" "	2616	225	" "
3887	225	" "	2617	225	" "
4270	225	" "	2618	225	" "
4271	225	" "			
4344	225	" "			

593

2158	£225	Plock & Co.	1414	225	Plock & Co.
2159	225	"	1415	225	"
2623	225	"	5697	225	"
2824	225	"	5698	225	"
2825	225	"	5329	£225	D. J. Sprague.
2826	225	"	5330	225	"
2827	225	"	5358	225	"
2828	225	"	4968	£225	Sam'l F. Phelps.
3341	225	"	4969	225	"
3344	225	"	4975	225	"
3583	225	"	4976	225	"
3785	225	"	4977	225	"
5036	225	"	4978	225	"
5175	225	"	539	£225	Geo. W. Bond.

594

526	£225	D. W. G. Kinney.	5860	225	S. A. Isbell.
4911	225	" "	5756	225	"
1429	£ 225	Geo. Tevrill.	5593	£225	Christopher C. Reid.
1446	225	"	507	£225	Squire Utley.
1457	225	"	508	225	"
1470	225	"	509	225	"
2534	225	"	524	225	"
2535	225	"	540	225	"
5668	225	"	4664	£225	Cochran & Co.
4641	£225	D. G. Dorrance.	4665	225	"
4670	225	" "	4666	225	"
221	£225	Tho's G. Nock.	4667	£225	Helen Cochran.
222	225	" "	3475	£225	Steward Van Dresar.
4254	£225	S. A. Isbell.	3474	£225	Francis Van Dresar.

595

2956	£225	Wm. B. Duncan, for A. R. Duncan.	2037	£225	Wm. H. Hays.
			2038	225	"
2959	225	"	2039	225	"
3006	225	"	2041	225	"
3480	225	"	5856	225	"
3481	225	"	735	£225	Hunsicker & Co., by Fred. Probst & Co.
3482	225	"			
4519	225	"	2595	225	"
4539	225	"	2800	225	"
4685	225	"	4300	225	"
4954	225	"	4904	£225	James Little John.
3524	£225	Stephen Moulton.	4905	225	"
3526	225	"	4906	225	"
5158	225	"	4907	225	"
5159	225	"	4908	225	"
5564	225	"			

596

854	£225	H. G. Utley.	1008	£225	Geo. H. Lynch.
2880	225	"	2554	225	" "
2918	225	"	3245	225	" "
3891	225	"	3496	225	" "
4018	225	"	4581	225	" "
4138	225	"	1831	£225	Ezekiel Van Dressar.
4673	225	"	4483	225	" "
4912	225	"	4486	225	" "
4916	225	"	5098	225	" "
5099	225	"	5250	225	" "
5201	225	"	2130	225	" "
5601	225	"	4010	225	" "
5638	225	"	5171	£225	John Reynolds, att'y for M. E. De Soto Longo.
536	£225	Geo. H. Lynch.			
1004	225	" "	5172	225	" "

597

537	£225	Milton D. Bligh.
538	225	" "
2138	225	" "
2933	225	" "
4107	225	" "
4109	225	" "
2478	£225	C. Pfizer & Co.
2479	225	" "
2480	225	" "
2482	225	" "
2483	225	" "
2484	225	" "
2485	225	" "
2486	225	" "
2487	225	" "

2488	225	C. Pfizer & Co.
4188	£225	
4523	225	David Utley.
527	225	" "
5511	225	" "
5510	225	" "
5509	225	" "
5507	225	" "
5502	225	" "
5501	225	" "
5221	225	" "
5183	225	" "
5182	225	" "
5019	225	" "

598

3984	£225	David Utley.
5020	225	" "
4572	225	" "
4571	225	" "
5754	225	" "
4569	225	" "
4568	225	" "
4410	225	" "
4228	225	" "
4215	225	" "
4214	225	" "
4042	225	" "
3050	225	" "
2972	225	" "
1264	225	" "

1260	225	David Utley.
1256	225	" "
5588	225	" "
5252	225	" "
5049	225	" "
5615	£225	John Reynolds.
4787	225	" "
3833	225	" "
1922	225	" "
746	225	" "
5424	225	" "
4947	£225	Plock & Co.
4948	225	" "
5000	225	" "

599

2802	£225	Plock & Co.
2803	225	" "
2806	225	" "
2809	225	" "
5675	225	" "
5676	225	" "
5677	225	" "
5678	225	" "
5679	225	" "
1410	225	" "
2720	225	" "
4143	225	" "
4190	225	" "
4313	225	" "
4379	225	" "

5404	225	Plock & Co.
5313	225	" "
5322	225	" "
5777	225	" "
5914	225	" "
5937	225	" "
5941	225	" "
5942	225	" "
2062	225	" "
1932	225	" "
3806	225	" "
5045	225	" "
5680	225	" "
3932	225	" "

600

5287	£225	Plock & Co.
5314	225	" "
5319	225	" "
5444	225	" "
601	225	" "
1366	225	" "
1422	225	" "
1881	225	" "
1950	225	" "
2714	225	" "
3579	225	" "
3580	225	" "
3632	225	" "
3634	225	" "
3771	225	" "

3772	225	Plock & Co.
3875	225	" "
4407	225	" "
4472	225	" "
5245	225	" "
5279	225	" "
5286	225	" "
3741	225	" "
5047	225	" "
5046	225	" "
1416	225	" "
732	225	" "
5044	225	" "
4375	225	" "

601

5273	£225	Plock & Co.	4996	225	Plock & Co.
5442	225	"	4997	225	"
4814	225	"	4613	225	"
4949	225	"	4614	225	"
4950	225	"	4615	225	"
4951	225	"	4616	225	"
2163	225	"	2774	225	"
2696	225	"	2775	225	"
2815	225	"	2776	225	"
2816	225	"	2778	225	"
3726	225	"	2781	225	"
3732	225	"	2782	225	"
4993	225	"	2784	225	"
4994	225	"	3545	225	"
4995	225	"			

602

3854	£225	Plock & Co.	2612	225	Plock & Co.
728	225	"	2615	225	"
3731	225	"	2755	225	"
3733	225	"	2757	225	"
3962	225	"	2758	225	"
3963	225	"	2759	225	"
3964	225	"	2762	225	"
3965	225	"	2763	225	"
3966	225	"	2766	225	"
1945	225	"	2768	225	"
1947	225	"	2770	225	"
1948	225	"	2771	225	"
1971	225	"	3958	225	"
1990	225	"	5581	225	"
2049	225	"			

603

609	£225	Plock & Co.	1872	225	Plock & Co.
622	225	"	1893	225	"
632	225	"	1940	225	"
633	225	"	3604	225	"
634	225	"	3574	225	"
635	225	"	5458	225	"
642	225	"	5461	225	"
643	225	"	950	£225	Sidney Shepard.
644	225	"	3250	225	" "
1373	225	"	3448	225	" "
1428	225	"	3449	225	" "
1539	225	"	3450	225	" "
1795	225	"	3451	225	" "
1800	225	"	3452	225	" "
1871	225	"			

604

4020	£225	Sidney Shepard.	4602	225	Sidney Shepard.
4191	225	"	4603	225	" "
4205	225	"	4604	225	" "
4206	225	"	4605	225	" "
4207	225	"	4606	225	" "
4208	225	"	4607	225	" "
4209	225	"	4608	225	" "
4210	225	"	4680	225	" "
4230	225	"	4689	225	" "
4232	225	"	4690	225	" "
4570	225	"	4691	225	" "
4597	225	"	4692	225	" "
4598	225	"	4693	225	" "
4599	225	"	4694	225	" "
4601	225	"			

605

4695	£225	Sidney Shepard.	4236	£225	M. F. Van Vranken.
4696	225	" "	4609	225	" "
4697	225	" "	4607	225	" "
4698	225	" "	1270	225	" "
4699	225	" "	1271	225	" "
4700	225	" "	1272	225	" "
4754	225	" "	1787	£225	E. Pavenstadt & Co.
4886	225	" "	2651	225	" "
4887	225	" "	2652	225	" "
4899	225	" "	2653	225	" "
4926	225	" "	2697	225	" "
4927	225	" "	130	£225	Henry Birkner.
4928	225	" "	131	225	" "
5331	225	" "	132	225	" "
5264	225	" "			

606

133	£225	Henry Birkner.	2677	225	Wm. B. Hale, pres'd't.
134	225	" "	2678	225	" "
135	225	" "	1811	£225	Peter Marie & John Stewart, trustees.
136	225	" "			
137	225	" "	2599	225	" "
607	225	" "	3567	225	" "
2843	225	" "	3570	225	" "
2845	235	" "	3603	225	" "
3429	225	" "	3698	225	" "
5068	225	" "	3777	225	" "
5544	225	" "	3829	225	" "
5545	225	" "	5428	225	" "
5546	225	" "	5429	225	" "
5660	225	" "	5459	225	" "
2670	£225	Wm. B. Hale, pres'd't.			
2674	225	" "			

607

4952	£225	H. B. Plant, trustee.	3303	225	H. B. Plant, trustee.
4953	225	" "	3422	225	" "
2579	225	" "	3651	225	" "
2580	225	" "	3927	225	" "
4848	225	" "	3940	225	" "
2592	225	" "	4150	225	" "
2058	225	" "	4396	225	" "
1802	225	" "	5152	225	" "
1420	225	" "	5190	225	" "
5418	225	" "	5209	225	" "
5605	225	" "	5451	225	" "
1412	225	" "	5629	225	" "
1799	225	" "	5187	225	" "
2056	225	" "	5207	225	" "
2248	225	" "			

608

5507	£225	H. B. Plant, trustee.	5208	225	H. B. Plant, trustee.
5604	225	" "	5124	225	" "
1372	225	" "	4302	225	" "
1788	225	" "	4144	225	" "
2048	225	" "	3933	225	" "
2169	225	" "	3858	225	" "
2627	225	" "	3625	225	" "
3409	225	" "	3400	225	" "
3650	225	" "	2626	225	" "
3926	225	" "	2160	225	" "
3934	225	" "	2046	225	" "
4145	225	" "	1445	225	" "
4342	225	" "	636	225	" "
5125	225	" "	4217	225	" "
5189	225	" "			

609

2126	£225	H. B. Plant, trustee.	4115	225	H. B. Plant, trustee.
4216	225	" "	745	225	" "
1261	225	" "	5582	225	" "
4161	225	" "	5285	225	" "
308	225	" "	5203	225	" "
3241	225	" "	5186	225	" "
220	225	" "	4786	225	" "
5610	225	" "	4292	225	" "
3643	225	" "	4137	225	" "
5554	225	" "	3931	225	" "
3637	225	" "	2574	225	" "
5220	225	" "	3794	225	" "
3605	225	" "	3623	225	" "
4295	225	" "	3355	225	" "
3602	225	" "			

610

2619	£225	H. B. Plant, trustee.	3343	225	H. B. Plant, trustee.
2143	225	" "	2609	225	" "
1973	225	" "	2142	225	" "
1424	225	" "	1840	225	" "
5830	225	" "	1423	225	" "
5558	225	" "	5770	225	" "
5249	225	" "	5557	225	" "
5194	225	" "	5233	225	" "
5174	225	" "	5192	225	" "
4412	225	" "	5170	225	" "
4291	225	" "	4408	225	" "
4136	225	" "	4267	225	" "
3930	225	" "	3990	225	" "
3779	225	" "	3929	225	" "
3614	225	" "			

611

3653	£225	H. B. Plant, trustee.	2094	225	H. B. Plant, trustee.
3328	225	" "	2593	225	" "
3503	225	" "	3334	225	" "
3652	225	" "	3506	225	" "
3928	225	" "	2930	£225	Gallatin Nat'l Bank.
3985	225	" "	2943	225	" "
4262	225	" "	3036	225	" "
4406	225	" "	3049	225	" "
5156	225	" "	3057	225	" "
5191	225	" "	3453	225	" "
5217	225	" "	3454	225	" "
5477	225	" "	3455	225	" "
5674	225	" "	3456	225	" "
1421	225	" "	3457	225	" "
1828	225	" "			

612

3458	£225	Gallatin Nat'l Bank.	4942	225	Gallatin Nat'l Bank.
3459	225	" "	5889	225	" "
3478	225	" "	5890	225	" "
3489	225	" "	5891	225	" "
3490	225	" "	5893	225	" "
3595	225	" "	5894	225	" "
4028	225	" "	743	£225	R. T. Wilson & Co.
4029	225	" "	2187	225	" "
4031	225	" "	2786	225	" "
4032	225	" "	2788	225	" "
4040	225	" "	2790	225	" "
4220	225	" "	2791	225	" "
4221	225	" "	2792	225	" "
4526	225	" "	2928	225	" "
4925	225	" "			

613

2949	£225	R. T. Wilson & Co.	4832	225	R. T. Wilson & Co.
3033	225	" "	4833	225	" "
3221	225	" "	4834	225	" "
3222	225	" "	4958	225	" "
3223	225	" "	4959	225	" "
3224	225	" "	4960	225	" "
3225	225	" "	3199	£ 225	W'm H. Hays, att'y for Mary V. E. Hays.
3226	225	" "			
3227	225	" "	3200	225	" "
3228	225	" "	5296	225	" "
4153	225	" "	5302	225	" "
4064	225	" "	2397	£ 225	" "
4065	225	" "	2398	225	" "
4135	225	" "	2399	225	" "
4156	225	" "	2400	225	" "

614

2973	£ 225	Herman Stutzer.	559	225	W'm H. Hays.
2974	225	" "	560	225	" "
2975	225	" "	561	225	" "
2976	225	" "	562	225	" "
2977	225	" "	563	225	" "
2978	25	" "	564	225	" "
3096	225	" "	565	225	" "
5354	225	" "	1105	225	" "
5392	225	" "	1106	225	" "
5393	225	" "	1107	225	" "
5394	225	" "	1108	225	" "
4203	£ 225	W'm H. Hays.	2475	225	" "
4913	225	" "	2476	225	" "
4914	225	" "	2477	225	" "
4915	225	" "			

615

2885	£ 225	W'm H. Hays.	3421	225	W'm H. Hays.
2172	225	" "	5447	225	" "
5327	225	" "	3351	225	" "
5328	225	" "	5323	225	" "
3810	225	" "	3615	225	" "
3644	225	" "	2000	225	" "
3646	225	" "	3861	225	" "
5543	225	" "	615	225	" "
5535	225	" "	5514	225	" "
2638	225	" "	5267	225	" "
3287	225	" "	5206	225	" "
3725	225	" "	2067	225	" "
3830	225	" "	3286	225	" "
1754	225	" "	5701	225	" "
1755	225	" "			

616

3913	£ 225	W'm H. Hays.	3735	225	Benjamin Meeker.
5090	225	" "	619	£ 225	Fred E. Mather.
5091	225	" "	1927	225	" "
5092	225	" "	4251	225	" "
1823	225	" "	5875	225	" "
5086	225	" "	481	£ 225	W'm H. Hays, att'y for Mary C. Tompkins.
5700	225	" "			
5699	225	" "	482	225	" "
3868	225	" "	483	225	" "
1282	£225	Jno. R. Griffith.	484	225	" "
1285	225	" "	485	225	" "
3577	£ 225	Benjamin Meeker.	486	225	" "
3697	225	" "	487	225	" "
3687	225	" "	488	225	" "
3700	225	" "	489	225	" "

617

490	£225	W'm H. Hays, att'y for	90	225	Alexander Duncan.
		Mary C. Tompkins.	91	225	" "
491	225	" "	92	225	" "
492	225	" "	93	225	" "
493	225	" "	94	225	" "
494	225	" "	95	225	" "
495	225	" "	96	225	" "
496	225	" "	97	225	" "
497	225	" "	98	225	" "
84	£225	Alexander Duncan.	99	225	" "
85	225	" "	100	225	" "
86	225	" "	138	225	" "
87	225	" "	139	225	" "
88	225	" "	140	225	" "
89	225	" "	141	225	" "

618

142	£225	Alexander Duncan.	157	225	Alexander Duncan.
143	225	" "	158	225	" "
144	225	" "	159	225	" "
145	225	" "	160	225	" "
146	225	" "	161	225	" "
147	225	" "	162	225	" "
148	225	" "	450	225	" "
149	225	" "	451	225	" "
150	225	" "	452	225	" "
151	225	" "	453	225	" "
152	225	" "	454	225	" "
153	225	" "	455	225	" "
154	225	" "	456	225	" "
155	225	" "	457	225	" "
156	225	" "			" "

619

458	£225	Alexander Duncan.	72	225	Alexander Duncan.
459	225	" "	73	225	" "
460	225	" "	74	225	" "
461	225	" "	75	225	" "
532	225	" "	76	225	" "
4081	225	" "	77	225	" "
4813	225	" "	78	225	" "
66	225	" "	79	225	" "
67	225	" "	80	225	" "
68	225	" "	81	225	" "
69	225	" "	82	225	" "
70	225	" "	83	225	" "
71	225	" "			

620

599	£225	M. M. Lombard Odier & Co.	2680	£225	Frankfurter Bank Verein.
1989	225	" "	2681	225	" "
2594	225	" "	5868	225	" "
2717	225	" "	5869	225	" "
3325	225	" "	5870	225	" "
3326	225	" "	5100	225	" "
3407	225	" "	5101	225	" "
3781	225	" "	5102	225	" "
3937	225	" "	5103	225	" "
3938	225	" "	5104	225	" "
3941	225	" "	5105	225	" "
4294	225	" "	5106	225	" "
4335	225	" "	5107	225	" "
4336	225	" "			" "

621

853	£225	Frankfurter Bank verein.	4051	225	Frankfurter Bank verein.
1253	225	" "	4055	225	" "
2572	225	" "	4059	225	" "
3047	225	" "	4231	225	" "
3441	225	" "	5108	225	" "
3442	225	" "	5109	225	" "
3443	225	" "	5110	225	" "
3444	225	" "	5111	225	" "
3445	225	" "	5112	225	" "
3446	225	" "	5113	225	" "
3447	225	" "	5114	225	" "
3468	225	" "	5115	225	" "
4014	225	" "	5116	225	" "
4035	225	" "	5117	225	" "

622

5118	£225	Frankfurter Bank verein.	5136	225	Frankfurter Bank verein.
5119	225	" "	5137	225	" "
5120	225	" "	5138	225	" "
5121	225	" "	5139	225	" "
5122	225	" "	5140	225	" "
5123	225	" "	5141	225	" "
5128	225	" "	5142	225	" "
5129	225	" "	5992	225	" "
5130	225	" "	516	£225	Robert T. Crawshay.
5131	225	" "	517	225	" "
5132	225	" "	518	225	" "
5133	225	" "	519	225	" "
5134	225	" "	520	225	" "
5135	225	" "	521	225	" "

623

541	£225	Robert T. Crawshay.	870	225	Robert T. Crawshay.
542	225	" "	871	225	" "
543	225	" "	872	225	" "
855	225	" "	873	225	" "
856	225	" "	874	225	" "
857	225	" "	875	225	" "
858	225	" "	876	225	" "
859	225	" "	877	225	" "
860	225	" "	878	225	" "
861	225	" "	879	225	" "
862	225	" "	880	225	" "
863	225	" "	881	225	" "
868	225	" "	882	225	" "
869	225	" "	883	225	" "

624

884	£225	Robert T. Crawshay.	898	225	Robert T. Crawshay.
885	225	" "	899	225	" "
886	225	" "	900	225	" "
887	225	" "	901	225	" "
888	225	" "	902	225	" "
889	225	" "	903	225	" "
890	225	" "	904	225	" "
891	225	" "	907	225	" "
892	225	" "	908	225	" "
893	225	" "	909	225	" "
894	225	" "	910	225	" "
895	225	" "	911	225	" "
896	225	" "	912	225	" "
897	225	" "	913	225	" "

625

914	£225	Robert T.	Crawshay.	628	225	Robert T.	Crawshay.
915	225	"	"	929	225	"	"
916	225	"	"	930	225	"	"
917	225	"	"	931	225	"	"
918	225	"	"	932	225	"	"
919	225	"	"	933	225	"	"
920	225	"	"	934	225	"	"
921	225	"	"	935	225	"	"
922	225	"	"	936	225	"	"
923	225	"	"	937	225	"	"
924	225	"	"	938	225	"	"
925	225	"	"	939	225	"	"
926	225	"	"	940	225	"	"
927	225	"	"	941	225	"	"

626

942	£225	Robert T.	Crawshay.	1011	225	Robert T.	Crawshay.
943	225	"	"	1012	225	"	"
944	225	"	"	1013	225	"	"
945	225	"	"	1014	225	"	"
946	225	"	"	1015	225	"	"
947	225	"	"	1016	225	"	"
948	225	"	"	1017	225	"	"
949	225	"	"	1018	225	"	"
975	225	"	"	1019	225	"	"
976	225	"	"	1020	225	"	"
977	225	"	"	1021	225	"	"
978	225	"	"	1022	225	"	"
1009	225	"	"	1023	225	"	"
1010	225	"	"	1024	225	"	"

627

1025	£225	Robert T.	Crawshay.	1039	225	Robert T.	Crawshay.
1026	225	"	"	1040	225	"	"
1027	225	"	"	1041	225	"	"
1028	225	"	"	1042	225	"	"
1029	225	"	"	1043	225	"	"
1030	225	"	"	1044	225	"	"
1031	225	"	"	1045	225	"	"
1032	225	"	"	1046	225	"	"
1033	225	"	"	1047	225	"	"
1034	225	"	"	1048	225	"	"
1035	225	"	"	1049	225	"	"
1036	225	"	"	1050	225	"	"
1037	225	"	"	1051	225	"	"
1038	225	"	"	1052	225	"	"

628

1053	£225	Robert T.	Crawshay.	1067	225	Robert T.	Crawshay.
1054	225	"	"	1068	225	"	"
1055	225	"	"	1069	225	"	"
1056	225	"	"	1070	225	"	"
1057	225	"	"	1071	225	"	"
1058	225	"	"	1072	225	"	"
1059	225	"	"	1073	225	"	"
1060	225	"	"	1074	225	"	"
1061	225	"	"	1075	225	"	"
1062	225	"	"	1076	225	"	"
1063	225	"	"	1077	225	"	"
1064	225	"	"	1078	225	"	"
1065	225	"	"	1125	225	"	"
1066	225	"	"	1126	225	"	"

629

1127	£225	Robert T. Crawshay.	1141	225	Robert T. Crawshay.
1128	225	" "	1142	225	" "
1129	225	" "	1143	225	" "
1130	225	" "	1144	225	" "
1131	225	" "	1145	225	" "
1132	225	" "	1146	225	" "
1133	225	" "	1147	225	" "
1134	225	" "	1148	225	" "
1135	225	" "	1149	225	" "
1136	225	" "	1150	225	" "
1137	225	" "	1151	225	" "
1138	225	" "	1152	225	" "
1139	225	" "	1153	225	" "
1140	225	" "	1154	225	" "

630

1155	£225	Robert T. Crawshay.	1169	225	Robert T. Crawshay.
1156	225	" "	1170	225	" "
1157	225	" "	1171	225	" "
1158	225	" "	1172	225	" "
1159	225	" "	1173	225	" "
1160	225	" "	1174	225	" "
1161	225	" "	1175	225	" "
1162	225	" "	1176	225	" "
1163	225	" "	1177	225	" "
1164	225	" "	1178	225	" "
1165	225	" "	1179	225	" "
1166	225	" "	1180	225	" "
1167	225	" "	1181	225	" "
1168	225	" "	1182	225	" "

631

1183	£225	Robert T. Crawshay.	1197	225	Robert T. Crawshay.
1184	225	" "	1198	225	" "
1185	225	" "	1199	225	" "
1186	225	" "	1200	225	" "
1187	225	" "	1201	225	" "
1188	225	" "	1202	225	" "
1189	225	" "	1203	225	" "
1190	225	" "	1204	225	" "
1191	225	" "	1205	225	" "
1192	225	" "	1206	225	" "
1193	225	" "	1207	225	" "
1194	225	" "	1208	225	" "
1195	225	" "	1209	225	" "
1196	225	" "	1210	225	" "

632

1211	£225	Robert T. Crawshay.	1549	225	Robert T. Crawshay.
1212	225	" "	1550	225	" "
1213	225	" "	1551	225	" "
1214	225	" "	1552	225	" "
1215	225	" "	1553	225	" "
1216	225	" "	1554	225	" "
1217	225	" "	1555	225	" "
1530	225	" "	1567	225	" "
1531	225	" "	1568	225	" "
1532	225	" "	1569	225	" "
1533	225	" "	1570	225	" "
1546	225	" "	1571	225	" "
1547	225	" "	1572	225	" "
1548	225	" "	1573	225	" "

633

1574	£225	Robert T. Crawshay.
1575	225	" "
1576	225	" "
1577	225	" "
1578	225	" "
1579	225	" "
1580	225	" "
1581	225	" "
1582	225	" "
1583	225	" "
1584	225	" "
1585	225	" "
1586	225	" "
1587	225	" "
1588	225	Robert T. Crawshay.
1589	225	" "
1590	225	" "
1591	225	" "
1592	225	" "
1593	225	" "
1594	225	" "
1595	225	" "
1596	225	" "
1597	225	" "
1598	225	" "
1599	225	" "
1600	225	" "
1601	225	" "

634

1602	£225	Robert T. Crawshay.
1603	225	" "
1604	225	" "
1605	225	" "
1606	225	" "
1607	225	" "
1610	225	" "
1611	225	" "
1612	225	" "
1613	225	" "
1614	225	" "
1615	225	" "
1616	225	" "
1617	225	" "
1618	225	Robert T. Crawshay.
1619	225	" "
1620	225	" "
1621	225	" "
1622	225	" "
1623	225	" "
1624	225	" "
1625	225	" "
1626	225	" "
1627	225	" "
1628	225	" "
1629	225	" "
1630	225	" "
1631	225	" "

635

1632	£225	Robert T. Crawshay.
1633	225	" "
1634	225	" "
1635	225	" "
1636	225	" "
1637	225	" "
1638	225	" "
1639	225	" "
1640	225	" "
1641	225	" "
1642	225	" "
1643	225	" "
1644	225	" "
1645	225	" "
1646	225	Robert T. Crawshay.
1647	225	" "
1648	225	" "
1649	225	" "
1650	225	" "
1651	225	" "
1652	225	" "
1653	225	" "
1654	225	" "
1655	225	" "
1656	225	" "
1657	225	" "
1658	225	" "
1659	225	" "

636

1660	£225	Robert T. Crawshay.
1661	225	" "
1662	225	" "
1663	225	" "
1664	225	" "
1665	225	" "
1666	225	" "
1667	225	" "
1668	225	" "
1669	225	" "
1670	225	" "
1671	225	" "
1672	225	" "
1673	225	" "
1674	225	Robert T. Crawshay.
1675	225	" "
1676	225	" "
1677	225	" "
1678	225	" "
1679	225	" "
1680	225	" "
1681	225	" "
1682	225	" "
1683	225	" "
1684	225	" "
1685	225	" "
1686	225	" "
1687	225	" "

637

1688	£225	Robert T. Crawshay.	1703	225	Robert T. Crawshay.
1689	225	" "	1704	225	" "
1690	225	" "	1705	225	" "
1691	225	" "	1706	225	" "
1692	225	" "	1707	225	" "
1693	225	" "	1708	225	" "
1694	225	" "	1709	225	" "
1695	225	" "	1710	225	" "
1696	225	" "	1711	225	" "
1697	225	" "	1712	225	" "
1698	225	" "	1713	225	" "
1699	225	" "	1714	225	" "
1700	225	" "	1715	225	" "
1701	225	" "	1716	225	" "
1702	225	" "	1717	225	" "

638

1718	£225	Robert T. Crawshay.	1733	225	Robert T. Crawshay.
1719	225	" "	1734	225	" "
1720	225	" "	1735	225	" "
1721	225	" "	1736	225	" "
1722	225	" "	1737	225	" "
1723	225	" "	1738	225	" "
1724	225	" "	1739	225	" "
1725	225	" "	1740	225	" "
1726	225	" "	1741	225	" "
1727	225	" "	1742	225	" "
1728	225	" "	1743	225	" "
1729	225	" "	1744	225	" "
1730	225	" "	1745	225	" "
1731	225	" "	1746	225	" "
1732	225	" "	1747	225	" "

639

1748	£225	Robert T. Crawshay.	2266	225	Robert T. Crawshay.
1749	225	" "	2310	225	" "
1750	225	" "	2311	225	" "
2254	225	" "	2312	225	" "
2255	225	" "	2330	225	" "
2256	225	" "	2331	225	" "
2257	225	" "	2332	225	" "
2258	225	" "	2333	225	" "
2259	225	" "	2334	225	" "
2260	225	" "	2335	225	" "
2261	225	" "	2336	225	" "
2262	225	" "	2337	225	" "
2263	225	" "	2338	225	" "
2264	225	" "	2339	225	" "
2265	225	" "	2340	225	" "

640

2341	£225	Robert T. Crawshay	2356	225	Robert T. Crawshay.
2342	225	" "	2357	225	" "
2343	225	" "	2358	225	" "
2344	225	" "	2359	225	" "
2345	225	" "	2360	225	" "
2346	225	" "	2361	225	" "
2347	225	" "	2362	225	" "
2348	225	" "	2363	225	" "
2349	225	" "	2364	225	" "
2350	225	" "	2365	225	" "
2351	225	" "	2366	225	" "
2352	225	" "	2367	225	" "
2353	225	" "	2368	225	" "
2354	225	" "	2369	225	" "
2355	225	" "	2370	225	" "

641

2371	£225	Robert T. Crawshay.	3111	225	Robert T. Crawshay.
2372	225	" "	3112	225	" "
2373	225	" "	3113	225	" "
2374	225	" "	3114	225	" "
2375	225	" "	3115	225	" "
3101	225	" "	3116	225	" "
3102	225	" "	3117	225	" "
3103	225	" "	3118	225	" "
3104	225	" "	3119	225	" "
3105	225	" "	3120	225	" "
3106	225	" "	3121	225	" "
3107	225	" "	3122	225	" "
3108	225	" "	3123	225	" "
3109	225	" "	3124	225	" "
3110	225	" "	3125	225	" "

642

3126	£225	Robert T. Crawshay.	3141	225	Robert T. Crawshay.
3127	225	" "	3142	225	" "
3128	225	" "	3143	225	" "
3129	225	" "	3144	225	" "
3130	225	" "	3145	225	" "
3131	225	" "	3146	225	" "
3132	225	" "	3147	225	" "
3133	225	" "	3148	225	" "
3134	225	" "	3149	225	" "
3135	225	" "	3150	225	" "
3136	225	" "	3151	225	" "
3137	225	" "	3152	225	" "
3138	225	" "	3153	225	" "
3139	225	" "	3154	225	" "
3140	225	" "	3155	225	" "

643

3156	£225	Robert T. Crawshay.	3171	225	Robert T. Crawshay.
3157	225	" "	3172	225	" "
3158	225	" "	3173	225	" "
3159	225	" "	3174	225	" "
3160	225	" "	3175	225	" "
3161	225	" "	3176	225	" "
3162	225	" "	3177	225	" "
3163	225	" "	3178	225	" "
3164	222	" "	3179	225	" "
3165	225	" "	3180	225	" "
3166	225	" "	3181	225	" "
3167	225	" "	3182	225	" "
3168	225	" "	3183	225	" "
3169	225	" "	3184	225	" "
3170	225	" "	3185	225	" "

644

3186	£225	Robert T. Crawshay.	5718	225	Robert T. Crawshay.
3187	225	" "	5719	225	" "
3188	225	" "	5720	225	" "
3189	225	" "	5721	225	" "
3190	225	" "	5722	225	" "
3191	225	" "	5723	225	" "
3192	225	" "	5724	225	" "
3193	225	" "	5725	225	" "
3194	225	" "	5726	225	" "
3195	225	" "	5727	225	" "
3196	225	" "	5728	225	" "
3197	225	" "	5729	225	" "
3198	225	" "	751	225	Junius S. Morgan.
5716	225	" "	757	225	" "
5717	225	" "	758	225	" "

645

2858	£225	Junius S. Morgan.	5965	225	Junius S. Morgan.
2859	225	" "	5966	225	" "
2860	225	" "	5967	225	" "
5953	225	" "	5968	225	" "
5954	225	" "	5969	225	" "
5955	225	" "	5970	225	" "
5956	225	" "	2115	£225	James Stables.
5957	225	" "	2184	225	" "
5958	225	" "	2291	225	" "
5959	225	" "	2894	225	" "
5960	225	" "	2896	225	" "
5961	225	" "	2897	225	" "
5962	225	" "	2899	225	" "
5963	225	" "	3021	225	" "
5964	225	" "	3029	225	" "

646

3035	£225	James Stables.	2893	225	Rev'd. St. Kettlewell.
3037	225	" "	2895	225	" "
3039	225	" "	2898	225	" "
3040	225	" "	3020	225	" "
3075	225	" "	3034	225	" "
4521	225	" "	4798	225	" "
4524	225	" "	3392	£225	Miss Mary Gamble.
4803	225	" "	3677	225	" "
4805	225	" "	3720	225	" "
4806	225	" "	4822	225	" "
1756	225	" "	4900	225	" "
4401	225	" "	245	£225	James Keegan.
2113	£225	Rev'd. St. Kettlewell.	246	225	" "
2117	225	" "	247	225	" "
2890	225	" "	248	225	" "

647

715	£225	Joseph Maynard.	3238	225	Joseph Maynard.
716	225	" "	5730	225	" "
717	225	" "	955	£225	John E. Bartlett.
718	225	" "	956	225	" "
719	225	" "	957	225	" "
720	225	" "	958	225	" "
3229	225	" "	959	225	" "
3230	225	" "	960	225	" "
3231	225	" "	961	225	" "
3232	222	" "	962	225	" "
3233	225	" "	963	225	" "
3234	225	" "	964	225	" "
3235	225	" "	965	225	" "
3236	225	" "	966	225	" "
3237	225	" "	967	225	" "

648

968	£225	Jno. E. Bartlett.	1557	225	Tho's. Robinson.
969	225	" "	1558	225	" "
970	225	" "	1559	225	" "
971	225	" "	2282	225	" "
972	225	" "	2283	225	" "
973	225	" "	2284	225	" "
974	225	" "	2285	225	" "
2855	225	" "	4120	£225	Charles H. E. Judkins.
2856	225	" "	4121	225	" "
2857	225	" "	4755	225	" "
2286	£225	Joseph Robinson.	4800	225	" "
2287	225	" "	4802	225	" "
2288	225	" "	4955	225	" "
2289	225	" "	4956	225	" "
1556	£225	Tho's. Robinson.	4961	225	" "

649

989	£225	Thomas Robins	1082	225	Thomas Robinson.
990	225	" "	1083	225	" "
991	225	" "	1084	225	" "
992	225	" "	1085	225	" "
993	225	" "	1086	225	" "
994	225	" "	1087	225	" "
995	225	" "	1088	225	" "
996	225	" "	1089	225	" "
997	225	" "	1090	225	" "
998	225	" "	1091	225	" "
999	225	" "	1092	225	" "
1000	225	" "	1093	225	" "
1079	225	" "	1094	225	" "
1080	225	" "	1095	225	" "
1081	225	" "	1096	225	" "

650

1097	£225	Thomas Robinson.	2292	225	Thomas Robinson.
1273	225	" "	2293	225	" "
1279	225	" "	2294	225	" "
1560	225	" "	2295	225	" "
1561	225	" "	2296	225	" "
1562	225	" "	2297	225	" "
1563	225	" "	2298	225	" "
1564	225	" "	2299	225	"
2131	225	" "	2300	225	" "
2267	225	" "	2301	225	" "
2268	225	" "	2302	225	" "
2269	225	" "	2303	225	" "
2270	225	" "	2304	225	" "
2290	225	" "	2305	225	" "
2291	225	" "	2306	225	" "

651

2307	£225	Thomas Robinson.	2325	225	Thomas Robinson.
2308	225	" "	2326	225	" "
2309	225	" "	2327	225	" "
2313	225	" "	2328	225	" "
2314	225	" "	2329	225	" "
2315	225	" "	2851	225	" "
2316	225	" "	2852	225	" "
2317	225	" "	2853	225	" "
2318	225	" "	2854	225	" "
2319	225	" "	2953	225	" "
2320	225	" "	2954	225	" "
2321	225	" "	3471	225	" "
2322	225	" "	4008	225	" "
2323	225	" "	4011	225	" "
2324	225	" "	4030	225	" "

652

4034	£225	Thomas Robinson.	2646	225	Joshua Dixon.
4932	225	" "	2693	225	" "
4933	225	" "	2694	225	" "
4934	225	" "	2695	225	" "
4935	225	" "	2698	225	" "
4936	225	" "	3353	225	" "
4937	225	" "	3727	225	" "
4938	225	" "	3799	225	" "
4939	225	" "	3808	225	" "
4940	225	" "	4920	225	" "
4941	225	" "	4921	225	" "
4957	225	" "	5759	225	" "
1902	£225	Joshua Dixon.	5359	£225	Henry Milford.
1993	225	" "	5383	225	" "
2641	225	" "	5384	225	" "

653

5712	£225	Henry Milford.	1280	225	Peter Kegan.
5713	225	" "	1281	225	" "
5714	225	" "	2219	225	" "
5715	225	" "	2241	225	" "
346	£225	Archibald D. Lemon.	3208	225	" "
347	225	" "	3209	225	" "
2223	225	" "	3210	225	" "
2224	225	" "	3211	225	" "
2225	225	" "	3212	225	" "
2226	225	" "	3213	225	" "
2227	225	" "	3214	225	" "
2228	225	" "	3215	225	" "
2229	225	" "	3216	225	" "
3100	225	" "	3217	225	" "
1278	£225	Peter Kegan.	3218	225	" "
			3219	225	" "

654

1218	£225	Sir Curtis M. Lampson.	1233	225	Sir Curtis M. Lampson
1219	225	" "	1234	225	" "
1220	225	" "	1235	225	" "
1221	225	" "	1236	225	" "
1222	225	" "	1237	225	" "
1223	225	" "	1238	225	" "
1224	225	" "	1239	225	" "
1225	225	" "	1240	225	" "
1226	225	" "	1241	225	" "
1227	225	" "	1242	225	" "
1228	225	" "	1243	225	" "
1229	225	" "	1244	225	" "
1230	225	" "	1245	225	" "
1231	225	" "	1246	225	" "
1232	225	" "	1247	225	" "

655

1248	£225	Sir Curtis M. Lampson.	1513	225	Sir Curtis M. Lampson.
1249	225	" "	1514	225	" "
1250	225	" "	1515	225	" "
1501	225	" "	1516	225	" "
1502	225	" "	1517	225	" "
1503	225	" "	1518	225	" "
1504	225	" "	1519	225	" "
1505	225	" "	1520	225	" "
1506	225	" "	1521	225	" "
1507	225	" "	1522	225	" "
1508	225	" "	1523	225	" "
1509	225	" "	1524	225	" "
1510	225	" "	1525	225	" "
1511	225	" "	1526	225	" "
1512	225	" "	1527	225	" "

656

1528	£225	Sir Curtis M. Lanpson.	1608	£225	Miss Henrietta Pidgeon.
1529	225	" "	1609	225	" "
2196	225	" "	3076	£225	A. Iselin & Co. for Lombard, Odier & Co.
2197	225	" "			
2198	225	" "	3077	225	" "
2199	225	" "	3078	225	" "
2200	225	" "	3079	225	" "
2221	225	" "	3080	225	" "
3436	225	" "	3093	225	" "
3437	225	" "	3094	225	" "
3438	225	" "	3095	225	" "
3439	225	" "	5360	225	" "
3440	225	" "	1882	225	" "
5732	225	" "	1925	225	" "
5733	225	" "	2093	225	" "
			2671	225	" "

657

2672	£225	A. Iselin & Co., for Lombard, Odier & Co.	5761	225	A. Iselin & Co., for Lombard, Odier & Co.
2673	225	" "	2146	225	" "
2701	225	" "	2147	225	" "
2765	225	" "	2148	225	" "
3594	225	" "	2149	225	" "
5026	225	" "	2151	225	" "
5054	225	" "	2153	225	" "
5080	225	" "	3838	225	" "
5083	225	" "	3839	225	" "
5085	225	" "	3840	225	" "
5087	225	" "	2152	225	" "
5089	225	" "	1805	225	" "
5257	225	" "	1806	225	" "
5547	225	" "	1807	225	" "
5753	225	" "	3532	225	" "

658

3538	£225	A. Iselin & Co., for Lombard, Odier & Co.	5437	225	A. Iselin & Co., for Lombard, Odier & Co.
3539	225	" "	1921	225	" "
3540	225	" "	1988	225	" "
3541	225	" "	1991	225	" "
3776	225	" "	4261	225	" "
3842	225	" "	5443	225	" "
3845	225	" "	5561	225	" "
3846	225	" "	3465	225	" "
3847	225	" "	4445	225	" "
3851	225	" "	5831	225	" "
4459	225	" "	5832	225	" "
4460	225	" "	5833	225	" "
4461	225	" "	5834	225	" "
4462	225	" "	5835	225	" "
5433	225	" "	5836	225	" "

659

5837	£225	A. Iselin & Co., for Lombard, Odier & Co.	4652	225	A. Iselin & Co., for Association Financière, Geneva.
5838	225	" "	4653	225	" "
309	£225	A. Iselin & Co., for Association Financière, Geneva.	4837	225	" "
			4838	225	" "
3247	225	" "	3589	225	" "
4131	225	" "	3591	225	" "
4132	225	" "	3638	225	" "
4133	225	" "	3676	225	" "
4241	225	" "	3876	225	" "
4243	225	" "	4186	225	" "
4245	225	" "	4393	225	" "
4246	225	" "	4463	225	" "
4248	225	" "	3572	£225	Wm. N. Calvert.
4249	225	" "	3900	£225	John A. C., Betsy C., and Mary C. Mason, minors.
4250	225	" "			
4595	225	" "	5779	225	" "

660

3788	£225	Mrs. Ella C. Campbell.	580	£225	Wm. H. Harbeck.
3477	£225	Mrs. Ann G. Scott.	4543	225	" "
4164	225	" "	4544	225	" "
4944	225	" "	4551	225	" "
3550	£225	Mrs. Henrietta C. Lay.	4552	225	" "
3551	225	" "	4553	225	" "
3556	255	" "	4555	225	" "
4397	225	" "	4556	225	" "
5025	225	" "	4557	225	" "
5665	225	" "	4558	225	" "
5705	225	" "	4559	225	" "
5857	225	" "	4561	225	" "
5858	225	" "	4562	225	" "
5859	295	" "	4726	225	" "
5877	225	" "	4727	225	" "

661

4728	£225	Wm. H. Harbeck.	2834	225	Plock & Co.
4731	225	" "	2835	225	" "
4732	225	" "	4998	225	" "
4735	225	" "			
4736	225	" "	2186		
4737	225	" "	29 add		
4740	225	" "	5		
4742	225	" "			
4745	225	" "	2220		
4749	225	" "	2613	£225	Frankfurter Bankverein.
4987	225	" "	2819	225	" "
4989	225	" "	2830	225	" "
4990	225	" "	2832	225	" "
4991	225	" "	2836	225	" "
2760	£225	Plock & Co.			
2831	225	" "	Total 2220 bonds.		

662 (Indorsed:) Sterling first mortgage, £499,500. United States circuit court southern district of Alabama. Filed 5 day of April, 1877. N. W. Trimble, clerk.

663, 664 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

William H. Hays, of the city of New York, being duly sworn and examined, deposes and says that he is chairman of the committee of reorganization of the M. & O. R. R., who is the holder and legal possessor of 926 several bonds of the Mobile and Ohio Railroad Company, secured by a second mortgage of said railroad, which several bonds are known as second-mortgage bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said committee of reorganization, as principal, the sum of five hundred & seventy-two thousand one hundred & twenty-two dollars & fifty-seven cents, and for interest from March 1, 1874; which interest is represented by coupons attached to said bonds and past due, together with interest on each coupon from the time it became due; and deponent further says that he is authorized by said committee to make this deposition.

Many of these bonds and coupons have been proved before the special master by the parties whose names are appended to the list herewith, but the legal possession thereof has been transferred to the committee, & I hereby notify you of such transfer & of such legal possession being in said committee.

(Sign here) W. H. HAYS.

Subscribed and sworn to before me this 17th day of January, A. D. 1877.

JOSEPH GUTMAN, JR.,
United States Commissioner, Southern District of New York.

665, 666 (Indorsed:) 2d-mortgage bonds. Number . Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim. W'm H. Hays, chairman of committee of reorganization M. & O. R. R. Co. Rec'd January 23, 1877. James Gillette, special master.

667 *Second mortgage.*

S	110	500	Wm. M. Clarke.		36	400	A. Murdock, trustee.
	111	500	" "		291	237 50	" "
	112	500	" "		236	606 35	" "
	113	500	" "		217	770	" "
	114	500	" "	T	299	300	A. Iselin & Co.
	115	500	" "		300	300	" "
	116	500	" "		301	300	" "
	117	500	" "	U	14	100	" "
	118	500	" "	L	53	1,000	
	119	500	" "		54	1,000	
	120	500	" "		58	525	
	121	500	" "	U	42	100	
	122	500	" "	Rr	8	1,000	
	123	500	" "				
L	17	500	A. Murdock, trustee.			$14,638 85	
	18	500	" "				

668

		$14,638 85			384	500	Chas. P. Chouteau.
S	368	500	Chas. P. Chouteau.		385	500	" "
	369	500	" "		386	500	" "
	370	500	" "	L	250	1,025 22	A. M. Boyd.
	371	500	" "	R	120	1,000	A. M. Wardwell.
	372	500	" "		395	1,000	S. M. G. Sherman.
	374	500	" "		396	1,000	" "
	375	500	" "		397	1,000	" "
	376	500	" "	S	309	500	" "
	377	500	" "	T	345	300	" "
	378	500	" "		346	300	" "
	379	500	" "		347	300	" "
	380	500	" "		256	300	" "
	381	500	" "				
	382	500	" "			$30,864 07	
	383	500	" "				

669

		$30,864 07		R	400	1,000	Plock & Co.
Rr	10	1,000	Ezra Van Dresar.		428	1,000	"
	160	1,000	" "	T	42	300	"
S	313	500	" "		117	300	"
	274	500	Alfred W. Gannett.		118	300	"
	277	500	" "		119	300	"
Rr	7	1,000	M. C. West.		120	300	"
R	408	1,000	Benoit La Roche.		222	300	"
	459	1,000	" "		242	300	"
	458	1,000	" "		243	300	"
	460	1,000	" "		244	300	"
	461	1,000	" "	U	112	100	"
L	24	500	Eliza Ware.		128	100	"
	25	100	"				
	27	100	"			$46,064 07	
	28	100	"				

670

		$46,064 07			262	500	Plock & Co.
Rr	5	1,000	Plock & Co.		263	500	"
	37	1,000	"		264	500	"
	192	1,000	"		265	500	"
Ss	46	500	"		266	500	"
	47	500	"	R	156	1,000	"
	48	500	"		157	1,000	"
	49	500	"		188	1,000	Sam'l F. Phelps, jr.
S	250	500	"		423	1,000	" "
	261	500	"				

671

		$63,564 07		L	79	100	E. G. Pearl.
R	320	1.000	Evesque & Co., by A. Iselin & Co.	R R	41	1,000	Benj'n Cartwright.
					42	1,000	" "
	332	1,000	" "		43	1,000	" "
	334	1,000	" "		44	1,000	" "
	335	1,000	" "		129	1,000	" "
	336	1,000	" "	U u	7	100	S. W. G. Kinney.
S	77	500	" "		32	100	" "
	78	500	" "		33	100	" "
	79	500	" "		34	100	" "
	80	500	" "	U	101	100	" "
	81	500	" "		102	100	" "
	82	500	" "		15	100	" "
	83	500	" "			$79,364 07	
	84	500	" "				
	85	500	" "				
	249	500	" "				

672

		$79,364 07			8	1,000	Drexel, Morgan & Co., Att'ys for Junius S. Morgan.
S	318	500	Sam'l F. Phelps.				
	422	500	" "				
R	1	1,000	" "		9	1,000	" "
	4	1,000	" "	S	12	500	" "
	14	1,000	" "		13	500	" "
	22	1,000	" "	L	12	350	" "
	24	1,000	" "	U	172	100	" "
	25	1,000	" "		173	100	" "
	26	1,000	" "		174	100	" "
	27	1,000	" "	R R	173	1,000	S. A. Isbell.
	28	1,000	" "		31	1,000	"
	31	1,000	" "	R	322	1,000	Plock & Co.
	32	1,000	" "		321	1,000	"
	185	1,000	" "			$102,014 07	
	186	1,000	" "				
	187	1,000	" "				

673

		$102,014 07			206	1,000	Gallatin Nat'l Bank.
L	206	1,000	Estate of U. F. Vedder, A. G. Brewer, ex'r.		207	1,000	" "
					208	1,000	" "
	207	1,000	" "		209	1,000	" "
	208	1,000	" "		210	1,000	" "
	223	1,000	" "		211	1,000	" "
	193	985 90	" "		212	1,000	" "
	249	240	" "		213	1,000	" "
	230	1,491	" "	U v	8	100	Steward Van Dressar.
	229	529 71	" "		161	100	" "
	252	270	" "		162	100	" "
	200	1,000	Gallatin Nat'l Bank.	T	87	300	Plock & Co.
	201	1,000	" "		88	300	"
	202	1,000	" "		479	300	"
	203	1,000	" "			$124,730 68	
	204	1,000	" "				
	205	1,000	" "				

674

		$124,730 68			229	1,000	Gallatin Nat'l Bank.
L	214	1,000	Gallatin Nat'l Bank.		230	1,000	" "
	215	1,000	" "		231	1,000	" "
	216	1,000	" "		232	1,000	" "
	217	1,000	" "		233	1,000	" "
	218	1,000	" "		234	1,000	" "
	219	1,000	" "		235	1,000	" "
	220	1,000	" "		236	1,000	" "
	221	1,000	" "		237	1,000	" "
	222	1,000	" "		238	1,000	" "
	223	1,000	" "		239	1,000	" "
	224	1,000	" "		240	1,000	" "
	225	1,000	" "		241	1,000	" "
	226	1,000	" "	Rr	53	1,000	Plock & Co.
	227	1,000	" "			$153,730 68	
	228	1,000	" "				

675

		$153, 730 68			45	1, 000	Ferdinand Stutzer.
T	289	300	L. Von Hoffman & Co.		46	250	" "
	290	300	" "	R R	154	1, 000	Lydia M. Richardson.
	291	300	" "		155	1, 000	" "
	292	300	" "		161	1, 000	" "
	293	300	" "		162	1, 000	" "
	294	300	" "		163	1, 000	" "
	295	300	" "	S	141	500	" "
	296	300	" "		481	500	Plock & Co.
	297	300	" "		485	500	"
	283	300	" "	U	169	100	"
	487	300	" "		60	100	"
R R	99	1, 000	Ferdinand Stutzer.		37	100	"
	100	1, 000	" "		159	100	"
	101	1, 000	" "				
L	43	1, 000	" "			$169, 180 68	

676

		$169, 180 68			161	100	Plock & Co.
R	173	1, 000	Hunzicker & Co., by Fred. Probst & Co.	S	36	500	"
					37	500	"
	674	1, 000	" "		38	500	"
	301	1, 000	" "		39	500	"
	302	1, 000	" "		454	500	"
	348	1, 000	" "		461	500	"
S	9	500	" "		462	500	"
	10	500	" "		95	500	"
	42	500	" "		96	500	"
	61	500	" "		404	500	"
U	24	100	Plock & Co.		407	500	"
	35	100	"		408	500	"
	44	100	"		474	500	"
	71	100	"				
	106	100	"			$183, 380 68	
	107	100	"				

677

		$183, 380 68			453	1, 000	Plock & Co.
U	57	100	Plock & Co.		454	1, 000	"
	117	100	"		455	1, 000	"
	131	100	"		456	1, 000	"
	143	100	"		457	1, 000	"
	132	100	"	U	38	100	"
R	114	1, 000	"		39	100	"
	323	1, 000	"		47	100	"
	333	1, 000	"		48	100	"
	349	1, 000	"		58	100	"
	420	1, 000	"		164	100	"
	421	1, 000	"		165	100	"
	449	1, 000	"		168	100	"
	450	1, 000	"	R	205	1, 000	"
	451	1, 000	"				
	452	1, 000	"			$200, 680 68	

678

		$200, 680 68	Plock & Co.		488	300	Plock & Co.
T	298	300	"		489	300	"
	302	300	"		490	300	"
	357	300	"		491	300	"
	358	300	"		492	300	"
	359	300	"		493	300	"
	360	300	"		5	300	"
	361	300	"		45	300	"
	362	300	"		502	300	"
	363	300	"		503	300	"
	364	300	"		504	300	"
	394	300	"		505	300	"
	395	300	"		506	300	"
	396	300	"	U U	120	100	
	483	300	"				
	484	300	"			$209, 180 68	

679

		$209, 180 68			165	1, 000	Plock & Co.
R	76	1, 000	Plock & Co.		166	1, 000	"
	77	1, 000	"		167	1, 000	"
	[illegible]	1, 000	"		176	1, 000	"
	79	1, 000	"		177	1, 000	"
	80	1, 000	"		178	1, 000	"
	86	1, 000	"		179	1, 000	"
	104	1, 000	"		180	1, 000	"
	105	1, 000	"		201	1, 000	"
	158	1, 000	"		203	1, 000	"
	159	1, 000	"		204	1, 000	"
	160	1, 000	"		466	1, 000	"
	161	1, 000	"		465	1, 000	"
	162	1, 000	"		464	1, 000	"
	163	1, 000	"				
	164	1, 000	"			$238, 180 68	

680

		$238, 180 68			259	500	Plock & Co.
S	73	500	Plock &Co.		260	500	"
	74	500	"		435	500	"
	75	500	"		440	500	"
	76	500	"		441	500	"
	135	500	"		442	500	"
	136	500	"		443	500	"
	137	500	"		455	500	"
	251	500	"		456	500	"
	252	500	"		457	500	"
	253	500	"		458	500	"
	254	500	"		459	500	"
	255	500	"		460	500	"
	256	500	"	R	211	1, 000	
	257	500	"				
	258	500	"			$253, 180 68	

681

		$253, 180 68			319	1, 000	Plock & Co.
R	463	1, 000	Plock & Co.		172	1, 000	"
	462	1, 000	"	T	30	300	"
	410	1, 000	"	U	63	100	"
	399	1, 000	"	S	40	500	"
	339	1, 000	"		41	500	"
	338	1, 000	"		279	500	"
	337	1, 000	"		280	500	"
	115	1, 000	"	T	40	300	"
	116	1, 000	"		241	300	"
	117	1, 000	"	U	56	100	"
	118	1, 000	"		61	100	"
	119	1, 000	"		62	100	"
	315	1, 000	"		160	100	
	316	1, 000	"				
	317	1, 000	"			$274, 580 68	
	318	1, 000	"				

682

		$274, 580 68			101	300	Plock & Co.
T	9	300	Plock & Co.		102	300	"
	41	300	"		103	300	"
	43	300	"		104	300	"
	64	300	"		226	300	"
	65	300	"		227	300	"
	66	300	"		228	300	"
	67	300	"		229	300	"
	68	300	"		348	300	"
	89	300	"		381	300	"
	90	300	"		382	300	"
	96	300	"		383	300	"
	97	300	"		384	300	"
	98	300	"		385	300	
	99	300	"			$283, 280 68	
	100	300	"				

683

		$283, 280 68			421	300	Plock & Co.
T	386	300	Plock & Co.		446	300	"
	387	300	"		451	300	"
	388	300	"		453	300	"
	389	300	"		454	300	"
	390	300	"		455	300	"
	391	300	"		494	300	"
	392	300	"		495	300	"
	393	300	"		496	300	"
	397	300	"		497	300	"
	408	300	"		498	300	"
	409	300	"		499	300	"
	410	300	"		500	300	"
	418	300	"		501	300	"
	419	300	"				
	420	300	"			$291, 980 68	

684

		$291, 980 68		S. s.	38	500	Plock & Co.
S	64	500	Plock & Co.		39	500	"
	65	500	"		40	500	"
	71	500	"		41	500	"
	133	500	"		42	500	"
	134	500	"		43	500	"
	138	500	"		44	500	"
	361	500	"		45	500	"
	362	500	"	S	436	500	"
	363	500	"		437	500	"
	364	500	"	T	480	300	"
	365	500	"		481	300	"
	366	500	"		482	300	"
	367	500	"	U	170	100	"
	438	500	"				
	439	500	"			$305, 480 68	

685

		$305, 480 68			150	1, 000	David Utley.
R	33	1, 000	David Utley.		151	1, 000	"
	417	1, 000	"		152	1, 000	"
	418	1, 000	"		153	1, 000	"
	419	1, 000	"		159	1, 000	"
R R	6	1, 000	"		109	1, 000	Gersh. Jansen.
	11	1, 000	"		110	1, 000	"
	12	1, 000	"		111	1, 000	"
	13	1, 000	"		112	1, 000	"
	39	1, 000	"		113	1, 000	"
	45	1, 000	"		114	1, 000	"
	131	1, 000	"		77	1, 000	"
	132	1, 000	"		19	1, 000	Peter Mariè.
	133	1, 000	"		25	1, 000	"
	134	1, 000	"				
	135	1, 000	"			$334, 480 68	

686

		$334, 480 68			32	1, 000	R. Y. Wilson & Co.
R R	26	1, 000	Peter Mariè.		33	1, 000	" "
	27	1, 000	"		34	1, 000	" "
	28	1, 000	"		35	1, 000	" "
	14	1, 000	R. Y. Wilson & Co.		36	1, 000	" "
	15	1, 000	" "		67	1, 000	" "
	16	1, 000	" "		68	1, 000	" "
	17	1, 000	" "		69	1, 000	" "
	18	1, 000	" "		70	1, 000	" "
	20	1, 000	" "		71	1, 000	" "
	21	1, 000	" "		72	1, 060	" "
	22	1, 000	" "		73	1, 000	" "
	23	1, 000	" "		74	1, 000	" "
	29	1, 000	" "		75	1, 000	" "
	30	1, 000	" "				
	31	1, 000	" "			$363, 480 68	

687

		$363, 480 68			179	1, 000	R. Y. Wilson & Co.
R R	82	1, 000	R. Y. Wilson & Co.		180	1, 000	" "
	85	1, 000	" "	U U	96	100	" "
	86	1, 000	" "		97	100	" "
	87	1, 000	" "		98	100	" "
	88	1, 000	" "	L	26	100	E. St. John Hays.
	91	1, 000	" "		275	450	Jacob Hays.
	107	1, 000	" "	T	61	300	"
	108	1, 000	" "		85	300	Wm. H. Hays, att'y for J. E. K. Brockaw.
	157	1, 000	" "				
	175	1, 000	" "		44	300	" "
	176	1, 000	" "		50	300	" "
	177	1, 000	" "	U	34	100	" "
	178	1, 000	" "				

688

		$384, 130 68			216	243	Wm. H. Hays.
S	347	500	Herman Stutzer.		219	127 50	"
	348	500	"		220	992 42	"
R R	115	1, 000	"		266	158 72	"
	116	1, 000	"		272	1, 355 60	"
	117	1, 000	"	S. s.	14	500	"
	118	1, 000	"		15	500	"
L	194	1, 000	Wm. H. Hays.		24	500	"
	195	514 25	"		50	500	"
	201	360 40	"		51	500	"
	215	840	"				

689

		$401, 722 57			115	100	Wm. H. Hays.
Ss.	52	500	Wm. H. Hays.		116	100	"
Uu	25	100	"		133	100	"
	69	100	"		134	100	"
	70	100	"		135	100	"
	71	100	"		136	100	"
	72	100	"		137	100	"
	73	100	"		140	100	"
	74	100	"		148	100	"
	80	100	"		149	100	"
	81	100	"		150	100	"
	103	100	"	R R	9	1, 000	"
	104	100	"		46	1, 000	"
	112	100	"		47	1, 000	"
	113	100	"				
	114	100	"			$407, 722 57	

690

		$407, 722 57			148	1, 000	W'm H. Hays.
R R	48	1, 000	W'm H. Hays.		149	1, 000	"
	49	1, 000	"		190	1, 000	"
	120	1, 000	"		191	1, 000	"
	121	1, 000	"		197	1, 000	"
	122	1, 000	"		198	1, 000	"
	123	1, 000	"	R	394	1, 000	"
	137	1, 000	"		413	1, 000	"
	138	1, 000	"		414	1, 000	"
	139	1, 000	"		422	1, 000	"
	140	1, 000	"		472	1, 000	"
	141	1, 000	"		194	1, 000	"
	144	1, 000	"		195	1, 000	"
	145	1, 000	"		196	1, 000	"
	146	1, 000	"				
	147	1, 000	"			$436, 722 57	

691

		$436, 722 57		R	127	1, 000	W'm H. Hays.
R	238	1, 000	W'm H. Hays.		136	1, 000	“
	239	1, 000	“		137	1, 000	“
	240	1, 000	“		138	1, 000	“
	241	1, 000	“		139	1, 000	“
	242	1, 000	“		140	1, 000	“
	243	1, 000	“		141	1, 000	“
	345	1, 000	“		142	1, 000	“
	350	1, 000	“		143	1, 000	“
	351	1, 000	“		144	1, 000	“
	352	1, 000	“		145	1, 000	“
	355	1, 000	“		146	1, 000	“
	356	1, 000	“		153	1, 000	“
	357	1, 000	“		189	1, 000	“
	358	1, 000	“				
	359	1, 000	“			$465, 722 57	

692

		$465, 722 57		R	84	1, 000	W'm H. Hays.
R	190	1, 000	W'm H. Hays.		85	1, 000	“
	191	1, 000	“		88	1, 000	“
	192	1, 000	“		121	1, 000	“
	193	1, 000	“		122	1, 000	“
	15	1, 000	“		123	1, 000	“
	16	1, 000	“		124	1, 000	“
	17	1, 000	“	U	109	100	F. Randall.
	18	1, 000	“	T	258	300	“
	19	1, 000	“		314	300	“
	20	1, 000	“		315	300	“
	21	1, 000	“		316	300	“
	22	1, 000	“		317	300	“
	29	1, 000	“				
	30	1, 000	“			$490, 322 57	
	34	1, 000	“				

693

		$490, 322 57		S	86	500	W'm H. Hays.
T	318	300	F. Randall.		87	500	“
	320	300	“		88	500	“
S	7	500	W'm H. Hays.		89	500	“
	8	500	“		94	500	“
	11	500	“		174	500	“
	14	500	“		175	500	“
	15	500	“		176	500	“
	16	500	“		248	500	“
	17	500	“		271	500	“
	54	500	“		281	500	“
	55	500	“		301	500	“
	56	500	“		306	500	“
	57	500	“		308	500	“
	58	500	“				
	59	500	“			$504, 422 57	

694

		$504, 422 57		S	486	500	W'm H. Hays.
S	314	500	W'm H. Hays.		487	500	“
	315	500	“		488	500	“
	316	500	“		489	500	“
	317	500	“		490	500	“
	319	500	“	T	86	300	“
	338	500	“		91	300	“
	339	500	“		92	300	“
	409	500	“		93	300	“
	423	500	“		94	300	“
	469	500	“		95	300	“
	472	500	“		108	300	“
	475	500	“		273	300	“
	476	500	“		274	300	“
	477	500	“				
	478	500	“			$517, 122 57	

695

		$517,122 57			476	300	Wm. H. Hays.
T	275	300	Wm. H. Hays.		477	300	" "
	276	300	" "		478	300	" "
	277	300	" "	U	1	100	" "
	278	300	" "		13	100	" "
	279	300	" "		18	100	" "
	280	300	" "		177	100	" "
	281	300	" "		178	100	" "
	282	300	" "		179	100	" "
	447	300	" "		180	100	" "
	458	300	" "		189	100	" "
	462	300	" "		190	100	" "
	463	300	" "		191	100	" "
	472	300	" "		192	100	" "
	473	300	" "				
	475	300	" "			$523,622 57	

696

		$523,622 57			209	100	Wm. H. Hays.
	193	100	Wm. H. Hays.		210	100	" "
	194	100	" "		211	100	" "
	195	100	" "		212	100	" "
	196	100	" "		213	100	" "
	197	100	" "		214	100	" "
	198	100	" "		215	100	" "
	199	100	" "		216	100	" "
	200	100	" "		217	100	" "
	201	100	" "	Rr	89	1,000	Wm. H. Hays, att'y for Mary C. Tompkins.
	202	100	" "				
	203	100	" "		90	1,000	" "
	204	100	" "		92	1,000	" "
	205	100	" "		93	1,000	" "
	206	100	" "			$530,122 57	
	207	100	" "				
	208	100	" "				

697

		$530,122 57			65	1,000	Wm. H. Hays, att'y for Mary C. Tompkins.
Rr	94	1,000	Wm. H. Hays, att'y for Mary C. Tompkins.				
					66	1,000	" "
					76	1,000	" "
	95	1,000	" "	Ss	11	500	" "
	96	1,000	" "	Uu	50	100	" "
	97	1,000	" "		51	100	" "
	98	1,000	" "		52	100	" "
	56	1,000	" "		53	100	" "
	57	1,000	" "		54	100	" "
	58	1,000	" "	S	275	500	" "
	59	1,000	" "		276	500	" "
	60	1,000	" "	R	473	1,000	" "
	61	1,000	" "		474	1,000	" "
	62	1,000	" "		475	1,000	" "
	63	1,000	" "				
	64	1,000	" "			$552,122 57	

698

		$552,122 57			91	1,000	Frankfurter Bankverein.
R	360	1,000	Geo. K. Sistare.		92	1,000	" "
	361	1,000	" "		93	1,000	" "
	346	1,000	Mrs Ann Marshall.		94	1,000	" "
	347	1,000	" "		95	1,000	" "
S	124	500	Lombard, Odier & Co.		96	1,000	" "
	125	500	" "		97	1,000	" "
	126	500	" "		98	1,000	" "
	127	500	" "		99	1,000	" "
	128	500	" "	S	465	500	" "
	129	500	" "		466	500	" "
	130	500	" "		467	500	" "
	131	500	" "		468	500	" "
	132	500	" "		470	500	" "
	300	500	" "				
R	90	1,000	Frankfurter Bankverein.			$573,622 57	

699

		$573, 622 57			373	300	Plock & Co.
S	473	500	Frankfurter Bankverein.		374	300	" "
R	467	1, 000	" "		375	300	" "
	468	1, 000	" "		376	300	" "
	469	1, 000	" "		377	300	" "
	470	1, 000	" "		378	300	" "
	471	1, 000	" "		379	300	" "
RR	136	1, 000	Rev. James K. Lombard.		380	300	" "
T	365	300	Plock & Co.	U	166	100	" "
	366	300	" "		167	100	" "
	367	300	" "				
	368	300	" "		949	$585, 122 57	
	369	300	" "		23	13, 000	
	370	300	" "				
	371	300	" "		926	$572, 122 57	
	372	300	" "				

Deduct from total addition for amounts charged as "2d mortgage," which were "arrearage interest—"

On sheet 21, 4 bonds	$3, 500 00
" 22, 9 "	4, 500 00
	$8, 000 00
" 4, 10 "	5, 000
	$13, 000

700 (Indorsed:) Second-mortgage bonds. $572,122.57. United States circuit court, southern district of Alabama. Filed 5 day of April, 1877. N. W. Trimble, clerk.

701, 702 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WILLIAM BUTLER DUNCAN AND A. FOSTER Elliot, trustees, complainants,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above entitled cause.

William H. Hays, of the city of New York, being duly sworn and examined, deposes and says that he is chairman of the committee of reorganization of the Mobile & Ohio R. R., who is the holder and legal possessor of 67 several bonds of the Mobile and Ohio Railroad Company, secured by a first mortgage of said railroad, which several bonds are known as interest arrearage C. bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said committee of reorganization as principal the sum of sixty-seven hundred pounds sterling, and for interest from November 1st, 1874, which interest is represented by coupons attached to said bonds and past due; together with interest on each coupon from the time it became due; and deponent further says that he is authorized by said committee to make this deposition.

Many of these bonds and coupons have been proved before the special master by the parties whose names are appended to the list herewith, but the legal possession thereof has been transferred to the committee, & I hereby notify you of such transfer and of such legal possession being in said committee.

(Sign here) W. H. HAYS.

Subscribed and sworn to before me this 17th day of January, A. D. 1877.

[SEAL.] JOSEPH GUTMAN, Jr.,
United States Commissioner Southern District of New York.

703, 704 (Indorsed:) Sterling int. C. bonds. Number . Circuit court of the United States, fifth judicial circuit and southern district of Alabama. Wm. Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim, by agent or attorney, of Wm. H. Hays, chairman of committee of reorganization M. & O. R. R. Co. Rec'd Jan'y 23, 1877. James Gillette, special master.

705 *Arrearage interest sterling.*

C	7	£100	Estate of Geo. Peabody.	67	£100	Estate of Geo. Peabody.

C	Total of arrearage interest sterling	£6, 700
B	Do. do.	£124, 800
		£131, 500

706 *Average interest sterling.*

C	1	£100	Robert T. Crawshay.	22	100	John E. Bartlett.
	2	100	" "	23	100	" "
	74	100	" "	24	100	" "
	10	£100	John E. Bartlett.	25	100	" "
	11	100	" "	69	100	" "
	12	100	" "	8	£100	Thomas Robinson.
	13	100	" "	9	100	" "
	14	100	" "	58	100	" "
	15	100	" "	59	100	" "
	16	100	" "	60	100	" "
	17	100	" "	61	100	" "
	18	100	" "	62	100	" "
	19	100	" "	68	100	" "
	20	100	" "	73	100	" "
	21	100	" "	47	£100	C. M. Lampson & Co.

707

C	26	£100	Junius S. Morgan.	41	100	Junius S. Morgan.
	27	100	" "	42	100	" "
	28	100	" "	43	100	" "
	29	100	" "	44	100	" "
	30	100	" "	45	100	" "
	31	100	" "	46	100	" "
	32	100	" "	48	100	" "
	33	100	" "	49	100	" "
	34	100	" "	50	100	" "
	35	100	" "	56	100	" "
	36	100	" "	57	100	" "
	37	100	" "	70	100	" "
	38	100	" "	72	100	" "
	39	100	" "	76	100	" "
	40	100	" "			

708

C	3	£100	Sir Curtis M. Lampson.		63	£100	Miss Henrietta Pidgeon.
	66	100	" "		64	100	" "
	71	100	" "				
	6	100	" "			£6, 700	

709 (Indorsed:) Interest arrearage C. £6,700 0 0. United States circuit court, southern district of Alabama. Filed 5 day of April, 1877. N. W. Trimble, clerk.

710, 711 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

William Butler Duncan and A. Foster Elliot, trustees, complainants,
vs.
The Mobile and Ohio Railroad Company et al., defendants.
} In equity.

Proof of claim.

Before the special master commissioner appointed by the said honorable circuit court in the above-entitled cause.

William H. Hays, of the city of New York, being duly sworn and examined, deposes and says, that he is chairman of the committee of reorganization of the Mobile & Ohio R. R., who is the holder and legal possessor of 131 several bonds of the Mobile and Ohio Railroad Company, secured by a mortgage of said railroad, which several bonds are known as convertible bonds of said company, and are numbered according to the list of numbers hereto annexed, and that there is due unto said committee of reorganization, as principal, the sum of two hundred & seventeen thousand & eight hundred dollars, and for interest from December 1st, 1874. Deponent further says that he is authorized by said committee to make this deposition.

Many of these bonds have been proved before the special master by the parties whose names are appended to the list herewith, but the legal possession thereof has been transferred to the committee, & I hereby notify you of such transfer & of such legal possession being in said committee.

(Sign here.) W. H. HAYS.

Subscribed and sworn to before me, this 17th day of January, A. D. 1877.

JOSEPH GUTMAN, J'R,
United States Commissioner, Southern District of New York.

712, 713 (Indorsed:) Convertible bonds. Number . Circuit court of the United States, fifth judicial circuit and southern district of Alabama. W'm Butler Duncan and A. Foster Elliot, trustees, vs. The Mobile and Ohio Railroad Company et als. Proof of claim, by W'm H. Hays, chairman committee of reorganization M. & O. R. R. Co. Rec'd Jan'y 23, 1877. James Gillette, special master.

714

Convertible.

292	1,000	W'm M. Clarke.	308	1,000	W'm M. Clarke.
293	1,000	" "	309	1,000	" "
294	1,000	" "	310	1,000	" "
295	1,000	" "	311	1,000	" "
296	1,000	" "	312	1,000	" "
297	1,000	" "	313	1,000	" "
298	1,000	" "	314	1,000	" "
299	1,000	" "	315	500	" "
300	1,000	" "	316	500	" "
301	1,000	" "	317	450	" "
302	1,000	" "	69	2,500	James D. Wood.
303	1,000	" "	200	625	Cha's H. Wardwell.
304	1,000	" "	323	625	Henrietta E. Cropsey, Hester Marsh, ag't.
305	1,000	" "		$28,200	
306	1,000	" "			
307	1,000	" "			

715

	$28,200		218	1,250	Sam'l S. T. Smith.
201	625	A. M. Wardwell.	51	250	J. F. Williams.
202	625	" "	59	875	Sam. F. Phelps.
203	625	" "	58	1,000	" "
204	625	" "	392	1,000	" "
205	250	" "	393	1,000	" "
346	250	" "	49	275	Martha E. Dickerman.
321	1,000	Hester Marsh.	206	500	G. W. G. Kinney.
322	875	" "	348	750	G. W. Bond.
319	1,000	Margaret Field.	64	375	F. H. Thomas.
320	900	" "	341	250	" "
162	1,250	R. R. Searles.	231	1,250	W. W. Wardwell.
65	500	M. C. West.	52	1,250	D. G. Dorrance.
61	375	E. M. McChesney.			
347	400	" "		$48,275	
161	750	James H. Searles.			

716

	$48,275		465	125	Hunsicker & Co., by Fred. Probst & Co.
70	650	Thos. G. Nock.	220	1,250	H. G. Utley.
72	250	" "	214	1,250	Ezekiel Van Dressar.
447	5,000	City Nat'l Bank, Cairo, Ills.	240	250	Israel Denis.
448	20,000	" "	73	275	Plock & Co.
195	2,500	L. Von Hoffman & Co.	471	125	" "
196	2,500	" "	472	125	" "
197	2,500	" "	473	125	" "
198	2,500	" "	474	125	" "
199	2,500	" "	475	125	" "
233	250	Steward Van Dressar.	476	125	" "
67	250	Francis Van Dressar.	477	125	" "
163	375	" "	478	125	" "
232	250	" "	479	125	" "
176	125	Hunsicker & Co., by Fred. Probst & Co.		$92,000	

717

	$92,200		324	1,000	Jacob Hays.
480	125	Plock & Co.	325	1,000	" "
167	1,000	" "	326	1,000	" "
168	1,000	" "	327	1,000	" "
169	1,000	" "	328	1,000	" "
170	1,000	" "	329	1,000	" "
171	1,000	" "	330	1,000	" "
172	1,000	" "	331	1,000	" "
394	15,000	David Utley.	332	1,000	" "
216	6,175	" "	333	1,000	" "
194	550	Mary E. Reynolds, ex'r'x.	1	2,500	W'm H. Hays.
452	250	Elizabeth J. Merritt.	2	2,500	" "
23	2,500	Closson & Hays.	3	2,500	" "
24	2,500	Closson & Hays, att'ys.	4	2,500	" "
21	2,500	W'm H. Hays & Jacob H. Hays.		$150,300	
22	2,500	W'm H. Hays & Jacob H. Hays.			

718

		$150,300			385	5,000	W'm H. Hays.
	5	2,500	W'm H. Hays.		386	5,000	" "
	6	2,500	" "		387	5,000	" "
	7	2,500	" "		388	5,000	" "
	8	2,500	" "		389	5,000	" "
	9	2,500	" "		390	5,000	" "
	10	2,500	" "			$215,300	
	381	5,000	" "		334	2,500	" "
	382	5,000	" "			$217,800	
	383	5,000	" "				
	384	5,000	" "				

719

(Indorsed:) Convertible bonds $217,800. United States circuit court, southern district of Alabama. Filed 5 day of April, 1877. N. W. Trimble, clerk.

720 *Index of claims presented to special master.*

CLAIMS AND BONDS.

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN AND A. FOSTER ELLIOT, trustees,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.

(Indorsed:) Index of claimants. Names and numbers. (S'gn'd) James Gillette, special master. Received and filed this 5th day of April, A. D. 1877. (S'gn'd) N. W. Trimble, clerk.

721 In the circuit court of the United States, fifth circuit, and southern district of Alabama.

W. B. DUNCAN ET AL.
vs.
MOBILE & OHIO R. R. CO.

Index to claims presented and proved before the undersigned, special master.

(S'gn'd) JAMES GILLETTE,
Special Master.

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741 *Notice of filing report.*

In the circuit court of the United States for the southern district of Alabama.

W'M BUTLER DUNCAN AND A. FOSTER ELLIOTT, receivers & trustees, *vs.* MOBILE AND OHIO RAILROAD CO. ET ALS. } No. 90.

Notice is hereby given in the above-entitled cause that James Gillette, a special master appointed by the decree of the court of March 6th, 1876, has this day filed his report under said decree upon the mortgages, deeds of trusts or other instruments which created a lien upon the mortgaged property, and upon the priorities of the same.

April 6th, A. D. 1877.

N. W. TRIMBLE,
Clerk & Master.

742 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN & A. FOSTER ELLIOTT, receivers & trustees, *vs.* MOBILE AND OHIO RAILROAD CO. & ALS. } No. 90. In equity.

Notice is hereby given, in the above-entitled cause, that James Gillette, special master, appointed by the decree of March 6th, 1876, has this day filed his report, under said decree, upon the claims of Alexander Duncan and others, holders of the first-mortgage coupons of 1874, and upon the exceptions thereto, etc.

May 3, 1877.

N. W. TRIMBLE,
Clerk, &c.

743 *Order at rules.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT, trustees, &c., *vs.* THE MOBILE & OHIO RAILROAD COMPANY et als. } No. 90. At rules. May 7, 1877.

Comes the complainants, and set the above-entitled cause down for hearing on the bill and exhibits, answers, decrees pro confesso, orders of the court, reports of the master, and the proofs in the cause, at the June term, 1877, of the court, for a decree of foreclosure and sale.

The Mobile and Ohio Railroad Company concurs in the above order.

GEORGE N. STEWART,
Sol'r for Def't.

744 *Notice and proof before master.*

Circuit court of the United States, southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOTT
vs.
MOBILE & OHIO RAILROAD COMPANY, W'M D. DUNN
et als.
} In equity.

To George N. Stewart, esq., solicitor Mobile & Ohio R. R. Company, W'm G. Jones, esq., solicitor trustees of mortgage M. &. O. R. R. Co., dated Febr'y 15, 1877:

Take notice that under the order of the court in the above-entitled cause, we will on Thursday, the 24th, produce and prove in the master's office, for a hearing of said cause, the following documents, viz:

Transcript of record in the case of Mobile and Ohio R. R. Company vs. Morris Ketchum, in the court of chancery at Mobile, for first district of the southern chancery division of the State of Alabama.

Letters of resignation of the trusteeship under deed of trust 1st Nov., 1853, by Alexander Jackson and George H. Young; the
745 resolutions of the board of directors of said corporation upon said resignation; the nomination and appointment of W'm Butler Duncan and A. Foster Elliott as trustees, and their letters of acceptance; the resolution of said board of directors affirming said appointment; the letters of Cha's Walsh of M'ch 5 & March 12, and April 20, 1875, resigning his said position of trustee under said deed of 1853; the resolutions of the board of directors authorizing the surrender of said trust property to said Duncan and Elliott as trustees of said deed, 1st Nov., 1853; the demand of said trustees for the possession of said trust property; the communication to the board of directors by the v. pres't that said property had been demanded and surrendered.

All which are shewn by the minutes of said board of directors.

The assent of the trustees of the Tenn. substitution bonds to the possession by said Duncan & Elliott, the agent of the trustees of the
746 consolidated mortgage of said R. R. company.

Resp'y,

P. & T. HAMILTON,
JNO. A. CAMPBELL,
For Compl'ts.

MAY 21, 1877.

Service of the foregoing notice is accepted this May 21, 1877.

W'M G. JONES,
Sol'r for Def'ts Dunn, Dickson & Young.
GEORGE N. STEWART,
Sol'r for Mob. & Ohio R. R. Co.

Filed May 24th, 1877.

N. W. TRIMBLE,
Clerk & Master.

747 GEORGE N. STEWART, of the city of Mobile, being duly sworn, deposes and says:

That in the year 1875, and before and afterwards, he was general solicitor of the Mobile and Ohio Railroad Company, and in charge of its legal business.

That in the spring of that year it became obvious that it would become necessary that legal steps should be taken by the trustees under the deed of first mortgage of the company, and I called on M'r Charles Walsh, one of said trustees, who, it was understood, would be absent from the State, to execute a power of attorney, to be signed by him and the two other trustees, to an agent or agents to execute bonds and do such acts as might be required to be done by such trustees in the prosecution *of* defence of suits, and to do in New York what might be needed there to be done by the trustees. To this application I received from M'r Walsh his letter, dated at Mobile on the 5th of March, 1875, the
original of which is now here produced to me, directed to me, as
748 general solicitor of the Mobile and Ohio Railroad Company, now
marked with my initials for identity. The said letter is signed
by said Walsh with his own proper signature.

It was suggested to me by M'r Walsh that he knew Mess'rs Jackson and Young, and that they being old gentlemen retired from active business he thought it very probable that they would be disposed to take the same course as he had.

I did apply to each of those gentlemen the other trustees, shewing them *them* the letter of M'r Walsh. M'r Alexander Jackson also, by his letter to me directed, dated on the 9th of March at Jackson, Tennessee, requested me to present his resignation as trustee as M'r Walsh had done; and on the 10th day of March, 1875, M'r George H. Young, by his letter of that date to me directed, requested me also to present his resignation as trustee under said first mortgage of the company. The letters of M'r Jackson and of M'r Young now produced before me are their original letters, signed by them, respectively, in my presence, with their
own handwriting, respectively.
749 The said letters for identification are now marked with my initials.

After I came into the possession of these three letters, considering of the same, I expressed the opinion that if these three letters were reported to M'r Walker, the vice-president of the company, then acting as president in the absence of the president, and the proposed resignations therein carried into effect, that the power given by the deed to perpetuate the execution of the trust by the appointment of successors as trustees would lapse, and that no successors as trustees could be appointed in the mode and manner specified in the said deed of first mortgage, and to obviate this evil, I reported only two of the resignations to M'r Walker, vice-president, to take effect at that time, and accordingly addressed to him my letter dated the 12th of March, 1875, communicating to him, as vice-president, the resignation of M'r Alexander Jackson, of Tennessee, a copy of which letter to M'r Walker is herewith marked with my initials for identification. And on the same
day I addressed to M'r Walker, vice-president, a similar letter
750 dated on the 12th of March, 1875, communicating to him the
resignation of M'r George H. Young, a copy of which letter is
also herewith marked with my initials for identification.

On the same day I addressed letters to M'r Alexander Jackson and to M'r George H. Young, respectively, dated on the 12 of March, 1875, advising them that their respective resignations had been accepted and made of record. But I did not make any return or report to M'r Walker at that time of the proposed resignation of M'r Walsh, for the reason above stated.

The copies of the letters to M'r Jackson and to M'r Young are herewith marked with my initials for identification.

Under my advice and for the purpose aforesaid, M'r Charles Walsh addressed me his letter of the 15th of March, 1875, of that date, with *or* *ow*ing or suspending his resignation as trustee, the original of which letter is now before me, signed by said Walsh with his own signature, on which I have placed my initials for identification.

The resignation of M'r Walsh was thus withheld and did not go into
effect until after the appointment of M'r William Butler Duncan
751 and Andrew Foster Elliot was made by the concurrence and
joint act of said Charles Walsh, then still acting trustee, and the
company; and after this was accomplished, then on the 20th of April, 1878, said Charles Walsh, by his letter of that date directed to J. J. Walker, esq., vice-president of the Mobile & Ohio Railroad Company, declared his final resignation, the original of which letter, in my handwriting, dated and written on said 20th of April, 1875, is now before me, signed with the proper hand of said Charles Walsh, on which I have affixed my initials for identification.

This last letter was handed to me by M'r Walsh, and was by me delivered to M'r Walker on the day of or soon after its date. After which M'r Walsh ceased to act as a trustee.

(Signed) GEORGE N. STEWART.

Subscribed and sworn to before me this 24th day of May, A. D. 1877.

(Signed) HENRY S. SKAATS,
U. S. Commissioner.

Filed May 24, 1877.

A. W. TRIMBLE, *Clerk.*

752 G. N. S.

MOBILE, *March 5th*, 1875.

GEORGE N. STEWART,
General Solicitor Mobile & Ohio R. R. Co.:

DEAR SIR: In reply to your request that I shall execute a power of attorney jointly with the two other trustees of the mortgage made by the Mobile & Ohio R. R. Co. on the 1st of November, 1853, to an agent or agents in New York to enable the company to do what may be there needed in respect to the management of the interests of the company, and also for the prosecution & defense of such proceedings as may arise in the courts there to execute bonds when necessary to protect the property of the trust, &c., I have to say that I have fully considered of the subject, and I have come to the conclusion that neither the interests of the company nor mine would be benefitted by my so doing.

I suppose it is probable that under the present difficulties of this road,
as well as of all other roads at this time, that intricate litigations
753 will arise, and, when commenced, I cannot foresee how long it will
be before they can be closed. I am not myself in a situation to
attend personally, at New York or elsewhere, to the complicated questions which may arise in adjusting the rights of all the complicating trust; and, to tell the truth, I do not feel willing to empower others to act for me in such matters on my responsibility. I prefer to resign the position of trustee, so that trustees in New York, on the spot, may be appointed who can act promptly, and may furnish such affidavits and bonds as may be needed in judicial proceedings, which I am not in a condition to do. I have reason to believe that my course would not be considered injurious to the parties interested as the matter now stands together, and their action cannot be very prompt or effectual.

At all events, I prefer to tender my resignation as a trustee, which I will thank you to forward to the president of the company. I regret to have to take this course, but believe it best for all parties under present circumstances.

Your ob't se'v't,
(Signed) CHA'S WALSH.

754 G. N. S.

M'r GEORGE N. STEWART,
General Solicitor Mobile and Ohio R. R. Co.:

JACKSON, TENN.,
March 9th, 1875.

Having carefully considered the foregoing communication of M'r Charles Walsh and coinciding with his views, I hereby join in requesting that you will forward my tender of resignation as trustee to the president of the company, coupled with the request that in accepting my resignation all proper proceedings may be had necessary to exempt and relieve me from further responsibility as trustee.

Resp'y y'rs, (Signed) ALEX'R JACKSON.

Witness present:
GEORGE N. STEWART.
HOWELL E. JACKSON.

755 G. N. S.

To GEORGE N. STEWART,
Gen'l Solicitor of the Mobile & Ohio Railroad Company:

WAVERLY, MISS.,
March 10, 1875.

D'R SIR: On consideration of the views expressed by M'r Charles Walsh and concurred in by D'r Alexander Jackson, as within stated, I have to say that I fully concur with them in the opinion that it would be better for the interests of the company, its bondholders, and of my own, that I should also resign the position of trustee of the deed of trust within referred to, and I therefore request that you tender my resignation as such trustee to the president of the company, and I also make the request, as made by D'r Alexander Jackson, that such proceedings be had that I shall be relieved from future responsibility on account of said trusts.

(Signed) GEO. H. YOUNG.

Witness:
GEORGE N. STEWART.
JOHN W. YOUNG.

756 G. N. S.

MOBILE, *March 12th*, 1875.

GEORGE N. STEWART, Esq.,
General Solicitor Mobile & Ohio R. R. Co.:

DEAR SIR: When I addressed to you my request that you should tender my resignation as trustee under the deed of mortgage and trust made by the Mobile & Ohio Railroad Company, on the 23rd of November, 1853, I did so with the great desire to be relieved for the future

from the duties & responsibilities of said trust. Such is now still my earnest wish, but it was under the full belief that it would cause no injury or inconvenience to the company, but rather advance its interests. I have now, however, been shown that the two other trustees having also resigned, the result is that the mortgage is left without any trustee to represent the interests of the beneficiaries, & that the trust, for the want of a trustee, cannot be made effectual without application to a court of chancery, which would require much time, and the duty
757 has been pressed on me that at least one trustee should remain,
in order that the succession of trustees may be maintained. Under this pres'ure on me, in view of the consequences, and upon the urgent solicitations of friends, I have been induced to say to you, as my determination to resign has not yet been presented by you for acceptance by the railroad company, that you will with'old it and consider it revoked until further instructions from me.

This cause seems now a duty on my part under the circumstances, although I had hoped to be relieved from the trust, and such it is still my desire to effec'uate so soon as future events will permit.

Please consider my instructions to you in this respect as revoked and annulled.

Your ob't ser't,
(Signed) CHA'S WALSH.

758 (Signed) GEORGE N. STEWART.

MOBILE, *April 20th*, 1875.

J. J. WALKER, Esq.,
Vice-President of the Mobile & Ohio Railroad Co.:

SIR: I have heretofore in a letter to George N. Stewart, esq., expressed my desire to resign my postion of trustee under the deed of mortgage and trust executed by the Mobile & Ohio Railroad Company, dated November 1, 1853, known as the first mortgage of said company, but at your suggestion the said resignation had not been presented. I have since that time, at the request of the said company, and in accordance with what seems to be my duty under said deed, united with the company in the appointment of trustees in place of Messrs. Young & Jackson, trustees, whose resignations as trustees under the same deed have been accepted.

I now renew my intention of resignation, and request that I
759 may be immediately relieved of all further duty and responsibility
in the trusteeship by the acceptance of this my resignation, and that proper resolutions be adopted by the company for my security and protection.

Your ob't serv't,
(Signed) CHA'S WALSH.

760 G. N. S.

MOBILE AND OHIO RAILROAD COMPANY,
GENERAL SOLICITOR'S OFFICE,
Mobile, March 12th, 1875.

JOHN J. WALKER, Esq.,
Vice-Pres't of the Mobile & Ohio R. R. Co.:

DEAR SIR: The present is to make known to you that Alexander Jackson, esq., of the State of Tennessee, has by an instrument under his hand, and duly witnessed (as herewith shown), directed and requested me on his behalf to tender his resignation as one of the trustees (appointed by substitution) under the deed of mortgage and trust, executed by the company on the first of November, 1853, originally to Mess'rs Palmer, Hallett, and Ketchum, for the purpose of securing the payment of an issue of sterling bonds of the company; in consequence of which, I now tender his said resignation, according to his desire and by his authority, in order that the same may be duly recorded.

Your ob't serv't,
(Signed) GEORGE N. STEWART,
Gen'l Sol. M. & O. R. R. Co.

761 G. N. S.

MOBILE AND OHIO RAILROAD COMPANY,
GENERAL SOLICITOR'S OFFICE,
Mobile, March 12th, 1875.

JOHN J. WALKER, Esq.,
Vice-President of the Mobile & Ohio R. R. Co.:

DEAR SIR: The present is to make known to you that George N. Young, esq., of the State of Mississippi, has, by an instrument under his hand, and duly witnessed (as herewith shown), directed and requested me on his behalf to tender his resignation as one of the trustees (appointed by substitution) under the deed of mortgage and trust executed by this company on the first of November, 1853, originally to Mess'rs Palmer, Hallett, and Ketchum, for the purpose of securing the payment of an issue of sterling bonds of the company. In consequence of which, I now tender his said resignation, according to his desire and by his authority, in order that the same may be duly recorded.

Your ob't serv't,
(Signed) GEORGE N. STEWART,
Gen'l Solicitor Mobile & Ohio R. R. Co.

762 G. N. S.

MOBILE AND OHIO RAILROAD COMPANY,
GENERAL SOLICITOR'S OFFICE,
Mobile, March 12th, 1875.

D'R ALEXANDER JACKSON,
Jackson, Tenn.:

DEAR SIR: The present is to inform you that your resignation as trustee under the deed of mortgage and trust originally made to Mess'rs Palmer, Hallett, & Ketchum, by the Mobile and Ohio Railroad Company, on the first of November, 1853, and under which you were appointed a trustee by substitution, has been this day tendered, as you requested, to M'r John J. Walker, vice-president of said company, and acting president in the absence of the president, has been duly accepted and made of record in the archives of the company; and M'r Walker directs me to say that at the first meeting of the board of directors proper resolutions will be presented, as requested by you, to exonerate you from all future liability in relation to said trust.

Your ob't serv't,
(Signed) GEORGE N. STEWART,
Gen'l Sol. M. & O. R. R. Co.

763 G. N. S.

MOBILE AND OHIO RAILROAD COMPANY,
GENERAL SOLICITOR'S OFFICE,
Mobile, March 12th, 1875.

GEORGE H. YOUNG, Esq.,
Waverly, Miss.:

DEAR SIR: The present is to inform you that your resignation as trustee under the deed of mortgage and trust originally made to Messrs. Palmer, Hallett, and Ketchum, by the Mobile and Ohio Railroad Company, on the first of November, 1853, and under which you were appointed a trustee by substitution, has been this day tendered, as you requested, to M'r John J. Walker, vice-president of said company, and acting president, has been duly accepted and made of record in the archives of the company, and M'r Walker directs me to say that at the first meeting of the board of directors proper resolutions will be presented, as requested by you, to exonerate you from all future liability in relation to said trust.

Your ob't serv't,
(Signed) GEORGE N. STEWART,
Gen'l Sol. M. & O. R. R. Co.

Filed May 24th, 1877.
N. W. TRIMBLE, *Clerk.*

764 *Affidavit of A. L. Willoughby and papers accompanying same.*

Circuit court of the United States, southern district of Alabama.

W'M BUTLER DUNCAN, A. FOSTER ELLIOT,
vs.
THE MOBILE & OHIO RAILROAD COMPANY,
W'm D. Dunn et als.
} In equity.

In the master's office.

Comes A. L. Willoughby, who, being duly sworn, on his oath saith that he has been secretary of the Mobile & Ohio Railroad Company, & the keeper of the books & minutes of said corporation; that he is still secretary of the company. He was elected to that office on the 8th day of November, 1865.

He further saith that the accompanying twenty-two pages of manuscript are correct transcripts from the minutes of the board of directors of said company, and of the letters, reports, and resolutions of the said board of directors, as they are spread out and recorded upon the minutes of said board as parts of their proceedings, & that said transcripts were made by himself, & are by him certified under the seal of said corporation.

(Signed) A. L. WILLOUGHBY.

Subscribed and sworn to before me this 24th day of May, A. D. 1877.
(Signed) HENRY S. SKAATS,
U. S. Commissioner.

765 *Extract, minutes Board of Directors M. & O. R. R. Co., April 19,* 1875.

Present, W'm Butler Duncan, president, Jno. J. Walker, vice president, A. Murdock, W. H. Pratt, M. Waring, A. J. Gillespie, W. P. Halliday, W. D. Dunn, Henry Hall.

The president announced the resignations of Alexander Jackson and George H. Young, trustees (appointed by substitution) under the deed of mortgage and trust executed Nov. 1st, 1853, whereupon the following preamble and resolutions were unanimously adopted.

Whereas, Alexander Jackson, of the State of Tennessee, who was appointed by substitution a trustee to act under the deed of mortgage, made by the Mobile and Ohio Railroad Company to Morris Ketchum, Jno. J. Palmer, and William R. Hallett, on the first of November, 1853, has tendered his resignation as such trustee, which has been accepted by the acting president of this company on the 12th day of March, 1875.

766 Now, therefore, be it resolved by the president and directors of said company that the said acceptance of said resignation so made be ratified and confirmed by this board, and that the said resignation be entered of record on the minutes of this company.

And be it further resolved, that the thanks of this company be, and the same are hereby tendered to the said Alexander Jackson, for the services he has rendered to this company as trustee, while he continued to act as such; and that the said company holds itself bound to the said Alexander Jackson, his heirs, executors, administrators, and assigns, to save him and them harmless and fully indemnified from all claims and demands, and all responsibilities which he may have incurred while in the proper discharge of the duties of said office of trustee, in all matters and things relating to said trust, and to the transactions of said company so that he shall stand released and fully discharged from any further responsibility, claim or damage, charges or costs in this behalf.

Resolved furthermore, that a copy of these resolutions be forwarded by the secretary to the said Alexander Jackson, under the seal of the company.

767 Whereas, George H. Young, esq., of the State of Mississippi, who was appointed by substitution, a trustee to act under the deed of mortgage made by the Mobile and Ohio Railroad Company to Morris Ketchum, John J. Palmer, and William R. Hallett, on the first of November, 1853, has tendered his resignation as such trustee, which resignation has been accepted by the acting president of this company on the twelfth day of March, 1875.

Now, therefore, be it resolved, by the president and directors of said company that the said acceptance of said resignation so made, be ratified and confirmed by this board, and that the said resignation be entered of record on the minutes of this company.

And be it further resolved, that the thanks of this company be, and the same are hereby tendered to the said George H. Young, for the services he has rendered to this company as trustee while he continued to act as such, and that the said company holds itself bound to the 768 said George H. Young, his heirs, executors, administrators and assigns to save him and them harmless and fully indemnified from all claims and demands and all responsibilities which he may have incurred while in the proper discharge of the duties of said office of trustee in all matters and things relating to said trust and the transactions of the said company, so that he shall stand released and fully discharged from any further responsibility claim or damage, charges or costs in this behalf.

Resolved, furthermore, that a copy of these resolutions be forwarded

Andrew Foster Elliot as trustees, to fill the vacancies occasioned by the resignation of Alexander Jackson and George H. Young, as trustees under the deed of trust and mortgage of the 1st Nov'r, 1853, is approved, and declared to be the act of the Mobile and Ohio Railroad Company jointly with said Charles Walsh, and the same is ordered to be spread on the minutes of this company together with this resolution.

773 JACKSON, TENN., *M'ch* 9, 1875.

GEOR. N. STEWART, ESQ.,
Gen'l Solicitor M. & O. R. R. Co.:

Having considered the foregoing communication of M'r Charles Walsh, and coinciding with his views, I hereby join in requesting that you will forward my tender of resignation as trustee to the president of the company coupled with the request that in accepting my resignation all proper proceedings may be had necessary to exempt and relieve me from future responsibility as trustee.

Respectfully yours,

ALEX. JACKSON.

Witness present:
GEORGE N. STEWART.
HOWELL E. JACKSON.

774 MOBILE, *M'ch* 12, 1875.

JOHN J. WALKER, ESQ.,
Vice-President M. & O. R. R. Co.

DEAR SIR: The present is to make known to you that Alexander Jackson, esq., of the State of Tennessee, has, by an instrument under hi hand and duly witnessed (as herewith shewn), directed and requested me on his behalf to tender his resignation as one of the trustees (appointed by substitution) under the deed of mortgage and trust execute by this company on the first of November, 1853, originally to Mess Palmer, Hallett and Ketchum for the purpose of securing the paym of an issue of sterling bonds of the company, in consequence of whic now tender his said resignation according to his desire and by his thority in order that the same may be duly recorded.

Your ob'd't servant,

GEO. N. STEWART,
Gen'l

775 WAVERLY, MISS., *M'ch* 10

GEO. N. STEWART,
Gen'l Solicitor M. & O. R. R. Co.

DEAR SIR: On consideration of the views expressed by
Walsh, and concurred in by D'r Alexander Jackson, as w
I have to say that I fully concur with them in the opinion t
be better for the interest of the company, its bondholders, an
that I should also resign the position of trustee of the
within refer'ed to, and I therefore request that you tende
tion as such trustee to the president of the company; an
the request, as made by D'r Alexander Jackson, that suc
be had that I shall be relieved from all further responsibil
of said trusts.

GEO.

Witness:
GEORGE N. STEWART.
JNO. W. YOUNG.

776 **Mobile**, *M'ch* 12, 1875.

JOHN J. WALKER, Esq.,
Vice-President M. & O. R. R. Co.

DEAR SIR: The present is to make know' to you that George H. Young, esq., of the State of Mississippi, has by an instrument under his hand and duly witnessed (as herewith shewn) directed and requested me on his behalf to tender his resignation as one of the trustees (appointed by substitution), under the deed of mortgage and trust, executed by this company on the first of November, 1853, originally to Messrs. Palmer, Hallett, and Ketchum for the purpose of securing the payment of an issue of sterling bonds of the company. In consequence of which I now tender his said resignation according to his desire and by his authority, in order that the same may be duly recorded.

Your ob'd't serv't.

GEO. N. STEWART,
Gen'l Sol'r.

777 *Extract minutes board of directors M. & O. R. R. Co., April* 21, 1875.

Present, W'm Butler Duncan, president, Jno. J. Walker, vice-president. A. F. Elliot, R. K. Dew, W. P. Halliday, A. Murdock, A. J. Gillespie, W. H. Pratt, M. Waring, Henry Hall.

The acceptance of W'm Butler Duncan and A. Foster Elliot, as trustees for the benefit of the first-mortgage bondholders in place of Mess'rs Alexander Jackson and George H. Young was read.

On motion of A. Murdock their acceptances were received, and ordered to be spread upon the minutes.

778 **Mobile**, *April 20th*, 1875.

To JOHN J. WALKER, Esq.,
Vice-President of the Mobile & Ohio R. R. Co.

SIR: I have been officially notified by the secretary of the Mobile & Ohio Railroad Company, that A. Foster Elliot, esq., and myself have been appointed by the conjoint action of Charles Walsh, esq., continuing trustee and the said corporation (in place of Mess'rs George H. Young and Alexander Jackson, who have resigned) trustees for the benefit of the holders of the first-mortgage sterling bonds and coupons of said company, issued by the said corporation under the terms of a certain deed of mortgage and trust originally executed by said Mobile and Ohio R. R. Co. to Morris Ketchum, Jno. J. Palmer, and William R. Hallett on the first day of November, 1853, to secure the payment of the bonds and interest in said deed described with authority to take possession of the properties and estate conveyed by said deed upon the happening of the contingencies therein named.

This is to inform the Mobile and Ohio Railroad Company through you, that I accept the appointment so made of trustee the said deed of trust of 1st November, 1853, upon the terms conditions therein set forth, and agree and promise to perform the and trusts therein and thereby created.

Very respectfully,

W'M BUTLER DUNCAN.

780 MOBILE, *April 20th*, 1875.

JOHN J. WALKER, ESQ.,
Vice-President of the Mobile and Ohio R. R. Co.

SIR: I have been officially notified by the secretary of the Mobile and Ohio Railroad Company that W'm Butler Duncan, and myself have been appointed by the conjoint action of Charles Walsh, esq., continuing trustee, and the said corporation (in place of Mess'rs George H. Young and Alexander Jackson who have resigned) trustees for the benefit of the holders of the first-mortgage sterling bonds and coupons of the said company issued by the said corporation under the terms of a certain deed of mortgage and trust originally executed by the said Mobile and Ohio Railroad Company to Morris Ketchum, Jno. J. Palmer, and William R. Hallett, on the first day of November, 1853, to secure the payment of the bonds and interest in said deed described with authority to take possession of the properties and estate conveyed by said deed
781 upon the happening of the contingencies therein named.

This is to inform the Mobile and Ohio Railroad Company through you, that I accept the appointment so made of trustee under the said deed of trust of the first of November, 1853, upon the terms and conditions therein set forth, and agree and promise to perform the duties and trusts therein and thereby created.

Very respectfully,

A. FOSTER ELLIOT.

782 APRIL 23, 1875.

The following resolutions offered by W. P. Halliday and seconded by W. H. Pratt were unanimously adopted, each member voting aye.

Whereas, by reason of depression in business from cause beyond control of this company, the resources of the company have during the past two years been greatly lessened, so that the company has been unable to meet and discharge the semi-annual coupons due upon its first-mortgage bonds in May and November, 1874, and the interest coupons upon its Tennessee substitution mortgage in July, 1874, and January, 1875, and the interest coupons upon its second mortgage due in March, 1875, which said coupons remain unpaid and may at any time be enforced against the company by the holders thereof;

And whereas the company will be unable to pay the next accruing interest upon its first-mortgage debt;

783 And whereas in the course of its business the company has contracted certain unsecured liabilities known as flo'ting debt, which it has been unable promptly to discharge at maturity, upon which suits are pending;

And whereas the business and property of the company exte
through four States of the Union and are subject to the jurisdictic
courts acting under distinct governments at the suit of the credit
the company, some of whom have already commenced proceedin
the recovery of judements, and to obtain execution upon their
whereby the property pledged in the mortgage will be exposed
ure and sale, and other complications may arise, and sacrifi'es
erty may be made, which property if cared for will suffice for
ment of all just debts of the company without detriment to the j
of the mortgage creditors of the company;

784 And whereas, by its deed of mortgage and trust first

which was executed the 1st day of November, 1853, the faith of this company is pledged to put the trustees of the holders of the bonds issued under authority of said deed in possession of the property conveyed thereby on demand in default of payment of interest on said bonds as therein covenanted for security against loss upon their said debts and demands;

And whereas the contingency of defaults in payments of interest provided for therein has occurred:

Resolved by the board of directors of the Mobile & Ohio R. R. Co., That the existing trustees of the first mortgage and deed of trust of this company executed the 1st day of November, 1853, to wit, W'm Butler Duncan and Andrew Foster Elliot, be placed in possession of the property conveyed by said deed in trust for the security of the holders of the bonds and coupons described in said mortgage or deed of trust.

And it shall be the duty of the vice-president of said company
785 to place, and he is hereby instructed to place, the said trustees
in full and actual possession and control of all the property of every name and kind, and each and every parcel thereof, and of each and every article thereof described in, or embraced in, or conveyed, or covered by the said deed of trust and mortgage executed as aforesaid, to be by said trustees held, used, managed, and applied, as trustees aforesaid, to and for the objects, purposes, and trusts disclosed or described in said deed of trust and mortgage upon their demand.

And the vice-president, upon so placing said trustees in possession as herein directed, will take from them, and their agents and servants, full inventory of all the property of every kind so received by them under this resolution.

And from and after the delivery to said trustees as aforesaid it shall be the duty of each and every officer, agent, employee, and servant of the company to account to and in all respects obey the instructions,
orders, and directions of said trustees or their officers, agents,
786 employees, and servants for the purpose of maintaining the pos-
session so delivered to said trustees.

And in order to protect and to secure the possession of the said trustees, and to obtain the aid and assistance of the judicial tribunals of the United States, or of the States through which the railroads of the company have been constructed, and in which the property of the company is situated, it is further—

Resolved, That the said trustees be empowered and requested to bring suitable suits for the settlement of the affairs of the company, and be authorized to apply for such additional powers as receivers and as trustees administering trust property and funds, as may be entirely adequate to obtain the objects of these resolutions, and to preserve the rights of the mortgagees, creditors, and stockholders respectively.

And it is further resolved, That in case possession be taken,
and that the administration of the property be so conducted, the
president of the company shall be authorized and empowered to
service of all process against the company in any such suits, and
rvice of process upon him shall valid and sufficient service,
that he perform all acts as president of this board whenever it
ecessary for the company and the board of directors to act
or concurrently with the trustees.

tract minutes board directors M. & O. R. R. Co., May 8, 1875.

, T. Haskins Du Puy, vice-president and president pro tem.,

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hundred

W. H. Pratt, Henry Hall, Moses Waring, W. E. Kimball, A. J. Gillespie, A. Foster Elliot.

The vice-president presented to the board some communications, whereupon the following resolution, offered by M'r Waring and seconded by M'r Hall, was unanimously adopted:

Resolved, That the communications presented by the vice-president this morning be spread upon the minutes of the company.

789 **Mobile,** *May* 8, 1875.

To the board of directors of the Mobile & Ohio Railroad Co.:

Gentlemen: The complications and litigations threatened by cause of default upon the bonded debt and inability to meet promptly the various just claims due by the company has obliged the trustees under the mortgage deed of 1st Nov'r, 1853, and other authorities of the company, in compliance with the demands made upon them, to require of me the delivery to them of all the property of this company.

I have called you together for the purpose of informing you formally that, in accordance with the resolutions of the board of directors passed on the 23rd day of April last past, conferring upon me full and irrevocable powers thereto, I have formally delivered to A. Foster Elliot, esq., acting for himself and his cotrustee, W'm Butler Duncan, the Mobile and Ohio Railroad, with all its appurtenances thereto belonging, together with all other properties, rights, and powers of the Mobile and Ohio Railroad Company.

T. HASKINS DU PUY,
Vice-President.

790 To the Mobile & Ohio R. R. Co., T. Haskins Du Puy, vice-president:

Sir: By direction of the holders of first-mortgage bonds of your company and of coupons for payment of interest thereon, about the payment of which interest due May and November, 1874, your company is now in default more than three months, the space specified in the first mortgage deed of the company, executed the first day of November, 1853, the undersigned, trustees under the said first mortgage deed, demand of you the possession of your line of road between the city of Mobile and Columbus, Kentucky, and all the property real and personal and assets of every kind which are conveyed by the said deed to the trustees thereof for the security of the said bonds and the payment of the interest thereon, in order that we may take charge & manage and control the same for the benefit and security of the parties interested, according to the terms and provisions of the said deed of trust executed as aforesaid.

W'M BUTLER DUNCAN, p. A. F. E.
A. FOSTER ELLIOT.

790½ **Mobile,** *May* 8, 187

Received the above notice at 10 o'clock a. m. this 8th
May, 1875, and in accordance therewith, and the powers vested
for that purpose, have and hereby do hand over and deliver to A
Elliot, for himself and his co-trustee, all the property and righ
Mobile and Ohio Railroad Company.

T. HASKINS DU PU
Vice-P

Filed May 24th, 1877.

N. W. TRIMBL

791 A transcript of the record and proceedings had in a certain cause heretofore pending in the court of chancery held at Mobile for the first district of the southern chancery division of the State of Alabama, wherein the Mobile and Ohio Railroad Company, a corporation, is complainant, and Morris Ketchum is defendant.

Index to transcript.

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No. 2480.

792 *Original bill.*

To the Hon. N. W. Cocke, chancellor of the southern chancery division of the State of Alabama, presiding at Mobile.

1. The Mobile & Ohio Railroad Company, a body politic and incorporate, chartered by the laws of Alabama, and also by the States of Mississippi, Kentucky, and Tennessee, respectfully shows to your honor that, by virtue of its powers, so granted by said States respectively, it has constructed a line of railway from Mobile to the mouth of the Ohio River, and is now running and operating the same.

2. The said company further shews that, under & by virtue of purchases and by grant from the Congress of the United States of America, it has obtained title to and possession of a large quantity of land and real estate. Among this property so owned by the company is a large quantity of vacant land in the States of Alabama and Mississippi, which this company obtained from the source above named, for the purpose of aiding said company in construction of said road.

793 3. The said company further shews that, to enable it to proceed and complete its said railway, said company has been compelled to borrow large sums of money for the payment of said loan, and also, in some instances, in payment for work & materials furnished the company by sundry parties, it has issued its bonds for the sum of two hundred and twenty-five pounds of the currency of Great Britain each, which are commonly known in the market as sterling bonds. These bonds are made payable in London, England, in the year 1883, at the office of George Peabody & Co., and bear interest at the annual rate of six per cent., which is payable semi-annually, at the place aforesaid, on the first days of May and November. Six thousand of these bonds have been executed, amounting to the sum of thirteen hundred thousand six hundred and fifty pounds sterling, English currency.

4. Further, your complainant respectfully shews to your honor that, on the first day of November, 1853, said Mobile and Ohio Railroad Company, by its deed of that date, conveyed to Morris Ketchum and
794 John T. Palmer, of the city and State of New York, and to William B. Hallett, of the city of Mobile and State of Alabama, the better to secure the payment of the bonds hereinbefore described and every part thereof, with the interest accruing thereon, the following described property, to wit: All the said Mobile and Ohio Railroad lying between its respective termini, constructed and to be constructed, together with all and singular the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned, and which may hereafter be owned, by said company, including the said lands donated by the Congress of the United States, that is, $419{,}528\frac{55}{100}$ acres of land in the State of Alabama, and $737{,}130\frac{36}{100}$ acres of land in the State of Mississippi, total $1{,}156{,}658\frac{92}{100}$ acres; saving and excepting therefrom so much as lies in township 4 S., R. 1 W., of lands subject to entry in the S't Stephens land office, being $692\frac{78}{100}$ acres, more or less; saving and excepting also the lots and tracts in the coun-
795 ty of Mobile, outside of the line of the railway, outside of its depots, and outside of the corporate limits of the city of Mobile, being lots and lands derived by private not yet fully paid for, and not included in the list of lands in Mobile County derived under and by the act of Congress, and saving and reserving the rights & liens that may attach to the roadway & constructed thereon in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that State in the event of said State aiding in the construction of so much of the road*may* as lies in said State, viz, one hundred and eighteen miles, not exceeding ten thousand dollars per mile. All which will more fully appear by reference to said deed, which is on record in the office of the judge of probate of Mobile, and a copy whereof in print is herewith filed as an exhibit to and part of this bill.

5. Said deed was executed to said Ketchum, Palmer, and Hallett, their survivor and successor, for the benefit, security, and advantage of the person or persons or corporations, or any other party, who
796 shall or may be holders of the before described bonds, or any of them, in trust for that purpose, and with certain powers over said property in said deed fully set forth.

It therein provided that of the said $1{,}156{,}658\frac{97}{100}$ acres of lands donated by the said Congress to be in immediate possession, with authority to devise and determine rules of management of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the payment of said bonds, said trustees to render annually on 1st January of each year to the said railroad company account of their doings in the matter of the trust; said trustees were authorized to appoint an agent to attend to said land business; but that no sale of said lands should be made so long as said grantor was not in default on any obligations connected with said bonds, except by and with the advice and consent of said company. The other property named in said deed was to remain under the control of said company, unless
797 said company became in default for the payment of said bonds or interest.

6. Your orator further shews to your honor that said deed also contains a provision that if either of the said trustees should at any time or times thereafter die, or become from any cause incapable of acting in the premises, or resign his said office, the said company and the surviving or continuing trustees should select some other person to fill the

vacancy occurring, and should thereupon make, execute, and deliver such other instruments or assurances as might be necessary to enable such selected person to act in the premises.

7. Your orator shews that said trustees assented to said deed and took upon themselves the burthen of its execution; that since then two of said trustees have departed this life, to wit, William B. Hallett, of Mobile, who died in July, 1860, and John I. Palmer, who died before the said Hallett, and that the only surviving trustee is the said
798 Morris Ketchum, and that said Ketchum is a resident citizen of the State of New York, and is an alien enemy of the Confederate States of America.

Your orator also shews that at sundry times before the 15th April, 1861, your orator, in pursuance of the terms of said deed of trust, applied to the said Ketchum to unite with your orator in the appointment of trustees to fill the vacancies occasioned by the death of said Hallett and Palmer; but said Ketchum has refused to unite in the appointment of such trustees, and the places of said deceased trustees remain vacant.

8. Your orator charges that said conduct on the part of said Ketchum is a breach of the spirit & letter of said trust deed, and that it has proceeded from selfish and interested motives on his part, and that he has pursued a course of conduct in relation to the trust that has embarrassed and operated to the injury of your orator.

Your orator shows that no provision is made in said deed for
799 compensation to the trustees, except in event of a forfeiture thereof, which has not occurred, & which your orator hopes will not occur. No services have been rendered by said trustees beyond the simple acts of signing the mortgage-bonds and few other papers, directing and authorizing the sale of a small portion of the lands; said trustees have not made any of the annual reports called for by the deed. It was the duty of the trustees to have directed the sale of lands, but they have failed to do so except to a small extent, hereinafter named. Such plain duties they have disregarded, whereby great injury has been done to your orator, and to the bondholders, retarding and preventing the sale of lands, and thereby impairing the market value of the bonds which were to have been received in payment for lands.

The said Hallett, before his death, resided in Mobile, but when applied to he declined acting, stating that the active management of the trust was with his co-trustee, Ketchum, always referring your
800 orator to said Ketchum, and professing to refer all communications to him. Thus having the active management of said business, the said Ketchum has used his power oppressively to your orator, and for selfish purposes.

When said bonds herein described were signed, the said Ketchum, in the name of himself & co-trustees, retained eighteen thousand dollars in the pretence of compensation for signing said bonds; and thus against the wishes of your orator, and notwithstanding the protest of your orator, which was then made and been repeatedly renewed, said bonds with all the coupons for interest thereon have been withheld from your orator; said Ketchum has in addition also demanded regular salaries at high rates, while your orator would not object to reasonable compensation for actual services, it has refused to accede to the demands because they were exorbitant, and could not be yielded without submitting to gross wrong. Since the death of his said co-trus-
801 tees, said Ketchum has refused to unite in the appointment of new trustees, except on condition that he shall retain what he

has already obtained & also have a fixed salary at some high rate, to begin about the year 1855 and continue till the maturity of the trust in 1883.

Said Ketchum also claims the right to move the management of the land department from Mobile to New York, and then to organize it by committing it to officers appointed by himself, & has notified the president of this company of his having appointed the chief agent or superintendent thereof. Your orator, to induce said Ketchum to consent to the appointment of new trustees, has obtained the request of a majority of the bondholders for tha' purpose, but without avail in his refusal to unite in the appointment of such new trustees.

Your orator charges that these actings and doings of said 802 Ketchum are in violation of his duties as trustees, and that he is an unfit person to continue in his position of trustee.

9. Your orator further shows that by a writing under date of 10 January, 1855, the said Ketchum and other trustees advised and directed the sale of lands embraced in the trust not exceeding 100,000 acres, in such terms as to price and time of payment as said company by its board of directors should approve, and promise to ratify such sale and execute proper deeds to the lands so sold. In pursuance of said authority orator has sold a large quantity of land to sundry purchasers, who have complied with the terms of sale, and paid most of the purchase money. Orator has made due reports of said sales to said Ketchum & has in all things performed the conditions on which such sale was to be made, and called for deeds for the purchasers from him as trustee holding the legal title, but he has refused to ratify the sale, and has failed to make deeds for the purchasers. Said purchasers have de- 803 manded of your orator deeds for their lands, and one has filed his bill in this hon. court to compel the specific performance of the contract with him. Others of said purchasers are threatening to pursue a similar course, and so your orator has been subjected to annoyance and cost, and is likely to be still further injured by the misconduct of said Ketchum in his said office of trustee.

These matters have been urgently presented to said Ketchum by your orator, but he has given no heed to their application, and not even acknowledged its reports to him, and when personally applied to, refused to execute the necessary deeds except on condition of his demands for past compensation & future salary being complied with.

Your orator shews that it is highly important that further sales of land should be made, that such was originally intended to be made, for the purpose of completing said road. And it was expressly de- 804 clared that the said sterling bonds so issued by the company should be received in payment of lands to be sold.

This can only be done by the agency of trustees under said deed of trust; that the lands lie in the States of Alabama and Mississippi, and their management should be confided to persons who can and will superintend their management in those States, and in the city of Mobile, where the trust-deed was executed, and where the chief business of your orator has necessarily to be executed, and where the trust will have to be executed, and that the removal of the control and direction of this business would be to the manifest detriment and injury of your orator & all others concerned.

It shows that the security of the bondholders requires the active agency of suitable and a full board of trustees to look after their interest in this property, and that interests so large should not be left in the control of one person alone. That the deed was originally to three, and

good faith to the creditors of your orator, the cestuis qui trust,
805 requires that the office should be full.

Your orator charges that said Ketchum has proved himself an improper person to manage this property as trustee thereof; that he has been unfaithful to said trust. It also charges that said Morris Ketchum is an alien enemy; said property is wholly in the Confederate States, and consists of real property, and franchises, and personal property whose chief value arises from its connection with the realty, and can be properly managed only by resident citizens of these Confederate States.

Your orator prays that said Morris Ketchum may be removed from his said position of trustee under the said deed of trust herein described, that the vacancies created by the deaths of John E. Palmer and William R Hallett may be filled, and that some suitable person be also appointed trustee in the place of said Morris Ketchum; and that said trustees so to be appointed be clothed with all the powers con-
806 ferred by said deed upon the said Ketchum, Palmer, and Hallett.

Your orator prays that said Morris Ketchum be made a party hereto, and that publication be made as provided by the statute in the case of application for the appointment of trustees, and for such other and further relief as may be consistent with equity and the nature of its case, and as in duty bound will ever pray, &c.

HAMILTONS & OWEN,
Sol's Compl't.
(Signed) GEORGE N. STEWART,
Sol. for Compl't.

Comes Milton Brown, who, being duly sworn, saith he is president of the Mobile and Ohio Railroad Company; that said Morris Ketchum is of mature age, & is a resident citizen of the State of New York, in the United States of America; and further, that he, said affiant, has read the foregoing bill of complaint, and the allegations thereof are true to the best of his knowledge, information, and belief.

(Signed) MILTON BROWN.

Subscribed and sworn to before the undersigned this 3rd January, A. D. 1862.

(Signed) T. M. BUNDLEY.
J. P. M. C.

807 (Copy.)

Whereas W'm R. Hallett and J. J. Palmer, two of the trustees under our first mortgage executed to secure our sterling bonds, have departed this life, and whereas Morris Ketchum, the surviving trustee, has attempted, & so far as in his power practiced gross fraud on this company and the bondholders; and whereas said Ketchum is a citizen of the State of New York and an alien enemy, and in all respects disqualified and unfit to act as a trustee:

Therefore resolved, That our counsel be instructed to apply to the chancery court, or such court as may be most suitable, to have three trustees appointed to act under said mortgage, with power to order sales of land, directing, if they deem it best, the taking of sterling bonds in payment, and to make deeds for lands already sold, to be hereafter sold, and to do all and everything necessary & proper to be done in the due execution of said trust; and be it further resolved, that we recom-

808 mend the appointment of Charles Walsh, of Alabama; George W. Young, of Mississippi; and Alexander Jackson, of Tennessee, said trustees under said mortgage.

I certify the foregoing to be a true copy of a resolution passed by the Board of M. & O. R. R. Co., at a meeting of said board on the 5th December, 1861.

[SEAL OF M. & O. R. R. CO.] (Signed) J. P. RUTLAND,
Secretary.

JAN'Y 6TH, 1863.

MOBILE, *January* , 1862.

I hereby acknowledge myself complainant's security for the costs in this cause.

(Signed) M. H. BLOOGOOD.

Filed January 6th, 1862.

(Signed) JOHN M. TAYLOR,
Register.

809 *Exhibit to bill.*

Deed of trust.

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and fifty-three, between the Mobile and Ohio Railroad Company, of the first part, and Morris Ketchum and John J. Palmer, of the city of New York, and State of New York, and William R. Hallett, of the city of Mobile, and State of Alabama, of the second part, witnesseth:

Whereas the legislature of the State of Alabama passed an act of incorporation, approved the third day of February, 1848, creating certain associates therein named, and their survivors, a body politic and corporate, by the name of Mobile and Ohio Railroad Company, and by that name to sue and be sued, plead and be impleaded, to make and have a common seal, and the same break, alter, and renew at pleasure; vested with all powers, privileges, and immunities which are or may be necessary to carry into effect its purposes and ob-
810 jects; authorized and empowered to locate, construct, and finally complete, a single, double, or treble railroad or way, from some suitable point in the city of Mobile, in a western or northwesterly direction, to the mouth of the Ohio River, in such route as shall be deemed most expedient, and to transport, take, and carry property and persons upon said railroad or way, by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them, which said company may cho'se to apply; and for the purpose of constructing said railroad or way, the said company is authorized to lay out the road, not exceeding one hundred feet wide, through the whole length; and for the purposes of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation in relation to the
811 business of said company, and also to make joint stock with any other railroad corporation.

Further, the State of Mississippi incorporated the said Mobile and Ohio Railroad Company by act of its legislature, approved the seventeenth

day of February, 1848. The State of Tennessee did also incorporate said Mobile and Ohio Railroad Compay, by act of the legislature approved the twentieth day of February, 1848; and also the State of Kentucky invested said Mobile and Ohio Railroad Company with corporate rights by an act of its legislature, approved the twenty-sixth day of February, 1848, constituting the Mobile and Ohio Railroad Company a full and complete corporation through the said States, authorized to purchase, hold, and dispose of real and personal estate; to borrow money; to make contracts for the loan of money, and to give evidence of debt, and securities for the payment of the same, by pledge,
812 mortgage, or otherwise, as it shall deem necessary and proper.

And whereas said Mobile and Ohio Railroad Company, in pursuance of the authorities vested by said charters, have surveyed and located the line of said road from the city of Mobile to or near the junction of the Mississippi and Ohio Rivers, secured the rights of way, obtained depot-grounds, and value the assets, all of which are of record in the records of said Company, and of record in the counties intersected.

And whereas the said ro'dway is under contract for the complete work of the road-bed from its respective termini and in progress of construction, the said Mobile and Ohio Railroad Company, parties of the first part, resolved by vote of the board of directors, and in pursuance of the power authority in said company vested, to raise a sum of money not exceeding six millions of dollars for the purpose of completing said road, viz, the purchase of the iron and laying of the same, the
813 necessary turnouts, depots, and equipments; and for that purpose
to execute, issue, sell, and transfer the bonds of said company, in sums of two hundred and twenty-five pounds sterling each, of even date with these presents, payable in thirty years from date, each with coupons attached for interest, payable semi-annually, each coupon being for £6 15s. sterling; both the principal and coupons, and interest on said bonds, until paid, payable at the counting-house of Geo. Peabody & Co., bankers, in London, England, each of said sterling bonds being the same as one thousand dollars money of the United States of America, and not exceeding six thousand bonds, each to be numbered respectively from number one to six thousand inclusive; and for security for the payment of said bonds; to transfer to the said parties of the second part, all and singular, all the rights and franchises of said company, together with all its personal property of a fixed character,
814 real estate, including its depots, warehouses, lots in town and
country, and especially all land donated by act of Congress under date of the twentieth day of September, one thousand eight hundred and fifty, transferred in fee simple to the said company, party of the first part, by act of the legislature of the State of Alabama, approved December first, one thousand eight hundred and fifty-one; by act of the legislature of the State of Mississippi, approved January twenty-eight, one thousand eight hundred and fifty-two; said lands having been selected, set apart, and confirmed to said railroad company, partly of the first part, and designated by described tracts, as will appear by the act of the Commissioner of the General Land Office at Washington, certified, affirmed, and ratified by the act of the honorable the Secretary of the Department of the Interior, one of the executive departments of the Government of the United States of America, dated Washington,
815 D. C., February the fourth, A. D. one thousand eight hundred and
fifty-three.

Now, therefore, this indenture further witnesseth, that the said

Mobile and Ohio Railroad Company, the better to secure the payment of said bonds, and every part thereof, with interest, according to the tenor thereof, and in consideration of the sum of five dollars unto the said company well and truly paid by the said Ketchum, Palmer and Hallett, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledge', have granted, transfer'ed, set over, and conveyed, and by these presents do grant, transfer, set over, and convey unto the said Ketchum, Palmer and Hallett, the survivors *a* successors of them, in fee-simple, all and singular of the rights and privileges of every name and kind, as hereinafter set forth, being the first and only conveyance of title, grant, *a* mortgage, hereby guaranteeing and warranting the described items, assets, and real estate, free from all liens or incumbrances done or suffered to be done by the
816 said party of the first part. The said items, as set forth, are as follows:

All the said Mobile and Ohio Railroad lying between its respective termini, constructed and to be constructed, together with all and singular the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned, and which may hereafter be owned by said company, including the said lands donated by act of Congress hereinbefore referred to, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting, as by the certificate of the Department of the Interior, to 419,528$\frac{56}{100}$ acres in the State of Alabama; to 737,130$\frac{36}{100}$ acres in the State of Mississippi—total, 1,156,658$\frac{92}{100}$ acres; saving and excepting therefrom so much as lies in township four south, range one west, of lands subject to entry in the S't Stephen's land office, Alabama, being 692$\frac{78}{100}$ acres, more or less; saving and excepting also the lots and tracts in the county of Mobile, State of Alabama, outside of the line of
817 the railway, outside of its depots, and outside of the corporate limits of the city of Mobile, being lots and lands derived by private purchase, not yet fully paid for, and not included in the list of lands in Mobile County, and saving and reserving the right and liens that may attach to the roadway and construction thereon in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that said State in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz, one hundred and eighteen miles, which aid is provided for by law of that State, and if used by said Mobile and Ohio Railroad the said prior lien in favor of said State will be to the extent of said State aid, not exceeding ten thousand dollars per mile.

To have and to hold the said premises hereinbefore set forth to the said Ketchum, Palmer, and Hallett, their survivors or successors, for the benefit, security, and advantage of the person or persons, or cor-
818 porations, or any other party who shall or may be holders of the before-described bonds, or any of them, conditioned as follows: The said Ketchum, Palmer, and Hallett shall at once have possession and control of the lands donated by act of Congress, and set forth in the before-mentioned certificate of the Secretary of the Interior, of February fourth, one thousand eight hundred and fifty-three, for 1,156,658 $\frac{92}{100}$ acres, and any other lands that may be obtained for the said company, by the present or by future act of Congress, with authority to devise and determine rules of management, of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds, said Ketchum, Palmer, and Hallett rendering an exhibit and account of their doings on or before

the first days of January of each and every year during the period of the trust herein made, to the said parties of the first part.

The said Ketchum, Palmer, and Hallett shall have full authority to appoint an agent or agents to attend to said land business, who
819 shall account for his or their doings to them, paying over to them all the proceeds of sales, or rents, or profits derived from said lands.

It is provided, however, that unless the said railroad company should be in default on any obligations connected with said lands, no sale of said lands shall be made except by and with the advice and consent of said company. The said party of the second part, themselves, or regularly constituted attorney, are hereby vested with authority to issue proper and sufficient deeds or muniments of title.

As to other items of assets of real estate, tolls, or income of said company, they are to remain in the possession or under the control of the said company, except the said company become in default for the payment of said lands or interest, or any portion thereof; in such case the said party of the second part is hereby vested with full authority to take possession and control of all and singular the entire estate and properties of whatsoever name or kind, and hold the same for the benefit of any and all
820 creditors, with such other action and disposition as shall be equitable to all concerned, provided the said party of the second part shall claim to take such possession and control, unless said company remains in default of payment of the said lands or interest for the space of three months after being due and payable.

The Mobile and Ohio Railroad Company further covenant and agree to make to said party of the second part, their survivors or successors, any further assurance or instrument as may be necessary at any further time, to carry out the equitable intentions of this deed, and the said company, for themselves, their successors and assigns, do hereby covenant and agree with the said Ketchum, Palmer and Hallett, or their successors in behalf of the bondholders, that the money received on the said lands shall be applied in good faith on the construction and completion of said road, and putting the same into operation.

And on the failure of said company to do and perform any and
821 all the covenants herein agreed, the said Ketchum, Palmer and Hallett, or survivors or successors, upon the request in writing of any one or more of the bondholders, may and shall take actual possession of all said railroad and the other property and effects of said company hereby conveyed, transfer'ed, and assigned, or so intended to be, and, through the agency of such person or persons as they may from time to time appoint, may receive and collect to tolls, incomes, and profits of the same, for the purpose of the security hereinbefore declared, and may sell and dispose of the said road and other property hereby mortgaged, conveyed, or assigned, or so intended to be, and all benefit and equity of redemption of the said company therein, always with the benefit of franchise, and subject to the conditions thereof, at public auction, giving reasonable public notice of the time and place of sale, and as the attorney or attorneys of the said company for that purpose, by these presents duly constituted, to make and deliver to the purchaser or
822 purchasers thereof good and sufficient deed or deeds of conveyance for the real estate, in fee simple or otherwise, according to the title of said company therein, and good and proper transfer and assignment of the personal property, and out of the money arising either from the income or profits of the said road and other mortgaged, conveyed, or assigned property or effects of the sale thereof, after deduct-

ing the expenses incurred in carrying on the business of the road, and in keeping the same in repair, together with the costs, charges, and counsel fees incurred in their proceedings, and a reasonable compensation to themselves for their services, in case of such sale, to apply so much of the residue as may be necessary to pay the principal and interest which may be due on said bonds issued as aforesaid, rendering the balance of such moneys, if any shall remain, to said company.

And the sale so made shall be a perpetual bar against the said parties of the first part, and persons claiming by, from, or under
823 them. Provided, however, and it is hereby expressly understood and agreed, that neither of them, the said Ketchum, Palmer, and Hallett, or their successors or assigns, shall in no manner be liable or responsible for any act of the other to which he does not expressly assent, and that they shall be accountable only for the exercise of reasonable care and diligence in their management in the premises.

And it is further covenanted and agreed between the said parties, that if either of them, the said Ketchum, Palmer, or Hallett, shall at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company and the said Ketchum, Palmer, and Hallett, or either of them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver, all and singular, such other and further instruments or assurance as may be necessary to en-
824 able such person or persons so selected to act in the execution of these presents.

But until such selections of some person or persons to fill such vacancy or vacancies, and the execution of the papers requisite to enable him or them to act, the act or acts of the other shall, notwithstanding such vacancy, be in all respects legal and valid.

And it is expressly understood that the conveyance made by this indenture is only on and for the present rights, interest, and property, and appurtenances of the parties of the first part as do or may exist on the line of said railroad from the city of Mobile to the mouth of the Ohio River.

And it is hereby further provided, and these presents are upon the express condition, that upon the payment or satisfaction of the principal and interest of the aforesaid bonds, the estate hereby granted and conveyed to Ketchum, Palmer, and Hallett, their survivors or successors, and the property and effects mortgaged, conveyed, or trans-
825 fer'ed to them, shall cease and become void; and the said company shall thereupon be fully and immediately reinvested with the same both in law and equity and in fact, without any entry or other act whatever.

In witness whereof the parties of the first part have caused these presents to be acknowledged by their president and attested to in their behalf by their president and secretary, and their common seal thereunto affixed; and the said parties of the second part hereunto set their hands and seals the day and year first above written.

President.

[SEAL.] MOBILE AND OHIO RAILROAD COMPANY.

Secretary M. & O. R. R. Co.

We accept the above trust.

Trustees.

Filed with bill Jan'y 6th, 1862.
(Signed) JNO. M. TAYLOR,
Register.

826 *Order of publication.*

AT RULES, REGISTER'S OFFICE,
Mobile, Ala.

This day being a regular rule day of the court of chancery at Mobile, the following order was made by the register of said court in this cause, as follows:

MOBILE AND OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE.

At rules, register's office, Mobile, January 6th, 1862.

In this cause it appearing that the defendant, Morris Ketchum, trustee, is of mature age, and that he resides beyond the limits of the State of Alabama, to wit, in the city and State of New York, in the United States of America, it is ordered that he answer or demur to the obligations of the bill of complaint on file on or before the 1st day of March next.

It is further ordered that this order be published once a week for four consecutive weeks in the Mobile Daily Tribune.

Attest:
(Signed) JNO. M. TAYLOR,
Register.

NOTE BY REGISTER.—The proof of publication is missing from the original file of papers.

827 *Decree pro confesso.*

AT RULES, REGISTER'S OFFICE,
Mobile, March 30th, 1863.

This being another rule day of the said court of chancery at Mobile, the following order was made by the register in this cause, as follows:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE.

At rules, register's office, Mobile, March 30th, 1863.

In this cause complainants, by their solicitors, presents the printed order of publication heretofore made against the defendant, Morris Ketchum, and *and* makes proof, by affidavits thereto attached, that said publication was regularly made, published once a week, for four consecutive weeks, in the Mobile Daily Tribune (a newspaper printed and published in the city of Mobile), and that a copy thereof was posted up at the court-house door of Mobile County, all within twenty days of the date of this order of publication, and it appearing that the defendant 828 has failed to appear and plead, answer, or demur to the allegations of the bill of complaint in this cause, it is ordered that the allegations of the same be taken as confessed against him.

Attest:
(Signed) JNO. M. TAYLOR,
Register.

Decree.

At a special term of the court of chancery, held at Mobile, for the first district of southern chancery division of the State of Alabama, on the first Monday of April, A. D. 1863, being the 1st day of said month, the hon'l' Nathaniel W. Cooke, chancellor of said court, present and presiding, and on the 7th day of April, 1863, the same being a regular day of said term, the following decree was rendered in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM.

This cause was submitted on the bill, exhibits, and decree pro confesso. The object of the bill is to appoint trustees under a certain deed of trust exhibited by the complainant, of the date of 1st November, 1853, a copy of which is attached to the bill, in place of William R. Hallett and John J. Palmer, who are dead, and also to remove the surviving trustee, Morris Ketchum, for breaches of duty as trustee, and also because he is an alien enemy and incompetent to act. 829

The court is satisfied of the death of said Palmer & Hallett, and of the fact that said Ketchum is an alien enemy. It is therefore ordered, adjudged, and decreed that said Ketchum be removed from his said trusteeship, and further that the prayer of the bill be granted for the appointment of trustees in place of said Ketchum, Hallett and Palmer be granted.

And the said complainant suggests as proper persons to be appointed in place of the former trustees, Charles Walsh, George H. Young, and Alexander Jackson, all citizens of the Confederate States.

It is accordingly referred to the master to ascertain and report whether the above-named parties be suitable persons to receive the said appointment of trustees aforesaid.

830 *Master's report.*

And on the 8th day of April, A. D. 1863, the same being another day of the special term of the court aforesaid, the following report was made by the register of said court in this cause, to wit:

THE MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM.

Master's report.

This cause comes before the master with instructions to ascertain and report whether Charles Walsh, George H. Young, and Alexander Jackson are suitable persons to be appointed trustees in place of William R. Halllett and John J. Palmer, former trustees, who are dead, and of the defendant, who has been removed.

The master reports that he gave notice of the time and place of considering the matters referred to him, and was attended by complainant's solicitors; that he examined reliable witnesses introduced, and is satisfied from their testimony that the said Walsh, Young & Jackson are fit and proper persons to be appointed trustees under the

831 deed of November 1, 1853, and in place of the former trustees, Hallett, Palmer & Ketchum.

Respectfully submitted.

(Signed) JNO. M. TAYLOR, *Master*.

APRIL 8, 1863.

And it is ordered that said report lie over one day.

Final decree.

And on the (ninth) 9th day of April, 1863, being still another day of said special term, the Honl. Nathaniel W. Cocke, chancellor of said court present and presiding, the following decree was rendered in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM.

In this cause the master, in pursuance of the former order of this court, having made his report at a former day of this term, and the same having been read in open court more than one day and no exceptions being filed, it is ordered that said report be in all things confirmed.

It is thereupon ordered, adjudged, and decreed that said Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander
832 Jackson, of Tennessee, who consent thereto, be appointed trustees under the deed described in the bill of complaint, in room and in place of W'm R. Hallett & John J. Palmer, former trustees, deceased, and of Morris Ketchum, former trustee, remove' by decree of this court.

It is further ordered, adjudged, and decreed, that said trustees hereby appointed be clothed with all the rights, powers and privileges named in said deed of trust, and that they be charged with all the duties by said deed imposed upon the trustees in the same manner and to the same extent as if they were the original appointees, and that they proceed and execute the trusts declared in said deed according to the terms and provisions thereof, and as to all other matters of complaint and prayers in said bill contained, it is ordered that said bill be dismissed without prejudice to complainants right to relief therein, or to any matter of account.

It is ordered that the complainant pay the costs of this proceeding.

833 First district, southern chancery division.

THE STATE OF ALABAMA,
Mobile County:

I, James Gillette, register of the court of chancery at Mobile, for the district and division aforesaid, hereby certify that the foregoing thirty-eight (38) pages contain a full, true, and correct transcript of the record and proceedings had in a certain cause heretofore pending in said court, wherein the Mobile and Ohio Railroad Company is complainant and Morris Ketchum is defendant, as the same appears upon the records of this said court.

Witness James Gillette, register of said court of chancery, and the seal thereof, at office in the city of Mobile, this the 26th day of September, A. D. 1873.

[SEAL.] (Signed) JAMES GILLETTE,
Register.

Southern chancery division of Alabama, Mobile chancery court, Mobile.

834 I, Adam C. Felder, chancellor of the southern chancery division of Mobile, now presiding in the Mobile chancery court at this January term, 1874, do hereby certify that James Gillette, who has certified and attested the foregoing transcript of record of the proceedings had in the said cause in this court wherein the Mobile and Ohio Railroad Company was complainant and Morris Ketchum and others were defendants, is and was the register and lawful keeper of the records of said Mobile chancery court at the time of making his said certificate of attestation of the transcript of said record as a true copy of said record and proceedings, and that his said attestation and certificate under the seal of this court is in due form and by the proper officer, and is entitled to full faith and credit as such.

Given under my hand in open court on this second day of February, in the year eighteen and seventy-four.

(Signed) ADAM C. FELDER,
Chancellor.

835 THE STATE OF ALABAMA,
City and County of Mobile:

I, James Gillette, register of the Mobile chancery court in the southern chancery division of Alabama, and keeper of the records of said court, do hereby certify that the honorable Adam C. Felder, chancellor, who has made the foregoing certificate, is the chancellor of the southern division of Alabama, and is the chancellor now sitting and presiding in the chancery court of Mobile, now sitting, and that said Mobile chancery court of Mobile is a court within the southern chancery division of Alabama.

In witness whereof I have signed this certificate and affixed the seal of said court on this second day of February, in the year eighteen hundred and seventy-four.

[SEAL.] (Signed) JAMES GILLETTE,
Register.

Filed 24th day of May, 1877.
(Signed) N. W. TRIMBLE,
Clerk & Master.

836 *Report of trustees & receivers.*

Report of W. B. Duncan and A. F. Elliott, trustees and receivers of the Mobile and Ohio Railroad, by T. Haskins Du Puy, their attorney and agent.

Circuit court of the United States, southern district of Alabama.

W'M BUTLER DUNCAN AND A. FOSTER ELLIOTT, trustees,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY ET AL.
No. 90.

To the honorable the circuit court of the United States for the southern district of Alabama aforesaid:

The undersigned, trustees and receivers in a suit pending in the cir-

cuit court of the United States aforesaid, in which, as trustees aforesaid, they are plaintiffs and the Mobile and Ohio Railroad Co. et als., defendants, in pursuance of the order of the court, file in this court their report as trustees and receivers, the schedule hereunto annexed, marked "E 6," showing the receipts and disbursements from October 1, 1876, to January 1, 1877, and schedule hereunto annexed, marked "F 6,"
showing the earnings and expenses of the road from October 1,
837 1876, to January 1, 1877, and schedule hereunto annexed, marked
"G 6," showing the resources and the accounting thereof from October 1, 1876, to January 1, 1877, and schedule hereunto annexed, marked "I 6," showing the earnings and expenses and extraordinary payments on the 118 miles of road in the State of Tennessee from October 1, 1876, to January 1, 1877, all under the orders of the Hon. W. B. Woods, judge of the circuit court of the United States for the fifth circuit and in the southern district of Alabama, dated May 14, June 3, August 10, 1875, and March 6, 1876. All of which is respectfully submitted.

W'M BUTLER DUNCAN,
A. FOSTER ELLIOTT,
Trustees & Receivers M. & O. R. R.,
By T. HASKINS DU PUY.

UNITED STATES OF AMERICA,
Southern District of Alabama:

On the 8th day of March, A. D. 1877, before me, James Gillette,
United States commissioner, duly appointed and qualified in the
838 circuit court of the United States for the southern district of
Alabama, in the fifth circuit, personally came T. Haskins Du Puy, the attorney and agent of W'm Butler Duncan and A. Foster Elliott, trustees and receivers mentioned in this report, and as such has been and still is in charge of the said Mobile & Ohio Railroad and property, and the income, receipts, and expenditures thereof, as general supervisor and controller for said trustees, who makes oath and says that this report and the schedule hereunto annexed are true and correct in substance and matter of fact, to the best of his knowledge and belief.

(Signed) T. HASKINS DU PUY.

Subscribed and sworn to before me this 8th day of March, 1877.

JAMES GILLETTE,
Special Master, U. S. Com'r.

Filed March 9th, 1877.

N. W. TRIMBLE, *Clerk.*

839 *Schedule accompanying report of W. B. Duncan and A. F. Elliott, trustees and receivers of the Mobile and Ohio Railroad, of their accounts from October 1st*, 1876, *to January 1st*, 1877. *Filed March 9th*, 1877. *N. W. Trimble, clerk.*

840 SCHEDULE E, 6.—*Receipts and disbursements from October 1st*, 1876, *to January 1st*, 1877.

ACCOUNTING DEPARTMENT, MOBILE AND OHIO RAILROAD.

RECEIPTS.

Agents and conductors	$780,591 53
Southern Express Co	13,650 00

United States P. O. Department	7,003	35
Freight balances	33,752	33
Passenger balances	9,281	18
Car service	1,503	68
Freight and passenger revenue refunded	361	72
Interest	1,052	24
Unpaid dues	1,742	40
Miscellaneous sources	17,381	66
Treasurer's cash, Sept. 30th, 1876	95,236	35
Total	$861,561	44

PAYMENTS.

Supply vouchers, etc	$373,229	33
Discharge vouchers, etc	4,762	45
Unpaid dues	1,598	75
Labor	208,348	15
Freight balances	60,013	48
Passenger balances	8,021	59
Interest	19	36
Car service	9,491	97
Freight and passenger revenue refunded	1,244	27
Loans—certificates	40,000	00
Miscellaneous	11,453	84
Treasurer's cash, December 31st, 1876	243,378	25
Total	$961,561	44

C. A. WETTON,
Auditor.

W'M BUTLER DUNCAN,
A. FOSTER ELLIOTT,
Trustees & Receivers.
By T. HASKINS DU PUY,
Attorney & Agent.

Schedule F, 6.—*Revenue and expenses from October 1st, 1866, to January 1st, 1877.*

ACCOUNTING DEPARTMENT MOBILE AND OHIO RAILROAD.

REVENUE.

Freight	$725, 824 90	
Passengers	100, 284 87	
Mails	10, 202 85	
Express	13, 650 00	
Miscellaneous	8, 742 29	$858, 704 91

EXPENSES.

Repairs of road-bed, railway, and structures:		
Cross-ties, lumber, tools, and materials for roadway	$18, 605 97	
Labor on roadway	47, 218 32	
Lumber, tools, and materials for bridges and culverts	7, 070 16	
Labor on bridges and culverts	3, 978 68	
Rails, joint fastenings, frogs, switches, and spikes	72, 202 06	
Ballasting and material trains	13, 101 59	
Repairs of buildings, platforms, and wharves	23, 311 29	
" wood and water stations	6, 601 37	
" hand-cars, pile machines, and excavators	1, 221 36	
		$193, 310 80
Repairs of machinery and rolling-stock:		
Repairs of engines and tenders	30, 394 98	
" passenger and baggage cars	14, 373 17	
" freight cars	44, 613 17	
" shop machinery and tools	9, 171 03	
Coal, wood, oil, and waste, &c., for shops	2, 511 73	
		101, 064 08
Operating expenses:		
Agents, clerks, and telegraph operators	30, 050 49	
Labor loading and unloading freight	14, 970 54	
Engineers and firemen—passenger	6, 557 35	
" " " freight	13, 062 20	
" " " switching, &c	2, 660 10	
Conductors, baggagemen, and brakemen—passenger	7, 044 25	
" and brakemen—freight	16, 946 60	
" " " switching, &c	1, 980 85	
Fuel for engines—cost, labor, &c	36, 781 06	
Amount carried forward	$130, 053 44	$294, 374 88

Amount brought forward	$130, 053 44	294, 374 88	
Oil, tallow, and waste for engines	2, 711 12		
" " " " " passenger trains	600 98		
" " " " " freight trains	835 78		
" " " " " switching & wood trains			
Inspection and cleaning engines and cars	3, 653 18		
Porters, watchmen, and switchmen	8, 244 45		
Wood and water station attendance	3, 182 00		
Lights and fuel for stations and trains, &c	4, 196 38		
Station furniture, &c	2, 677 55		
Stationery and printing	3, 186 13		
Advertising and foreign agencies	2, 629 39		
Loss and damage—freight and baggage	13, 900 85		
" " " stock killed	1, 418 25		
Personal injuries	212 50		
Telegraph expenses and repairs	2, 535 33		
Superintendents and clerks	2, 478 00		
Car service	9, 264 28		
Mail expenses	791 60		
Incidentals	1, 196 73		
		193, 767 94	
General expenses:			
General office salaries	7, 784 34		
Insurance	251 33		
Taxes—State and local	1, 200 50		
Legal expenses	12, 536 66		
Contingencies	1, 078 02	22, 850 85	
Total		$510, 993 67	$510, 993 67
Net loss			$347, 11 24

C. A. WETTON, *Auditor.*

W'M BUTLER DUNCAN, } *Trustees and Receivers,*
A. FOSTER ELLIOTT, }
By T. HASKINS DU PUY, *Attorney & Agent.*

842 *Schedule G, 6.—Resources and their disposition from October 1st, 1876, to January 1st, 1877.*

ACCOUNTING DEPARTMENT MOBILE AND OHIO RAILROAD.

RESOURCES.

Freight earnings	$725,824 90	
Passenger earnings	100,284 87	
Mail earnings	10,302 85	
Express earnings	13,650 00	
Miscellaneous earnings	8,742 29	
		$858,704 91
Interest and exchange		1,032 88
Income account		24,677 37
Total to be accounted for		$884,415 16

ASSETS.

	Oct. 1st, 1876.	Jan. 1st, 1877.
Donated lands	$1,657,873 53	$1,656,854 57
Real estate, town lots, & gen'l office build'gs	100,824 88	104,393 98
U. S. Q. M. department	179,959 05	183,830 03
U. S. post office department	10,202 85	7,416 31
Uncollected earnings	39,518 09	87,515 57
Materials on hand	195,422 56	264,297 65
Individual balances	39,985 26	43,337 02
Land department	22,367 19	21,063 52
Treasurer's cash	95,236 35	243,378 25
	$2,341,389 76	$2,612,086 90

DISPOSITION.

Repairs of road-bed and railway, &c	$193,310 80	
" " machinery and rolling stock	101,064 08	
Operating expenses	193,767 94	
General expenses	22,850 85	
		$510,993 67
Decrease of liabilities, as per table below		102,724 35
Increase of assets, as per table below		270,697 14
Total accounted for		$884,415 16

LIABILITIES.

	Oct. 1st, 1876.	Jan. 1, 1877.
First mortgage sterling bonds	$5,641,000 00	$5,609,000 00
M. & O. R. R. Co.—Unpaid labor	603 00	603 00
" " " Bills payable	516,061 86	516,061 86
" " " Bills audited	3,315 61	3,315 61
" " " Overdraft	19,325 31	19,325 31
Trustees and receivers—bills payable	40,000 00	
" " " unpaid labor	8,093 31	8,517 86
" " " pay-rolls	66,082 00	72,294 90
" " " bills audited	90,832 01	53,470 21
	$6,385,313 10	$6,282,588 75

C. A WETTON,
Auditor.

W'M BUTLER DUNCAN,
A. FOSTER ELLIOTT,
Trustees & Receivers,
By T. HASKINS DU PUY,
Attorney and Agent.

843 SCHEDULE I, 6.—*Earnings and expenses on the* 118 *miles of the Mobile and Ohio Railroad in the State of Tennessee, from October 1st,* 1876, *to January 1st,* 1877, *under the orders of Judge Woods, of the U. S. circuit court for the southern district of Alabama, at Mobile, and Judge Emmons, of the U. S. circuit court for the western district of Tennessee, at Memphis—filed, respectively, May 19th and May 27th,* 1875.

ACCOUNTING DEPARTMENT, MOBILE AND OHIO RAILROAD.

	EARNINGS.						EXPENSES.				
Month.	Freight.	Pass'ngers.	Mails.	Express.	Miscellan's.	Total.	Roadbed, &c.	Rolling-stock, &c.	Oper'ng ex.	Gen. exp's.	Total.
October	$50,219 55	$6,870 44	$765 24	$1,023 75	$501 23	$59,380 21	$13,441 60	$9,005 68	$14,061 52	$1,266 16	$37,774 96
November.........	41,678 34	7,049 72	765 24	1,023 75	580 55	51,097 60	12,112 58	6,413 83	11,458 10	2,940 21	32,924 72
December.........	45,650 60	9,324 55	765 24	1,023 75	885 23	57,649 37	7,172 34	5,112 44	12,360 65	953 38	25,598 81
Total	$137,548 49	$23,244 71	$2,295 72	$3,071 25	$1,967 01	$168,127 18	$32,726 52	$20,531 95	$37,880 27	$5,159 75	$96,298 49
By reduction in postal pay for service rendered in the fourth quarter of 1876—compensation received under protest............						660 42					
Total earnings						$167,466 76	Total expenditures............				$96,298 49

C. A. WETTON, *Auditor.*
W'M BUTLER DUNCAN,
ANDREW FOSTER ELLIOTT,
Trustees & Receivers,
By T. HASKINS DUPUY,
Attorney & Agent.

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SCHEDULE F 7.—*Revenue and expenses from January 1st, to April 1st, 1867.*

ACCOUNTING DEPARTMENT, MOBILE AND OHIO RAILROAD.

REVENUE.			
Freight	$421,336 36		
Passengers	94,905 24		
Mails	10,202 85		
Express	13,650 00		
Miscellaneous	5,367 54		$545,461 99
EXPENSES.			
Repairs of roadbed, railway, and structures:			
Cross-ties, lumber, tools, and materials for roadway	$20,895 96		
Labor on roadway	48,354 74		
Lumber, tools, and materials for bridges and culverts	4,428 09		
Labor on bridges and culverts	5,431 08		
Rails, joint fastenings, frogs, switches, and spikes	51,632 73		
Ballasting and material trains	15,430 71		
Repairs of buildings, platforms, and wharves	25,205 09		
" wood and water stations	4,403 03		
" hand-cars, pile machines, and excavators	7,344 92		
		$183,126 35	
Repairs of machinery and rolling-stock:			
Repairs of engines and tenders	32,529 25		
" passenger and baggage-cars	12,442 86		
" freight cars	26,911 70		
" shop machinery and tools	9,745 03		
Coal, wood, oil, and waste, &c., for shops	2,058 98		
		83,687 82	
Operating expenses:			
Agents, clerks, and telegraph operators	31,037 14		
Labor loading and unloading freight	10,131 99		
Engineers and firemen, passenger	6,190 88		
" " " freight	13,410 97		
" " " switching, &c	2,106 85		
Conductors, baggagemen, and brakemen, passenger	6,957 02		
" and brakemen, freight	16,446 60		
" " " switching, &c	2,101 85		
Fuel for engines, cost, labor, &c	32,203 51		
Amount carried forward	$120,586 81	$266,814 17	
Amount brought forward	$120,586 81	$266,814 17	
Oil, tallow, and waste for engines	2,736 16		
" " " " " passenger trains	604 62		
" " " " " freight trains	852 11		
Inspection and cleaning engines and cars	3,899 07		
Porters, watchmen, and switchmen	7,966 47		
Wood and water station attendance	4,732 20		
Lights and fuel for stations and trains, &c	4,296 99		
Station furniture, &c	2,889 89		
Stationery and printing	2,633 09		
Advertising and foreign agencies	3,461 06		
Loss and damage, freight and baggage	3,168 21		
" " " stock killed	1,741 40		
Personal injuries	426 72		
Telegraph expenses and repairs	398 36		
Superintendents and clerks	2,190 00		
Car service	18,126 42		
Mail expenses	681 00		
Incidentals	1,203 00		
		182,593 58	
General expenses:			
General office, salaries	7,184 36		
Insurance	10,920 00		
Taxes, State and local	2,383 75		
Legal expenses	5,904 52		
Contingencies	706 37		
		27,099 00	
Total		$476,506 75	$476,506 75
Net revenue			$68,955 24

C. A. WETTON, *Auditor.*

W'M BUTLER DUNCAN,
A. FOSTER ELLIOTT,
Trustees and Receivers,
By T. HASKINS DU PUY,
Attorney & Agent.

850 ACCOUNTING DEPARTMENT, MOBILE AND OHIO RAILROAD.

Schedule G 7.—Resources and their disposition from January 1st to April 1st, 1877.

RESOURCES.

Freight earnings	$421,336 36	
Passenger earnings	94,905 24	
Mail earnings	10,202 85	
Express earnings	13,650 00	
Miscellaneous earnings	5,367 54	
		$545,461 99
Interest and exchange		1,070 70
Amount to credit of income account		926 18
Increase of liabilities, as per table below		1,476 70
Total to be accounted for		$548,935 57

LIABILITIES.

	Dec. 31, 1876.	March 31, 1877.
First mortgage sterling bonds	$5,609,000 00	$5,607,000 00
M. & O. R. R. Co.—Unpaid labor	603 00	603 00
" " " —Bills payable	516,061 86	516,061 86
" " " —Bills audited	3,315 61	2,652 96
" " " —Overdraft	19,325 31	19,325 31
Trustees and receivers.—Unpaid labor	8,517 86	8,852 16
" " " —Pay-rolls	72,294 90	70,754 20
" " " —Bills audited	53,470 21	58,815 96
	$6,282,588 75	$6,284,065 45

DISPOSITION.

Repairs of road-bed and railway, &c	$183,126 25	
" " machinery and rolling-stock	83,687 82	
Operating expenses	182,593 58	
General expenses	27,099 00	
		$476,506 75
Increase of assets, as per table below		72,428 82
Total accounted for		$548,935 57

ASSETS.

	Dec. 31, 1876.	March 31, 1877.
Donated lands	$1,656,854 57	$1,652,943 82
Real estate, town lots & gen'l office build'gs	104,393 98	102,978 98
U. S. Q. M. Department	183,830 03	187,106 61
U. S. Post-Office Department	7,416 31	10,202 85
Uncollected earnings	87,515 57	21,126 95
Materials on hand	264,297 65	245,638 71
Individuals—doubtful	43,337 02	43,465 27
Railroads "	20,337 04	21,105 82
Land department	21,063 52	23,365 45
Treasurer's cash	243,378 25	394,918 30
	$2,632,423 94	$2,704,852 76

C. A. WETTON, *Auditor.*
W'M BUTLER DUNCAN,
A. FOSTER ELLIOTT,
Trustees and Receivers,
By T. HASKINS DU PUY,
Attorney & Agent.

851 SCHEDULE 17.—*Earnings and expenses, &c., on the* 118 *miles of the Mobile and Ohio Railroad in the State of Tennessee, from January* 1st *to April* 1st, 1877, *under the orders of Judge Woods of the U. S. circuit court for the southern district of Alabama, at Mobile, and Judge Emmons of the U. S. circui court for the western district of Tennessee, at Memphis, filed respectively May* 19th *and May* 27th, 1875.

ACCOUNTING DEPARTMENT, MOBILE AND OHIO RAILROAD.

	EARNINGS.						EXPENSES.				
Month.	Freight.	Pass'ngers.	Mails.	Express.	Miscellan's.	Total.	Roadbed, &c.	Rolling stock, &c.	Oper'ng ex.	Gen. exp's.	Total.
January	$39,686 52	$7,129 17	$765 24	$1,063 12	$475 47	$49,119 52	$10,314 29	$5,837 05	$13,766 82	$1,625 37	$31,543 53
February	25,815 64	8,043 72	765 24	945 00	414 37	35,983 97	14,870 73	5,440 82	12,649 39	1,039 99	34,000 93
March	23,851 79	6,984 41	765 24	1,063 12	317 85	32,982 41	10,567 77	6,525 04	14,471 74	3,453 60	35,018 15
Total	$89,353 95	$22,157 30	$2,295 72	$3,071 24	$1,207 69	$118,085 90	$35,752 79	$17,802 91	$40,887 95	$6,118 96	$100,562 61
By reduction in postal pay for service rendered in the fourth quarter of 1877—compensation received under protest						660 42	The following liabilities of the Mobile and Ohio railroad existing on the 1st day of May, 1875, upon the portion of the R. R. lying in the State of Tennessee, and paid by the receivers under above orders				165 66
Total earnings						$117,425 48	Total expenditures				$100,728 27

C. A. WETTON, *Auditor.*
W'M BUTLER DUNCAN,
A. FOSTER ELLIOT,
Trustees and Receivers,
By P. HASKINS DU PUY,
Attorney and Agent.

852 *Affidavit of W. E. Kimball.*

U. S. circuit court, southern district of Alabama.

W'M B. DUNCAN & ANDREW F. ELLIOTT, trustees, &c., *ag'st* THE MOBILE AND OHIO RAILROAD COMPANY and others.	No. 90.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William E. Kimball, being duly sworn, deposes and says that, on some day late in January or in the early part of February last, meeting M'r John Graham in the street, in the city of New York, the subject of the Mobile and Ohio Railroad affairs was brought up. M'r Graham asked deponent what there was in reference to said affairs. Deponent replied that he understood a suit had been brought in New Orleans to remove Duncan & Elliot as trustees. M'r Graham answered to this, that he thought it an unnecessary and unwise proceeding, and that in his 853 judgment no better person could be got than M'r Duncan to have charge of the property and that he was sorry to hear of this suit. Deponent afterwards, by personal examination of certain books and records at the office of Duncan, Sherman & Co.'s assignee, discovered that certain coupons which were originally attached to the bonds now alleged to belong to Georgie Warnes had been converted into cash by M'r Graham in November, 1874.

(Signed) W. E. KIMBALL.

Subscribed and sworn to before me this 31st day of March, 1876.
JOSEPH GUTMAN,
United States Commissioner S. D. N. Y.

Filed April 6th, 1876.
N. W. TRIMBLE, *Clerk.*

854 *Notice of motion for appointment of receivers.*

United States circuit court in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &C.,
against
THE MOBILE AND OHIO RAILROAD CO., W'M B. Duncan and A. F. Elliott, as receivers, et al.

To the Mobile and Ohio Railroad Company, William B. Duncan and Andrew F. Elliott, as receivers:

Take notice that on the bill of complaint and exhibits herein which was filed on the 14th day of March, 1876, in the office of the clerk of the circuit court of the United States for the southern district of Alabama, and on the affidavits of Morris Ketchum and the affidavit of Thomas Belknap, j'r, and on copies of which are herewith served upon you, and certain records of the chancery court of Alabama, in 1862, 1863, and 1864, copies of which are herewith served on you, and

on all the papers and proceedings in a certain suit brought by
855 W'm B. Duncan and A. F. Elliott against the Mobile and Ohio
Railroad Co. and others in this court, and to which we shall refer as papers on file in said cause, and on such other papers as may be served on you before the hearing, we will, on the 6th day of April, 1876, at 12 o'clock, noon, or as soon thereafter as counsel can be heard, in the United States court-house, in the city of Mobile, move the circuit court of the United States for the 5th judicial circuit, and southern district of Alabama, for an order appointing fit and proper persons as receivers of the Mobile and Ohio Railroad Company, its roads, lands, property and franchises of every nature and description, and for an order enjoining the defendants and others from interfering in any manner with any of said assets and property. And for such appropriate orders and directions as may be requisite to maintain said receivership and secure the proper administration of the said railroad and its affairs thereunder.

And for such other and further or different relief as may be just
856 and equitable.

EDWARD L. ANDREWS,
Solicitor for Complainants.

B. F. JONAS, LOBATT ARONI & CLINTON,
Of Counsel.

Affidavit of Morris Ketchum.

United States circuit court in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM AS SURVIVING TRUSTEE, &C.,
against
MOBILE AND OHIO RAILROAD CO., W. B. DUNCAN and A. F. Elliott as receivers.
} In equity.

UNITED STATES OF AMERICA,
Southern District of New York:

Morris Ketchum, being duly sworn, deposes and say that he is trustee of the first-mortgage sterling bonds of the Mobile and Ohio Rail-
857 road Company and was such trustee at the time hereinafter mentioned.

That on the first days of May and November, 1874, the semi-annual coupons of said bonds, being of the sterling issue, became due according to their tenor, and on said days or immediately thereabout, as he deponent, is informed, and believes, many holders of said bonds went to the office of Duncan, Sherman & Co., where the Mobile and Ohio Railroad Company had previously paid its coupons, W. B. Duncan of said firm being then a director of said company, and presented their said coupons and demanded payment of the same, as he had been accustomed to do, when the said coupons had become payable at previous dates.

That, as deponent is informed and believes, the said coupons were received by said Duncan, Sherman & Co. for said Mobile and Ohio Railroad Company and were examined by them, and the numbers of the coupons were transcribed, and after this process of verification in the regular course of business had been proceeded with, the said Duncan, Sherman & Company delivered to said bondholders checks for the amount of the interest due them, to their order. That said bond-
858 holders received payment of the said check, being the interest on

their first-mortgage sterling bonds due May and November 1st, 1874, from the Mobile and Ohio Railroad Company.

That the said payment of the coupons then due was in the regular, usual, and ordinary course of business, and deponent never heard at said time or until very lately that said payment was claimed to have been made in any other way than in the ordinary method of payment of coupons upon its bonds by said Mobile and Ohio Railroad Company.

That deponent never supposed that the bondholders were selling said coupons to any one whatsoever, but supposed that they were simply delivering the said coupons upon receipt of their interest for surrender and cancellation, and deponent has learned for the first time within the past few weeks that it is claimed and set up by William B. Duncan and Andrew F. Elliott, that the Mobile and Ohio Railroad Company defaulted in the payment of interest on its first-mortgage bonds at the times above set forth, May 1st and November 1st, 1874, when the
859 coupons of said sterling bonds were presented by the bondholders and paid in the manner above set forth. That deponent has been informed, and verily believes, that the said pretence of said Duncan and Elliott, that the said coupons were not paid by the Mobile and Ohio Railroad Company arises from the fact that the said coupons so surrendered to and paid by the company as above set forth, were afterwards improperly and fraudulently delivered by said Duncan and others, or by some one for them, to Alexander Duncan, the father of said William B. Duncan and others, or to some one for him or them, and that said Alexander Duncan and others, and said William B. Duncan and Andrew F. Elliott for them, claim and set up that said coupons so paid as aforesaid, are now lawfully outstanding and are prior and paramount liens upon the property mortgaged to secure bondholders.

That said pretense and claim of said William B. Duncan and Andrew F. Elliott is false, fraudulent, and a breach of duty and confidence towards the bondholders aforesaid, and is utterly rejected and repudiated by them.

That deponent has been informed, and verily believes, that
860 a petition has been presented to the United States circuit court for the southern district of Alabama by said W'm B. Duncan and Andrew F. Elliott, in reference to the payment of the floating debt of said Mobile and Ohio Railroad Company, which debt is an inferior and subordinate claim upon the property on which deponent holds a first prior and paramount claim.

That in said petition of said Duncan and Elliott, the following allegation is contained:

"But at the same time they (referring to themselves, Duncan and Elliott) are ready to concede that the character, credit and business of the company, the value of the franchises, and the future prosecution of its business, would be promoted by the removal of this body of debt (referring to the floating debt) from the corporation, and that the work of reorganization would probably be forwarded by the discharge of some portion of these demands."

That deponent is informed and believes that on said petition the question of paying this floating debt was referred to a master in chancery; that no evidence in opposition to the payment thereof was
861 tendered by said Duncan and Elliott, and no opposition by argument or otherwise, as appears from the record, was offered by them; that thereupon, after certain proceedings had, the master reported in favor of the disbursement of about two hundred and thirty thousand dollars ($230,000) of the property of deponent and the other first mort-

gage bondholders of the Mobile and Ohio Railroad Company for the benefit of these floating subordinate creditors. That one of the largest of said creditors to be so benefitted, as deponent is informed and believes, is Adrian Iselin, of the city of New York, who is cognizant of said proceeding of said Duncan and Elliott, in the capacity of a trustee of the mortgage of said Mobile and Ohio Railroad Company given to secure the holders of securities known as the Tennessee substitution bonds, and of which mortgage the said W. B. Duncan is also a trustee.

That another of the parties most largely interested in the satisfaction of said subordinate floating claims, is W. D. Dunn, who is liable upon said claim to a very large amount. That said Dunn is one of the trustees of the second mortgage of the Mobile and Ohio Railroad 862 Company, and is cognizant of said record in that capacity.

That deponent is informed and verily believes that said W'm B. Duncan and his assignee in insolvency are likewise largely interested in said floating claims, and that said Duncan has been for a long time past a dealer and speculator in said floating claims against the Mobile and Ohio Railroad Company, and that said Duncan has misapplied moneys which were remitted for the purpose of paying the interest on the mortgage bonds to the payment in full of floating claims held by him on his firm, Duncan, Sherman & Co., which had been purchased by him or them at about seventy-five cents on the dollar.

That the securities which it is claimed are pledged to secure said floating claims, consist of about seven hundred thousand dollars ($700,000) so-called consolidated bonds, which purport to be an inferior and third lien on the property, if they have any validity whatsoever, which deponent is informed and believes is exceedingly doubtful. And the said bonds have no market value whatsoever, and in the present con- 863 dition of the property are of the most inconsiderable and trifling value, if they have any intrinsic value whatsoever; that about sixty thousand dollars ($60,000) of second mortgage bonds are alleged to be pledged to secure a portion of said floating claims. And said second mortgage bonds have no claim or equity to payment or redemption before the coupons and bonds of the first mortgage are paid. That the said proceedings whereby it is attempted by said floating creditors and said Duncan and Elliott to procure the payment of their claim ahead of the first mortgage bondholders, and in violation of the duty of several of them towards their cestuis que trust is grossly unjust and fraudulent towards said bondholders; that there is no reason or fairness in taking the assets, which are properly applicable to the payment of the overdue coupons on the first mortgage bonds, and using them for the benefit of claimants whose equity is inferior to that of said bondholders.

That the existence of said floating debts has no such bearing upon the sale and reorganization of the Mobile and Ohio Railroad Company as alleged in the said proceedings, and the reasons set up in the 864 said proceedings why the holders of said floating claims should receive their moneys in preference to mortgage bondholders are specious and puerile in the extreme.

That the floating debt has already been reduced from $1,166,492.19, which was its amount in January 1st, 1875, to the sum of $529,598, which is alleged to be the amount at the present time. That the said reduction in the floating debt of $636,894.19 between January and May of the past year, has been accomplished at a time when the bondholders were not receiving any interest upon their mortgage, and long after the time when the said Duncan and Elliot aver that the company had already defaulted in the payment of the coupons of its first-mortgage sterling

bonds. And deponent avers upon his information and belief that a large proportion of said floating claims were paid at said late period to the firm of Duncan, Sherman & Company, to which said Duncan and Elliott belonged. That the said payments to Duncan, Sherman & Company were fraudulent, upon the showing of said Duncan and Elliott, they claiming to be trustees for the first mortgage bondholders, and that the road was in default in the payment of its mortgage
865 interest, and yet refraining from taking possession of the mortgage estate or applying to the court therefor, while they were paying to themselves and others these subordinate floating claims. That deponent and the bondholders are greatly dissatisfied with the aforesaid preferential payment of claims subordinate to their own, and are determined, so far as lies within their power, that no more of said floating claims shall be paid, at least until the resumption of interest payment on the mortgage bonds.

That the conduct of said Duncan and Elliott in reference to said floating debt is a strong additional reason to deponents' minds why the said Duncan & Elliott, who are utterly insolvent, should not hold any position of trust in connection with the affairs of the Mobile and Ohio Railroad Company, and particularly why they should not be receivers thereof.

That the said Duncan was a director at the time the coupons due May 1st and November 1st, 1874, were paid by the Mobile and Ohio Railroad Company, and the said Duncan and Elliott exercised a substantial control of the affairs of said company at said times through the rela-
866 tions of the firm of Duncan, Sherman & Company with the railroad. That the conduct of said Duncan and Elliott in regard to the said coupons, as above set forth, utterly unfits them for the occupancy of any position of trust connected with the railroad. That if the statements contained in their bill filed in this court were correct, that the coupons for May and November, 1874, were not paid by the company, then they practiced a gross fraud upon the bondholders in leading them to suppose, at the time of the payment of said coupons, that they were paid in the ordinary course of business by the company. That if, on the contrary, the said coupons were paid by the company so that no third parties could have any lawful or honest title to them, which deponent alleges to be the fact, then the allegation in the bill filed by said Duncan and Elliott to the effect that the interest due in May and November, 1874, remains unpaid by the company is false, and a fraudulent attempt on the part of said Duncan and Elliott to set up a fictitious and improper claim against the interest and the property of the bondholders.

867 That since W. B. Duncan and A. F. Elliott were appointed receivers of the Mobile and Ohio Railroad Company their insolvency has become known, and on or about the 26th day of July, 1875, the said William B. Duncan and Andrew F. Elliott, the receivers aforesaid, made an assignment of all their and each of their interest in the firm of Duncan, Sherman & Co., and the said Duncan also assigned all his individual estate, the said assignment reciting their insolvency.

That the said Duncan and Elliott, receivers aforesaid, had at the time they became receivers aforesaid carried on business with others under the firm-name of Duncan, Sherman & Co., and the said Duncan purported on the public records to be the owner of valuable pieces of land, situate in the city of New York, and other places, which property stood in his name in the registers of conveyances.

That the said Duncan, being the apparent owner of said real estate, and purporting with others under the firm-name of Duncan, Sherman & Co. to carry on a banking business, obtained large sums of money from depositors, who to the number of more than two thousand had on 868 deposit with them at the time of their said failure more than two millions of dollars.

That at the time above named the doors of the place of business of Duncan, Sherman & Co., of which firm Duncan and Elliott were members as aforesaid, were closed and their insolvency announced to their creditors, and thereupon it appeared that the extensive property theretofore and down to said time still standing in the name of said Duncan, had been for a long time previously conveyed by said Duncan to his father, though still kept ostensibly in the ownership of William B. Duncan, the receiver herein, on the public records.

That thereafter the said Duncan proposed to his creditors to accept his promissory notes payable at long dates for one-third of the amount of their claims to be taken by such creditors in satisfaction of their claims, and in said proposal averred that his assets, and those of the said firm, would approximate only about one-third of the liabilities, but said proposal was rejected by the creditors of said Duncan and Elliott, the aforesaid receivers.

869 That the said Duncan and Elliott are now under orders of arrest at the suits of their creditors for frauds as stated by their creditors to have been committed by said Duncan and Elliott upon them in obtaining their money under false pretences.

That the said Duncan has made application upon such proof as he could present to the supreme court of the State of New York to be released from certain of said orders of arrest, but said application was after full hearing and subsequent advisement denied by one of the justices of said supreme court.

That the said Duncan is at present out of jail upon bail in several of said suits, and the said Elliott has not yet been arrested for the reason that he could not be found by the sheriff, and orders of arrest were in the hands of the sheriff for service upon said Duncan and Elliott, these receivers of the Mobile and Ohio Railroad, when the service thereof was stayed as against said Duncan upon his application to the court of bankruptcy.

That on or about the 18th day of December, 1875, the said William B. Duncan was adjudged a bankrupt on the petition of a number of 870 his creditors by the United States district court for the southern district of New York.

That since said time and very lately the said Duncan renewed his application before the supreme court of the State of New York on all the further testimony he could furnish for release from the orders of arrest for frauds on his creditors. That said renewed application was after full hearing and advisement denied on March 21st, 1876, by said supreme court, and said arrests were maintained against said Duncan.

That the solvency of the said Duncan and Elliott and the very large number of suits which have been and are being continually instituted against them and the examination to which said Duncan has been subjected, and is being continually subjected, and the arrests which are being continually enforced against them, and the bail which they are under the necessity of furnishing, and the duties which are devolved upon said Duncan by the bankrupt laws of the United States, render them incompetent on account of the immense preoccupation and embar'assments to which they are subjected to perform the duties of receivers of the Mobile and Ohio Railroad.

871 That the aforesaid circumstances have likewise thrown them into such a position of financial and personal dependence as utterly unfits them to execute the responsible and enormous trusts which devolve upon them as such receivers; that the independence of action which is necessary for the due performance of the said trusts is lost, if ever maintained by said Duncan and Elliott, with the loss of their solvency and personal freedom, and they would not have been selected as such receivers had their insolvency been known at the time of their appointment.

That the badges of fraud evidenced by the keeping of the conveyances aforesaid, from the public records, and leaving their depositors and creditors to suppose William B. Duncan to be still the owner of the large properties standing in his name as aforesaid; that the enormous disproportion between their cash available assets of about $60,000 and their deposit liabilities of about $2,400,000, and moreover, the judicial ascertainment of the fraudulent conduct of said Duncan, and the order of arrest now extant against said Elliott render them utterly un-
872 fit to act as receivers of the Mobile and Ohio bondholders and representatives of the circuit court of the United States.

That the enormous and varied interests involved in this trust afford unusual opportunities for temp'ation to abuse of trust, and render it a peculiarly inappropriate position for bankrupts and persons who have been already adjudged guilty of frauds, and the large number of persons of small means and under legal disabilities, who own the first-mortgage bonds of the Mobile and Ohio Railroad Company, made it additionally important not to leave the custody of their property and funds in the possession of improper persons.

That the bonds furnished by said receivers do not and cannot afford an adequate protection to the cestuis que trust; that the receivers can easily commit malversations in connection with the administration of such a diverse and extensive property, which frauds are scarcely discoverable, or if discovered, hardly susceptible of proof, and consequently their bonds are not available for the protection of their cestuis que trusts in such respects.

873 That the bondholders do look and are entitled to look for their safety mainly to the solvency of their receivers, and the consequent sense of responsibility which such solvency implies, and likewise to the fair reputation of the receivers for honesty and good faith, as the principal safeguards for the beneficiaries in the administration of the estate.

That deponent does not place confidence in the said Duncan and Elliott, and is informed and believes that a large number of the bondholders of the Mobile and Ohio take the same view of the impropriety of maintaining W. B. Duncan and A. F. Elliott in said position of trust after the discovery of their insolvency, the concealment of the transfers of Duncan's property to his father, their failure with a deposit liability of more than two millions dollars, and with only less than sixty thousand dollars of cash on hand, together with their absolute omission down to the present time to account in any manner for the loss of their depositors' money, the arrest of Duncan for frauds, and his failure to obtain reversal of the orders of arrest after full opportunity *is* there-
874 for and hearing thereupon, the issuance of an order of arrest of Elliott and the adjudication of bankruptcy.

That it appears from the schedules filed on the insolvency of said Duncan and Elliott, that they and their estate are the owners of—

$78,925 Con. Mobile & Ohio bonds.
" 2,000 arrearage " " "
" 10,800 2 mort. Mobile & Ohio bonds.
" 3,000 1st st'g " " "
" 4,000 1st mort. " " "
" 9,109 shares " " R. R. stock.

That the said Duncan and Elliott are far more largely interested in the subordinate claims against the Mobile and Ohio Railroad than in the first-mortgage sterling bonds, and their interest is directly enlisted against the first-mortgage bondholders in all questions which arise between the holders of the aforesaid bonds and the holders of the subordinate securities of the Mobile and Ohio Railroad, and they are on that account unfit persons for the position of unbiased and independent receivers.

That said Duncan and Elliott are utterly unfit and improper
875 persons to be or continue as receivers of the Mobile and Ohio Rail-
road Company and to conduct this litigation in a fiduciary capacity, and had the facts above recited, been known to the bondholders at the time they were constituted such receivers, the bondholders would not have suffered them to be so constituted.

That two other men, solvent, honest, and capable, can be found to represent the bondholders under the first mortgage as receivers of the Mobile and Ohio Railroad Company, and to represent the bondholders in this important litigation by the proper or improper conduct of which the property of your deponent and the other bondholders will be irretrievably affected.

That the said Duncan and Elliott, as members of the said firm of Duncan, Sherman & Co., were the financial agents of the Mobile and Ohio Railroad Company, and in such capacity made various charges of account against said company, and the accounts of Duncan and Elliott, and of said Duncan, Sherman & Co., as such financial agents, should be
investigated and passed upon by an impartial person represent-
876 ing said Mobile and Ohio Railroad Company, and the claims of
said company arising thereout should thereupon be presented without delay to the legal custodians of said estate of Duncan, Sherman & Co. before the distribution thereof and payment thereof enforced.

That some of the creditors of Duncan and Elliott in insolvency are first-mortgage bondholders of the Mobile and Ohio Railroad, and there is great diversity of interest and feeling, and of views in regard to the administration of the affairs of said company between said Duncan and Elliott and their said creditors and bondholders of said Mobile and Ohio Railroad.

That the said Duncan, immediately before his appointment as receiver, was the representative of the stockholders of the Mobile and Ohio Railroad, and in that capacity was president thereof, and deponent is informed and believes and avers the orders heretofore had appointing Duncan and Elliott receivers were made without opposition upon the part of the directors and the stockholders of said company.

MORRIS KETCHUM.

Sworn to before me this 20th day of March, 1876.

EDWARD L. OWEN,
U. S. Commissioner Southern District of New York.

877 *Affidavit of Morris Ketchum.*

United States circuit court in and for the fifth judicial circuit and southern

MORRIS KETCHUM AS SURVIVING TRUSTEE, &c.,
against
MOBILE AND OHIO RAILROAD CO., W'M B. Duncan and A. F. Elliott, as receivers.
} In equity.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

MORRIS KETCHUM, being duly sworn, deposes and says:

That he is the complainant in the above-entitled suit.

That he refers to the bill of complaint heretofore filed in this court, and to the records, affidavits, and papers presented by him on the motion for the appointment of a receiver herein as the grounds of said application for a receiver, and he also refers to the same documents for the allegations showing the unfitness of W. B. Duncan and A. F. Elliott for the offices of receivers of the Mobile and Ohio Railroad Company.

878 That he has read all the said documents and knows the contents thereof. That all the statements contained in the said affidavits and papers are true where the same are positively averred, and where the same are averred on information and belief, he believes the same to be true.

And deponent further says that immediately before the commencement of hostilities between the United States and the Confederate States, the officials of the Mobile and Ohio Railroad Company had persistently neglected and refused to reply to or comply with the letters of deponent on the business of his trust for the first mortgage sterling bondholders of the company aforesaid.

That sometime after the cessation of the rebellion, when deponent heard that the failure to attend to his official communications as trustee as aforesaid, had been with the design of and had been followed up by hostile proceedings against deponent to remove him from his trust, on the ground of his being an alien enemy of the Confederate States of America, deponent deemed it useless to communicate with the officials representing the stockholders who had acted in the improper and

879 unlawful manner above mentioned, and more fully set forth in the records and affidavits in this proceeding for the appointment of receivers herein, and who had been evidently bent on ousting deponent from the trusteeship so that they might pursue their fraudulent designs on the property of the bondholders without hindrance.

That he has frequently advised with parties interested, who have applied to him since the ending of the rebellion, to the effect that the persons who have since said time intruded themselves into a claim upon the trusteeship of the first mortgage of said company were without right or title to the said property, and could convey no interest in the lands or any of the assets belonging to the trust; and deponent has warned all persons interested that he was the only lawful trustee of said mortgage, and the only person competent to convey its lands.

That he has examined the schedule of accounts filed by William D. Shipman, the assignee of Duncan, Sherman and Company, now insolvent, and sworn to by William B. Duncan, and discovered the following entries therein, to wit:

880 Under the schedule entitled "Sup'lementaly Ledger Account," the item Mobile and Ohio purchase account, interest on common bonds due March 1st, 1875, $9,740; "bills receivable, trustees Mobile and Ohio Railroad, $16,429.23"; "trustees and receivers Mobile and Ohio Railroad, $29,945.57"; "Walsh, Crawford & Co., Mobile, Alabama, $78,968.78."

That he found also, in a schedule entitled "bills discounted," an item entered Mobile and Ohio Railroad Company, Mobile, Alabama, $20,000, and an item under "stock & bonds," "Mobile and Ohio consolidated bonds, $78,925."

MORRIS KETCHUM.

Sworn to before me this 30th day of March, 1876.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

881 A partial transcript of the record and proceedings had in a certain cause heretofore pending in the honorable court of chancery, held at Mobile, for the first district of the southern chancery division of the State of Alabama, wherein the Mobile and Ohio Railroad Company, a body politic and incorporate, was complainant, and Morris Ketchum, trustee, defendant.

Order of publication.

AT RULES, REGISTER'S OFFICE,
Mobile, Ala., Janu. 6th, 1862.

This day, being a regular rule day of the court of chancery, held at Mobile, for the first district of the southern chancery division of Alabama, the following order was made by the register of said court in this cause, to wit:

MOBILE AND OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE.

At rules, register's office, January 6th, 1862.

In this cause, it appearing that the defendant, Morris Ketchum, trustee, is of mature age, and that he resides beyond the limits of the State of Alabama, to wit, in the city and State of New York, in the United States of America, it is ordered that he answer or demur to the allegations of the bill of complaint on file on or before the first day of March next.

882 It is further ordered that this order be published once a week, for four consecutive weeks, in the Mobile Daily Tribune.

Attest:

JOHN M. TAYLOR,
Register.

Decree pro confesso.

AT RULES, REGISTER'S OFFICE,
Mobile, Alabama, March 30th, 1863.

This day, being a regular rule day of the court of chancery aforesaid, the following order was made and entered by the register of said court in this cause, to wit:

MOBILE AND OHIO RAILROAD CO.
vs.
MORRIS KETCHUM, TRUSTEE.

At rules, register's office, Mobile, March 30, 1863.

In this cause complainants, by their solicitor, presents the printed notice of publication heretofore made against the defendant, Morris Ketchum, and makes proof, by affidavit thereto attached, that said publication was regularly made, published once a week, for four consecutive weeks, in the Mobile Daily Tribune (a newspaper printed and published in the city of Mobile), and that a copy thereof was posted up at the court-house door of Mobile County, all within twenty days of the date of this order of publication; and it appearing that the defendant has failed to appear and plead, answer, or demur to the allegations of the bill of complaint in this cause, it is ordered that the allegations of the same be taken as confessed against him.

Attest:

JNO. M. TAYLOR,
Register.

883 *Decree removing trustee.*

At a special term of the court of chancery aforesaid, held in the city of Mobile on the first Monday of April, 1863, and being the sixth day of said month, Hon. Nathaniel W. Cocke, chancellor of said court, present and presiding, and on the 7th day of April, 1873, the same being a regular day of said special term, the following decree was rendered and enrolled in this cause, to wit:

MOBILE AND OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM.

This cause was submitted on the bill, exhibits; and decree is to appoint trustees under a certain deed of trust exhibited by the complainant of the date of 1st November, 1853, a copy of which is attached to the bill, in place of W'm R. Hallett and John J. Palmer, who are dead, and also to remove the surviving trustee, Morris Ketchum, for breaches of duty as trustee, and also because he is an alien enemy and incompetent to act.

The court is satisfied of the death of said Palmer and Hallett, and of the fact that said Ketchum is an alien enemy; it is therefore ordered, adjudged, and decreed that said Ketchum be removed from the said trusteeship; and further, that the prayer of the bill be granted for the appointment of trustees in place of said Ketchum, Hallett and Palmer *be granted.*

And the said complainant suggests, as proper persons to be appointed in place of the former trustees, Charles Walsh, George H. Young, and Alexander Jackson, all citizens of the Confederate States. It is accordingly referred to the master to ascertain and report whether the above named parties be suitable persons to receive the said appointment of trustees aforesaid. 884

Final decree.

And on the 9th day of April, 1863, the same being another day of said special term of said court, it was further decreed in this cause as follows, to wit:

MOBILE AND OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

In this cause the master, in pursuance of the former order of this court, having made his report at a former day of this term, and the same having been read in open court more than one day and no exceptions being filed, it is ordered that said report be in all things confirmed. It is thereupon ordered, adjudged, and decreed that said Charles Walsh of Alabama, George H. Young of Mississippi, and Alexander Jackson of Tennessee, who consent thereto, be appointed trustees under the deed described in the bill of complaint, in room and in place of William R. Hallett and John J. Palmer, former trustees, deceased, and of Morris Ketchum, former trustee, who has been and is removed by decree of this court.

885 It is further ordered, adjudged, and decreed that said trustees, hereby appointed, be clothed with all the rights, powers, and privileges named in said deed of trust, and that they be charged with all the duties by said deed imposed upon the trustees in the same mn ner and to the same extent as if they were the original appointees, ad - that they proceed and execute the trusts declared in said deed accorof ing to the terms and provisions thereof; and as to all other matters ll complaint and prayers in said bill contained it is ordered that said bi n be dismissed without prejudice to complainant's right to relief therei or to any matter of account.

It is ordered that the complainant pay the costs of this proceeding.

886 THE STATE OF ALABAMA,
First District Southern Division:

In chancery at Mobile.

I, Joseph Hodgson, register in chancery for the first district of the southern division of the State of Alabama, do hereby certify that the foregoing six pages and eight lines contain a true and complete transcript of certain orders and decrees, to wit, order of publication, decree pro confesso, decree removing trustee, and final decree, made and enrolled in a certain cause heretofore pending in the court of chancery for the district and division aforesaid, wherein the Mobile and Ohio Railroad Company, a body politic and incorporate, was complainant, and Morris Ketchum, trustee, &c., was defendant, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court of chancery this 7th day of March, A. D. 1876.

[SEAL.] JOSEPH HODGSON,
Register.

887 *Affidavit of Thomas Belknap.*

United States circuit court, in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS SOLE SURVIVING TRUSTEE of the first mortgage of the Mobile and Ohio Railroad Company, *against* MOBILE AND OHIO RAILROAD COMPANY ET AL. } In equity.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Thomas Belknap, j'r, being duly sworn, deposes and says:

That the annexed documents, marked Exhibit A, B, C, D, E, F, G, H, & I, are true copies of letters addressed by Morris Ketchum, trustee of the first mortgage of the Mobile and Ohio Railroad Company, to the persons named in said letters.

That the said exhibits were copied from the letter-press book of Morris Ketchum, kept in his possession, and the impressions in which were taken from the original of said letters.

888 That the letter hereto annexed and marked "Exhibit D," dated New York, June 6th, 1860, and addressed to Arch'l Gracie & Son, Mobile, referred to a suit which had been instituted against Morris Ketchum and his co-trustees as trustee of the first mortgage of the Mobile and Ohio Railroad Company, in relation to some land of the company subject to said mortgage.

That deponent was a partner of Morris Ketchum at the time the above correspondence took place.

THOMAS BELKNAP, J'R.

Sworn to before me this 9th day of March, 1876.

JOSEPH GUTMAN, J'R,
United States Commissioner, S. D. N. Y.

889 EXHIBIT C.

NEW YORK, *March* 16, 1859.

DEAR SIR: I have received your letter of the 4th March, and in reply I have to state that, as you know, the correspondence of the trustees of the M. & Ohio Railroad Co. was with our late lamented friend J. J. Palmer. Most of the letters written by him to the co. have been submitted to me and received my approval. All the papers relating to our business with the co. and the correspondence was in the possession of M'r Palmer, and soon after the death of that gentleman I applied to his son, requesting him to turn them over to me. Within the last few weeks I have applied again, and he has promised to collect all the papers and correspondence with the co. and hand them over to me, which he will no doubt do, and when he does I shall be prepared to do all that is proper and necessary in the premises as a trustee.

890 With regard to President Brown's strictures on the conduct of the trustees, I can only say that they are unnecessarily severe and utterly uncalled for. I have acted as one of the trustees of the great landed estate of the Illinois C. R. R., and am daily in the habit of signing deeds transmitted me, when final payments have been made, and no inconvenience has been experienced, nor any complaints

made as to the course taken by the co. If the Mobile & Ohio R. R. Co. will consent to do their business in the same simple and business-like way, they cannot fail to experience the same facility in transacting the business of the land department. And that they may understand how this is done, I will send them an explanation of the mode, with a copy of one of the deeds. The acceptance of this trust was not a mere matter of form, the execution of which was to be confided to others; at least, that is not the was I shall perform my duty. The co. can sell by contract, but when a deed is presented it should show in the face that a bond, or a portion of a bond by endorsement, has been canceled
891 equal to the amount the deed calls for. I know of no other mode in which I can execute the trust.

With regard to the compensation to be paid to the trustees, and their withholding $18,000 of the bonds, and the amount seeming to the company excessive, but forced to a reluctant acquiescence, and that the coupons will be promptly paid, past and to become due, but with the express understanding that the amount retained by them as compensation is to include future as well as past services; I can only say to the best of my recollection of the correspondence held between the late M'r Palmer and the company on the subject of compensation, the company made a specific proposal as to their compensation, which, after mutual consultation, was accepted by them; all of which will be found in the records of the company; I adhere to that arrangement, and shall expect the M. & O. R. R. Company to adhere to it also, without any further stipulations. I have no particular desire to receive these bonds in payment, and am quite willing to surrender them to the com-
892 pany. We took them, as you will remember, at their suggestion, and they suppose that they were coerced; we can return them and reimburse ourselves from the trust fund.

If the company should conclude to adopt the simple plan of the Illinois Central R. R. Company, which I trust they will, then so far as they have gone, for the sake of dispatch, it would be best for the company to make out an abstract of the lands ready to deed, approved by you and the company, and then send it to me, and I will approve and transmit to you, and you can deliver it to the company for record; you seeing that an amount equal to the amount received by the company is endorsed on a bond or bonds of the company.

Very respectfully, your obedient servant,
(Signed) MORRIS KETCHUM,
Trustee.

To W. R. HALLETT, Esq., *Trustee.*

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893 NEW YORK, *March 24th*, 1859.

DEAR SIR: Some days since I requested the secretary of the Illinois Central R. R. Co. to furnish me with all the form incidental to the sale of the lands, by the land department of that co., thinking that some of them might be found useful in the land department of the M. & O. R. R. C.

These documents have been gotten up by men of great experience in the sale of lands (M'r Wilson, late of the department at Washington, having been at the head of the office for the last two or three years), and probably many of the system. Should any of them be found useful to the M. & O. R. R'd Co., in the sale of the lands, I shall not regret having forwarded them.

Very respectfully, your ob't s'v't,
(Signed) MORRIS KETCHUM.

To W. R. HALLETT, Esq., *Trustee.*

894 **New York,** *Jan'y 6th*, **1860.**

Milton Brown, Esq.,
Pres'd't Mobile & Ohio R. R.:

Dear Sir: On the 21st of May I addressed a letter to the late W. R. Hallett, my associate trustee in the Mobile & O. R. R'd Co., trus., with the request that he would lay it before your board.

M'r Hallett, as you are doubtless aware before this, has deceased. The letter, on inquiry, I find, could not have been received by him before he left for the North, consequently could not have been passed over to you as I desired. I now enclose a copy of that letter, which, I believe, embraces all that is necessary for me to say to the R. R. Co. I regret that there should have been any difference of opinion between us as to the course to be pursued in the sale of the bonds or the manner of executing the trust, and shall be most happy to do all in my power to forward the interest of the co., consistent with the trust confided to me. I am now the trustee left, and I deem it important that one
895 or more should be appointed, and I should be glad to hear from you on this subject. You will see that they are appointed with the surviving trustee. I should also be glad to know if the co. desire to act as the agent of the trustees in conformity to the mode adopted by the trustees for conveying the fee. If they do not, then I shall deem it my duty to establish an agency for that purpose.

I again enclose a blank form of the Ill. Cen. R. R'd Co., to be used by the M. & O. R. R'd Co., which I would recommend be adopted in this instance; it has been found to work well. They like it very much after having used it for some time.

Very respectfully, your ob't serv't,
(Signed) MORRIS KETCHUM,
Trustee M. & O. R. R'd Co.

(Confidential.)

New York, *June 6th*, **1860.**

Mess'rs Arch. Gracie & Son,
Mobile:

Gents: Presuming upon my long acquaintance with the senior
896 of your house, M'r A. Gracie, I take the liberty of committing to you some business, not very profitable to you, but which I doubt not will receive your attention.

The writer is one of the trustees, and now the only surviving trustee, to the deed of trust of the Mobile and Ohio Railroad Company, M'r Palmer, of this city, having deceased, and now M'r Hallett, of Mobile.

By a notice which I enclose, which is all the information I have on the subject, it would seem there is a suit pending against the trustees, which comes on on the 26th inst. I had written M'r Hallett on the subject, but the letter could not have reached him before he left for the north. I therefore do not know whether M'r Hallett had employed counsel ot answer on behalf of the trustees or not, and the object of this letter is to have counsel employed, if he, M'r Hallett, had not done it. This may be ascertained by applying to the counsel of the plaintiff in the suit. I enclose a copy of my letter to M'r Hallett, which, together with
897 this letter, you will please hand over to the counsel you may employ, which will be quite sufficient for him to make an answer. It

is quite possible from some things that have come to my knowledge that the company may be accessory to this suit for some purpose of their own, and if this is the case, I desire to show through the counsel of the trustees that it is not their fault, but the fault of the company in not preparing the deeds for our execution, they having assumed to act for the trustees (by their consent) on the sale of the lands conveyed to us. In employing counsel, please be particular that the party employed is not in the interest of the M. & O. R. R. Co., and the counsel will understand that he is to act for me individually as a trustee, unless, in conferring with the counsel employed by M'r Hallett (if such counsel employed by M'r Hallett), he finds that all has been done to place the trustees on the right ground before the court. The counsel must bear in mind that it is possible my interests and that of the company may be adverse.

For whatever cash may be necessary, you will please check
898 on me as trustee of the M. & O. R. R. Co.

Very respectfully, your ob't s'v't,

MORRIS KETCHUM,
Trustee M. & O. R. R. Co.

To the Directors of the Mobile & Ohio R. R.:

NEW YORK, *July 25th*, 1860.

GENTLEMEN: Your president, M'r Milton Brown, has been here, and by an arrangement with him, the deeds called for by the full payment on the tracts of land sold, in the early part of the week will have them filled out in conformity to the descriptions furnished to me, which I think are somewhat incomplete, as in many instances the initials only of the Christian names are furnished. From your returning them in this way, I take it for granted you deem that sufficient.

I would have preferred that the deed should have emanated from the land department at Mobile, but it seems that it is necessary these
899 deeds should be furnished as soon as possible, and to facilitate this object, I shall have them all completed, executed, and finished the early part of next week, when I shall expect a corresponding amount of bonds cancelled, and delivered to me. Of this I will write more particularly when I forward the deeds.

I have received but one return of land sections and lots sold where the payments have been made in full, and the parties consequently entitled to deeds. The document is marked thus: "Abstract III, continued," from which it would seem a previous abstract had been furnished some one of the trustees, which would confirm President Brown's impression, that a large amount of payments in full had been made, and yet the numbering of the deeds in the abstract commencing with sale No. 1, would indicate this to be the first return. Please set me right on this point, and if there are other parties entitled to deeds, send a description and the deeds will be executed and returned at once.

I would suggest, as we are now prepared and gotten up, in
900 which these deeds shall be registered. Such a book I shall have prepared here for my own guidance, but I desire such a record kept at the department in Mobile, so that no possible difficulty can hereafter occur in regard to sales and deeds, and that the page of the book in which the deed is entered, as having been executed and delivered, be endorsed on the back of each deed.

Yours, respectfully,
(Signed) MORRIS KETCHUM,
Trustee.

NEW YORK, *July* 25, 1860.

CHA'S WALSH, Esq., *Pres't:*

DEAR SIR: Accompanying this, I have forwarded you 88 deeds of the trustee of the Mobile & Ohio R. R. Co., for lands sold by the Co. under the instructions of the trustee, upon w'ich the Co. make returns, after full payments have been made. The aggregate amounts of these deeds is $49,881.41, which, by an arrangement with the R. R. Co., I have stipulated to receive in the sterling mortgage bonds of the trustees of that Co.

901 I have taken the liberty of confiding this business to you from the circumstance of your filling the same official status in the Bank of Mobile as my late associate trustee, M'r Hallett, and also from your name having been proposed as his successor in this trust. With this explanation, may I ask that you will make this exchange with the M. & O. R. R. Co., the deeds for a corresponding amount of the above-described bonds, which bonds, when rec'd, I desire you to cancel in the usual way, sending me a return of the numbers, and holding them subject to the order of the trustee or trustees of the M. & O. R. R. Co.

It is my intention to make some change in the future mode of disposing of these lands, in which event I shall direct the money rec'd on acc't of land sales deposited to the credit of the trustees in your institution, which will, I trust, be some equivalent for any favors I may ask in this way.

Very respectfully yours,
(Signed) MORRIS KETCHUM,
Trustee.

902 NEW YORK, *Oct.* 23, 1860.

To the pres't and directors of the M. & O. R. R'd Co.:

GENTS: On the 25th of July last I addressed you a letter advising of having forwarded 88 deeds to Cha's Walsh, esq., and requesting you to give me a new statement of sales of land previous to 1 July, 1857, arranged so that I could make out the deeds to the parties, to which letter I have rec'd no answer. I now call your attention particularly to it, & request you will furnish me with the necessary information. I also wish a duplicate of sales No. 3 and transcript of your land department cash-book from July 1, 1857 (the balance as then brought down was $37,300.80), that may have a correct record of the sales of the land, and the receipt of money on of the trust.

I remain yours respectfully,
MORRIS KETCHUM,
Trustee M. & O. R. R. Co.

903 NEW YORK, *Nov.* 21, 1860.

MILTON BROWN, Esq.,
President of the M. & O. R. R. Co.:

DEAR SIR: I received your letter of the 16th inst., some three days since; we have been in the midst of a financial crisis, to which you may attribute my not giving you an immediate answer, which I will now do. I have read with care the papers enclosed, and beg to state that I see nothing in them to change my views on the subject of electing two additional trustees as communicated to you in my letter of the 7th of July last. That proposition was entirely reasonable and in strict conformity with the requirements of the deed of trust, and I cannot but regret that we should have any disagreement on that subject.

I have written you two or three letters that have an important; I now beg to call your attention particularly to them, & request that you will give me the information desired, so that the deeds may be
904 made out & delivered to you, and the bonds cancelled and deposited in the Bank of Mobile, subject to my order.

Very re'p'f'y,

MORRIS KETCHUM,
Trustee.

NEW YORK, *April*, 1860.

J. S. MORGAN, Esq.:

DEAR SIR: Yours of the *of the* 21st duly received I sent you a hasty note by last steamer, in which they are asked to sign a request to the trustees to allow the parties purchasing the lands of the co. to pay for the same in the bonds of the co., which shall be cancelled when the deed is given, similar to the plan adopted by the Ill. Central Co.;. that there is a considerable amount of these bonds held in England, and the holders are disposed favorably to consider the plan, but as they learn the trustees object to such an arrangement, they hesitate; and that you have promised to write me and ascertain what are the objections.

There is some great mistake or misapprehension somewhere.
905 The statements are erroneous in almost every particular. By the enclosed correspondence you will see that, so far from objecting to the plan suggested, I had proposed it and sent them all the blanks used by the trustees of the Illinois Central trust, in order that they might at once adopt them.

I have never made any objections to signing deeds, because none have been made out by the company and sent to me for that purpose. Whenever they are sent me, with the cancelled bonds to the amount of the purchase-money, they will be executed and returned without delay.

The company have written requesting me to give some one a power of attorney to sign deeds, which I agreed to do as far as lands have been paid for, though on mature reflection I have my doubts of the full propriety of my giving them even that authority, in view of my responsibility to the bondholders, for whose benefit I have been appointed, and shall now insist on separate deeds being sent me for
906 signature for all the lands sold, with the numbers and amounts of bonds cancelled and endorsed in each deed, in the same manner as is done by the Ill. Central R. R. trust.

It is quite certain that the managers of this company could not so far have knowingly departed from the facts in the case in these representations to the bondholders without an object; what their object is, I will not pretend to say.

You will see by my letter to M'r Hallett, also to the executive committee, dated March, 1859, copies of which I herein enclose, that though all the necessary blanks used by the Ill's Central trust (and these schemes are identical), were forwarded that they might at once have prepared to conduct this department without any delay or embarrassment, yet no reply has ever been received from M'r Hallett or the executive committee, nor have they indicated to me any plan of operation except the one before referred to, which will not be submitted to.

With regard to the charge of my having thrown obstacles in
907 the way of what was proposed by the directors in order to throw the money into my hands on which to charge a commission, is simply ridiculous. The plan of conducting the land sales presupposed

the co. to be provided with the bonds of the road, which would be absorbed at par just as fast as the money came in; and if this was done in good faith no money would, as there never has any, reached the hands of the trustees, we preferring the company to sell lands, as they should do, and furnishing the bonds whereby they realized a profit of the difference between the market value and par.

I have deeded in this way nearly a million and a half of the Illinois Central lands, and cancelled that amount of their bonds; have never charged them any commission, nor has a dollar of their money passed through our hands. It was just this system I desired this company to adopt.

908 I have now disposed of all the charges, and I thank you for giving me an opportunity of correcting these misrepresentations to the bondholders. The trust is a large and responsible one, and I should like to be relieved from it; it is not only the responsibility, but to protect the bondholders it is likely to be annoying. It has always appeared to me that the M. and O. R. R. has felt restive under the restraint of the N. Y. trustees, and now, while the bondholders are together, I beg you will induce them to designate some responsible person in Mobile to supersede me.

I am the N. Y. trustee left, and it would be more agreeable to the managers to have one of their own people to fill the station, and by a judicious selection equally safe for them.

If they will do this, I will speedily adjust my account with the co., and

The enterprise, in my judgment, when unembarrassed, is destined to become a successful one, and the bonds a good and improving security. It only requires an honest, economic, and persevering administration, which I have no reason to doubt it now has, except the shade thrown over it by these erroneous statements, to realize all the success that its friends have anticipated.

I am, dear sir, yours, very truly,

MORRIS KETCHUM.

909 *Notice of motion for receivership.*

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &c.,
ag'st
MOBILE AND OHIO RAILROAD CO. ET AL.

To W'm B. Duncan, Andrew F. Elliott, and the Mobile and Ohio Railroad Company:

Take notice, that the motion for a receivership of the Mobile and Ohio Railroad Company, of which motion you have already received notice, will, in addition to the papers referred to in said notice, be made on the opinions of the supreme court of the State of New York, copies of which are herewith served upon you, and upon an affidavit of Morris Ketchum, copies of which are herewith served on you. And also take notice, that the affidavit of Morris Ketchum, sworn to on the 30th day of March, and a copy of which has also been served on you, should include in the 16th paragraph thereof, after the words "were fraudulent upon the showing of said Duncan and Elliott, they claiming, 910 the following words: "by the reports and circulars of the directors, from which they did not dissent, though being directors, to be acting in the interest of and honestly towards the first-mortgage bondholders, and also claiming for a portion of said time."

EDWARD L. ANDREWS,
Solicitor for Complainants.

Affidavit of Morris Ketchum.

United States circuit court, in and for the 5th judicial circuit, southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE,
ag'st
MOBILE AND OHIO RAILROAD COMPANY ET AL.

UNITED STATES OF AMERICA,
Southern District of New York:

Morris Ketchum, being duly sworn, deposes and says:

That the annexed paper, marked "Exhibit A." is a true copy of the circular that was issued by the directors of the Mobile and Ohio
911 Railroad Co. to the bondholders thereof in April, 1875.

That on the 8th of March, 1876, W. Butler Duncan issued a circular to the holders of the bonds of the Mobile and Ohio Railroad Co., and signed the same: "By an order of the board.—W. Butler Duncan."

MORRIS KETCHUM.

Subscribed and sworn to before me this 31st day of March, 1876.

JOSEPH GUTMAN, JR.,
United States Commissioner, S. D. N. Y.

EXHIBIT A.

MOBILE AND OHIO RAILROAD COMPANY.

The directors of the Mobile and Ohio Railroad Company beg to inform the holders of their bonds that the unexampled falling off in earnings, resulting from business depression, general throughout the country, and which will probably continue until another crop is assured, deprives the company of the ability to meet the May interest at its maturity.

All the earnings of the past business season has been applied
912 arrears of pay-rolls, to current supplies, to necessary improvements of the road, and to other matters strictly in the interest of the bondholders.

All our labor and current supply bills are now paid, as far as practicable, in cash.

The directors recognize the fact that the bondholders have the first claim on the property, and that it is imperative upon the directors to apply all the earnings of the road to the interest in the strict order of equity.

With this assurance, the directors invite the confidence of the holders of the mortgage liens to enable them to make some acceptable proposition, upon a substantial basis, which will permit the continued development of the property in the interest of all concerned.

For details of the application of the earnings of the past year, the directors beg leave to refer to the annual report of the company.

By order of the board.

A. L. WILLOUGHBY,
Secretary.

MOBILE, *April 23d*, 1875.

913 ROEBLING *ag'st* DUNCARN & ALS.

Motion to vacate an order of arrest.

M'r Macfarland for the motion. M'r Morange opposed.

LAWRENCE, J.:

The complaint in this action does not appear to have been submitted with the motion papers; but it is evident from the affidavits that the cause of action and the ground of the arrest are distinct, and in such cases it is settled that the court must decide upon the motion, whether upon the whole case, as made by the affidavits on both sides, the court would, if called upon to act in the matter as res nova, have granted the order. (Allen v's McCarvan, 32 Barb., 663, per Sutherland, J.; Chapin v's Seeley, 13 How., 490; Union Bank v's Mott. 6 Abb', 315; & see Phillips v's Benedict, 20 How., 265; Frost v's McCayer, 14 How., 131.)

914 After carefully reading the affidavits on both sides, I cannot say that there exists such a preponderance of evidence in favor of the defendants as to warrant me in coming to the conclusion that the order of arrest ought not to have issued, and ought not to be maintained. There are many allegations in the affidavits of the plaintiffs which have no bearing on the case, and which do not, in my opinion, tend to strengthen it; but after discarding all such allegations, there seems to be enough stated by the plaintiffs, in the absence of a positive explanation by the defendants, to lead to the result that the order should be upheld.

The allegations contained in the plaintiffs' affidavits in respect to the conveyances to M'r Alexander Duncan, are in no manner met or explained by the defendants. One of those conveyances was made as far back as the year 1868, and was not recorded until July 27, 1875, the other was made in 1874, and recorded in July 27, 1875. These conveyances covered the premises in which the business of the defend-
915 ants had been for years carried on. The property was of great value, and the defendant, Duncan, the apparent owner of it. It must, I think, be assumed that one of the elements which contributed very greatly to the establishment of the credit of the defendants as bankers, was the reported ownership by the members of the firm, or some of them, of this property.

It seems to me, further, that these secret conveyances to M'r Alexander Duncan, and the failure to record them, constituted a fraud as to those persons who were dealing with the defendants, or that, on the most favorable view of the case for the defendants, such conveyances were badges of fraud, and as such should receive great weight on the determination of this motion. (Hawley vs. Sackett, 3 How., 605; Fox vs. Meyer, 54 N. Y., 126, 131; Case vs. Phelps, 39 N. Y., 169, and cases cited by Woodruff, J., p. 170.)

It appears that the bill of exchange was sold to the plaintiff, only six days before the failure and assignment of the defendants, and while it is true that no actual representations appear to have been
019 made to the plaintiff at the time such bill was sold, as to the defendants' responsibility, it further appears by the defendants own affidavits that the defendants were at that time in greatly embarrassed circumstances, and that without assistance they could not possibly meet their liabilities.

In Johnson vs. Monell (2 Keyes, p. 655) the court of appeals say, per Morgan, J., that in the absence of a satisfactory explanation, it is not a violent presumption to infer that a man who stops to-day because he is hopelessly insolvent, must have known and contemplated it six days before. That in order to establish fraud in the purchase of goods, it is not necessary that a purchaser should have made false statements concerning his pecuniary ability, and that it is only where the evidence of circumstances fails to establish a presumption of fraud, that evidence of false representations became indispensable to prove the purchase fraudulent.

And it was further held in that case that the usage between parties in their dealings together for a period of years is competent evi-
917 dence in the case of an alleged fraudulent purchase of goods as tending to show that the seller had a right to presume the solvency of the purchaser, when he gave the order for the goods in the usual way. I can discover no difference in principle between that case and the case before me.

The defendants were, in my opinion, hopelessly insolvent when they sold the bill of exchange to the plaintiff, and I cannot avoid the conclusion that they knew that they were insolvent. The plaintiff had been accustomed for several years to purchase bills of exchange from the defendants, and such bills had been duly honored. There was nothing to indicate to the plaintiff that there had been any change in the circumstances of the defendants, at the time that they purchased the bill. As I have said, at that time the defendants must have known that they were insolvent, and although it has been held in some cases that an omission to declare insolvency is not necessarily an evidence of fraud, yet it has also been held, that if an insolvent, who is carrying on
918 business, with knowledge that he can no longer continue it, and that his property must be surrendered to his creditors, purchases goods upon credit, without disclosing his circumstances to the vendor, his concealment thereof is equivalent to fraud, and his assignment of the purchased property for the benefit of his creditors will pass no title therein to his assignee. (Chaffee vs. Fort L. Lansing, 82). And in the same case it was further held that the same rule applies to a banker, who, under like circumstances, receives the money of his depositor. (See particularly remarks of Muller, J., at p. 87, 88.)

It is stated in one of the affidavits of the defendants that the bank upon which the bill was drawn had a large amount on deposit to the credit of the defendants, but upon examining the schedules filed with the assignment it appears that the defendants were largely indebted to said bank. Although there the defendants state that they drew
919 the bill in the full expectation that the same would be paid, I cannot say, upon all the facts as presented to me, that the defendants were at all justified in such expectation. There is no allusion in the defendants' affidavits to the conveyances to M'r Duncan, except such as may be contained in the general allegation that the defendants are advised that certain of the matters in the plaintiffs' affidavits contained are

impertinent, and that the defendants are not called upon to answer them.

If those conveyances were fair, were based upon a good consideration, and if there is any just explanation of the failure to record them while the land and buildings which they conveyed appeared to be owned by the defendants or some of them, and were held out to the world to be so owned, it would have been easy to have set forth the facts in the affidavits. Again, in cases where it is sought to vacate an order of arrest, a mere denial by the debtor of the facts sworn to on the part of
the plaintiffs is not sufficient to vacate the order of arrest. There
920 must be a preponderance of evidence, either by other witnesses
or by the statement of other matters to confirm the defendants' denial. (Phillips vs. Benedict, 20 How., 265.)

Here there is neither a denial of the fact that the conveyances were made and that they were not recorded until the failure of the defendants, and, as I have already stated, the allegations of the plaintiff in respect to such conveyances are entitled to great weight in arriving at a proper determination of this motion.

The case made by the plaintiffs on their original affidavits does not seem to me to have been answered or contradicted, and as I regard the order as having been properly made in the first instance, the motion to vacate it must be denied.

921 WASHINGTON A. KOEBLING AND OTHERS
ag'st
WILLIAM B. DUNCAN AND OTHERS.

BARRET, J.:

The rule of law which governs in cases of this kind is well settled.

The question is one of intent, to be ascertained by an inquiry as to whether the debtor had any reasonable expectation of meeting his obligations at maturity.

If he had such reasonable expectation, then it is the case of a legitimate effort by an embar'assed person, to be a trader or banker, to retrieve his fortunes, and then the law is not so strict as to require a disclosure which would probably defeat the effort; otherwise it falls within that other class of cases where the merchant or trader, finding himself hopelessly insolvent and with stoppage im'inent, without disclosing his situation, and in virtue of his supposed solvency and well-established credit,
contracts fresh obligations which he cannot reasonably hope to
922 meet, and this the law condemns as fraudulent.

Now, in the case at bar, the defendants were hopelessly insolvent when they sold the bill in question; that is, their liabilities amounted to about $5,000,000.00; their assets to less than $2,000,000.00. They deny knowledge of insolvency but admit knowledge of embar'assment. Six days later they stopped payment and made a general assignment.

Under these circumstances, it became very clearly the duty of the defendants, especially after the admonition of M'r *M'r* Justice Lawrence, to lay before the court all the facts upon which they based their sanguine expectations. This they have failed to do. They say that they were negotiating for additional means which would have insured their ability to continue, and that they had strong hope of accomplishing that result. But they furnish no facts upon this head.

They do not say with whom they were negotiating, nor for what
923 sums; nor do they give letters, telegrams, or other particulars.

It was for the court to say, when the facts were presented, whether the hopes and expectations of which the defendants speak were reasonable and real. It certainly will not do for a firm which owes $5,000,000, and has less than $2,000,000 of assets, when taxed with continuing after knowledge of that state of things, to rely upon generalities.

Again, on this question of knowledge, there is, unfortunately, the same reticence.

The defendants admit, that about the time of the sale of the bill, they were engaged in an examination of their financial affairs and had discovered that they were embarrassed, though not hopelessly insolvent, The court could better have sustained that view of the case if the defendants had given the facts as to such examination and discoveries.

Presumptively such examination disclosed the truth, viz, that the defendants could not pay forty cents on the dollar. If it did not;
924 if there was any mystery about their *their* affairs which could not
be immediately unravelled by an examination of the books, or any peculiarity about their assets which rendered at least an approximately accurate valuation impossible, the defendants should have shown what the difficulty was.

No light is thrown upon the subject by simply declaring that they found themselves embarrassed.

That again was a matter for the court. What the defendants in fact found was that they owed so much, and that they had such and such assets with which to pay. It was their duty to give the court, as nearly as might be, a photographic view of this examination, and of all the facts tending to justify the assumption of mere embarrassment, which might be relieved by the acquisition of additional means.

It is true that there is an averment in the defendants' affidavits that the realizable value of assets did not "necessarily" appear upon the face of their books, and that without a close examination of the sev-
925 eral accounts the value of assets or amount of losses would not
"necessarily" appear. This is a general statement, which is true of almost every firm; but whether or to what extent the defendants here, in continuing after such examination, were misled by any such state of things is not detailed.

It thus appears that when the defendants sold the bill their liabilities exceeded their assets by upwards of three millions of dollars, and that they had made an examination of their condition, which ought to have disclosed that fact, and the consequent futility of negotiating for the enormous sum which would have been necessary to have placed them upon a reasonably sound basis, under such circumstances; therefore, it was their duty to have stopped at once; and now, when they seek to justify their continuance until the failure of the negotiations for additional means, they should have spread before the court fully and explicitly the particulars of the examination which they had made, the assets which it showed, the value which it placed thereon, the facts upon which they grounded such valuation, and, as a sequitor,
926 what deficiency there then appeared to be between debts and
means of payment. If upon such facts having been presented, the court had been of opinion that as the defendants were then situated (that is, treating them as honest men of fair judgment, looking at their affairs according to the best lights then afforded to them) they were justified in believing that theirs was a case of mere embarrassment and not of complete insolvency, it would have justified them in continuing their business without disclosing their condition. But even then if the embarrassment appeared to be of so grave a character, that without

additional means there was no prospect of retrieving themselves, the court before finally justifying the incurring of fresh obligations (even pending the negotiations) would have been compelled to ask for full and precise information as to the amount necessary to be had and the grounds upon which the defendants based their hope of obtaining it—in fact for the details of such negotiations.

927 The explanations made by the defendants with respect to the state of the account with the Union Bank of London are sufficiently full.

They do not, however, alter the effect of the failure to furnish the facts which have been discussed; of course the payment of the bill did not altogether depend upon the fact that the defendants had money or credit with the drawee. It depended rather upon their continuance.

In other words, they were not justified in the expectation that the bill would be honored merely because the drawees had funds in their hands, unless they were also justified in the expectation of success in the negotiations for additional means and in the belief that such additional means would enable them to continue their business without interruption. Indeed, as they themselves say, the cause of the failure of the Union Bank of London to honor their bills, including that now in question, was the telegraphic report in London of their stoppage, and of the execution of their assignment.

928 The court is therefore constrained to hold as the necessary result of the conceded facts, calling as the' do for clear and precise evidence (which has not been furnished) of other facts sufficient to justify the alleged expectation of continuance, that the defendants must have known, when they sold the bill, that before it reached London they would be compelled to close their doors, and that a refusal to accept would be the result.

It follows, therefore, without the necessity of considering the other branch of the case, that the motion to vacate must be denied.

Marshal's return.

Received in marshal's office April 6th, 1876, and executed on the same day by delivering a copy of the within notice of motion and affidavit to T. Haskins DuPuy.

R. W. HEALY,
U. S. Marshal,
By GEO. COTTIN, *Deputy.*

Filed April 7th, 1876.

N. W. TRIMBLE, *Clerk.*

929 *Transcript of proceedings against Morris Ketchum et als.*

[SEAL.] The President of the United States of America to all to whom these presents shall come, greeting:

Know ye that we, having inspected the records and files of the circuit court of the United States for the southern district of New York, do find certain paper writings there remaining of record, in the words and figures following, to wit:

930 To the honorable the judge of the circuit court of the United States for the southern district of New York, in the second circuit:

Charles I. Davis and Charles B. Pope, as survivors of the copartner-

ship firm of said Pope & Company, composed of themselves and Edmund Aiken, now deceased, bring this their bill of complaint against Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, Lyndon M. Swan, Edward B. Ketchum, Augustus A. Robinson, and Charles J. Ketchum, all, each, and every of whom are residents of the city and county of New York, in the State of New York.

And thereupon your orators as surviving, as aforesaid, complain and say, that your orators and the said Edmund Aiken, now deceased, at the several times hereinafter stated, were copartners in business
931 under the name and firm of Davis, Pope and Company, and as
such copartners carried on business as merchants at and in the city of Chicago, in the State of Illinois, where your orators still reside, and that the said Edmund Aiken departed this life in or about the month of January, 1867, leaving your orators as the survivors of said copartnership as survivors, as aforesaid.

And your orators further shows that prior to and since the first day of January, in the year 1865, Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, Lyndon M. Swan, and Edward B. Ketchum, have carried on and conducted business in the city of New York, in copartnership, under the name, style, and firm of Ketchum, Son & Company, which business so conducted and carried on by the said copartnership firm of Ketchum, Son and Company had been previously conducted and carried on by the said Morris
932 Ketchum, associated at different times with others, and which
copartnership firm of Ketchum, Son and Company had existed for several years prior to the fifteenth day of August, in the year 1865, and in or about the year 1860 was composed of the said Morris Ketchum, Franklin M. Ketchum, and Thomas Belknap, junior, who afterwards, and for a long time prior to the fifteenth of August, in the year 1865, associated with themselves, as members of the said firm, the said Landon Ketchum, Lyndon M. Swan, and Edward B. Ketchum, so that on the fifteenth day of August, in the year 1865, and for a long time prior thereto, the said firm of Ketchum, Son and Company was composed of the said Morris Ketchum, Franklin M. Ketchum, Thomas Belknap, junior, Landon Ketchum, Lyndon M. Swan, and Edward B. Ketchum.

And your orators, as survivors as aforesaid, further shows that
933 the said Morris Ketchum, by means of the long series of years
that he had been engaged in said brokerage and banking business, and the very large business carried on and conducted by him, and his manner of living and conducting and carrying on business, and from other causes, became reputed to be a person of large wealth and great business and pecuniary facilities, and upon the formation of the said firm of Ketchum, Son and Company, said firm, by means of the reputation acquired by the said Morris Ketchum from the commencement thereof, had a large and unbounded credit for its wealth and means and facility of doing business, and its business capacity, and sought and obtained the business of a large number of banks, bankers, and merchants, who with them would deposit money and securities as bankers, to be drawn upon in the usual and ordinary course of doing a
934 banking business, and among others your orators and said Ed-
mund Aiken, as co-partners as aforesaid, on or about the first day of January, 1865, commenced doing business with the said firm of Ketchum, Son and Company, by depositing money and securities with the said firm as bankers, to be drawn upon by your orators, said firm of Davis, Pope and Company, as their business and necessities should

require, and continue such business with said firm until on or about the fifteenth day of August, in the year 1865.

And your orators as survivors as aforesaid further state, upon information and belief, that prior to the fifteenth day of August, in the year 1865, the said firm of Ketchum, Son & Company were very extensive dealers and speculators in stocks, gold, and government bonds and securities, and that for several months prior to the fifteenth day of August, in the year 1865, Edward B. Ketchum, one of the said firm of
935 Ketchum, Son and Company, had been speculating in gold on his individual account by buying and selling gold and stocks to enormous amounts—many millions of dollars; and for the purposes of said speculations, he, the said Edward B. Ketchum, embezzled and took large amounts of bonds, stocks, and other securities left and deposited by different persons and corporations with the said firm of Ketchum, Son & Company for safe-keeping, and as securities for loans and advances and for other confidential purposes, and belonging to the said persons and corporations so leaving and depositing the same with said Ketchum, Son and Company, and sold and disposed of the same without the knowledge or consent of the persons and corporations owning, depositing, and having the same as aforesaid, and converted the same and the proceeds thereof to his own use, and also made and issued forged checks purporting to be drawn by the firm of Brockleman, Unger & Company,
936 Hallgarten & Hertzfeldt, and others whoes names are unknown to your orator, upon the Bank of New York, a corporation doing business in the city of New York as bankers, and other banks and bankers, the signatures to which checks were not written by the parties purporting to have signed the same, but were false, fictitious, and forged signatures, made and written by the said Edward B. Ketchum, which checks required the bank or bankers upon whom they were drawn to pay to the payees thereof, or order, the amount for which said checks were drawn, in coin of the United States, and were what was then known in the city of New York as gold checks, and that he, the said Edward B. Ketchum, used and negotiated said forged and fictitious gold-checks by selling and disposing of the same, or some of them, and by borrowing large sums of money and depositing said fictitious and forged
937 checks, representing them to be good and genuine, as security for the money so loaned, and that the said Edward B. Ketchum had, prior to the fifteenth day of August, in the year 1865, so made, issued, negotiated, and deposited, as collateral, such fictitious and forged gold-checks to the amount of several hundred thousand dollars.

And your orators, as survivors as aforesaid, further show and state on information lately obtained and belief, that for a long time, at least for two months prior to the fifteenth day of August, in the year 1865, the other members of the said firm of Ketchum, Son and Company, and especially the said Morris Ketchum, well knew that the said Edward B. Ketchum had been and was purloining and using said bonds, stocks, and other securities deposited with the said firm of Ketchum, Son and Company for safe keeping, and otherwise, as aforesaid, and selling and disposing of the same, and converting the same, or the proceeds
938 thereof, to his own use, and suppressing the fact of the said purloining, using, and conversion from the said persons and corporations to whom said bonds, stocks, and securities belonged, and took no means to prevent the said Edward B. Ketchum from continuing the purloining, taking, using, disposing of, and converting the stocks, bonds, and other securities belonging to other persons and corporations, deposited by them, the owners thereof, with the said firm of Ketchum,

Son and Company for safe keeping, and otherwise as aforesaid, and that the amount of the said bonds, stocks, and other securities purloining, taken, used, disposed of, and converted by the said Edward B. Ketchum prior to the fifteenth day of August, in the year 1865, amounted in the aggregate to between one and two millions of dollars.

939 And your orators, as survivors as aforesaid, further show and aver, upon information lately obtained and belief, that the said firm of Ketchum, Son, and Company were for and during several months prior to the fifteenth day of August, in the year 1865, largely indebted, and that the liabilities of the said firm, immediately and for some weeks prior to the said fifteenth day of August, in the year 1865, amounted to about the sum of three millions of dollars; and that the property and assets of the said firm, and of the several individual members thereof, greatly exceeded the total amount of the liabilities of the said firm, and of the several members thereof, individually; and that on the said fifteenth day of August, in the year 1865, the said firm of Ketchum, Son, and Company, and the several individual members thereof, exclusive of the said Edward B. Ketchum, had and possessed in their own right more than sufficient property and means to fully pay and satisfy all the debts and liabilities of the said firm, and of the several members thereof, excluding the said Edward B. Ketchum, and 940 were fully able to pay and satisfy all said debts and liabilities, including the amount and value of the said bonds, stocks, and other securities purloined, taken, used, disposed of, and converted as aforesaid by the said Edward B. Ketchum.

And your orators, as survivors as aforesaid, further show and aver, upon information lately obtained and belief, that the said Morris Ketchum, when he was informed of the purloining, taking, using, disposing of and converting of the said bonds, stocks, and other securities, by the said Edward B. Ketchum as aforesaid, or shortly thereafter, being apprehensive that to pay the debts and liabilities of the said firm of Ketchum, Son and Company, and the owners of the said bonds, stocks, and other securities purloined, taken, used, disposed of, and converted by the said Edward B. Ketchum as aforesaid, for the amount and value thereof, would involve and require the greater part, if not all the property and assets of the said firm of Ketchum, Son and Company, 941 and of his private fortune and property, conceived the scheme and contrivance to make use of the fraudulent practices of the said Edward B. Ketchum as aforesaid, as a means of compromising and compounding with the creditors of the said firm of Ketchum, Son and Company, so that he, the said Morris Ketchum, might, by means of such composition and compromise, save to himself his private fortune and property, or the greater part thereof; and in pursuance of the said scheme and contrivance; and combining and confederating with the said Franklin M. Ketchum, Thomas Belknap, junior, Landon Ketchum, Lyndon M. Swan, and Edward B. Ketchum, it was arranged and agreed by and between the said Morris Ketchum, Franklin M. Ketchum, Thomas Belknap, junior, Landon Ketchum, Lyndon M. Swan, and Edward B. Ketchum, that the said firm of Ketchum, Son and Company should suspend payment of its debts and liabilities for the alleged reason of 942 the abstraction of the said bonds, stocks, and other securities by the said Edward B. Ketchum, as aforesaid, and to fraudulently take advantage of the commotion and alarm that would be created among the creditors of the said firm when said abstractions of said bonds, stocks, and other securities should become known, as aforesaid, to affect a composition and compromise with the creditors of the said firm of their several claims and demands against said firm, so that the said Morris Ketchum might preserve and keep to his own use the whole or the greater part of his private fortune or property; and that upon such suspension of payment of its debts and liabilities by the said firm being agreed upon as aforesaid, certain persons and firms dealing with said firm of Ketchum, Son and Company, and who it was the interest of said firm to protect, were advised by said firm, or some members thereof, to, and did, withdraw all moneys and securities then on deposit by them respectively with said firm and close their respective accounts with said firm, the names of which persons and firms are 943 now unknown to your orator, but whose names, when discovered, your orator prays leave to insert herein.

And the said Edward B. Ketchum absconded and secreted himself in the city of New York under a false name, and immediately thereafter the said forgeries committed by him as aforesaid became known.

Whereupon the said Morris Ketchum, Franklin M. Ketchum, Thomas Belknap, junior, Landon Ketchum, and Lyndon M. Swan, to carry out the said fraudulent scheme and contrivance, and in pursuance thereof taking advantage of the commotion and alarm created by the fact of the absconding of and the forgeries committed by the said Edward B. Ketchum as aforesaid being made public, and to cheat and defraud the creditors of the said firm of Ketchum, Son and Company, determined that the said firm should immediately suspend payment, and 944 thereupon, on the fifteenth day of August, in the year 1865, announced that the said firm of Ketchum, Son and Company were insolvent, and unable to pay their debts and liabilities in full, and declined to pay any of such debts and liabilities, and when called upon by parties interested as creditors of the said firm of Ketchum, Son and Company, he, the said Morris Ketchum, in pursuance of the said fraudulent scheme and design, stated and represented that the said Edward B. Ketchum had taken and abstracted from the said firm of Ketchum, Son and Company two or three millions of dollars, and made use of the same for his own purposes, in consequence of which the said firm had stopped payment, and were unable to go on with their business, but meant to make an examination of its resources and liabilities for the purpose of seeing how it was situated pecuniarily, and that said Edward B. 945 Ketchum had absconded, and he did not know where he was, and gave out and pretended that the said firm of Ketchum, Son and Company were insolvent and unable to meet or pay its liabilities, when, to the contrary thereof, the said Morris Ketchum well knew the extent of the abstractions from said firm by the said Edward B. Ketchum, and that they did not amount to two or three millions of dollars, and that the said firm of Ketchum, Son and Company were not insolvent, but that said firm, and the individual members thereof, owned and possessed sufficient property to pay all its debts and liabilities after applying the individual property of each member of said firm to the payments of his individual debts and liabilities, except in the case of the said Edward B. Ketchum, and well knew the then whereabouts of the said Edward B. Ketchum, and was himself a party to the concealment of the said Edward B. Ketchum.

946 And your orators, as survivors as aforesaid, further aver and state on information and belief, that, in pursuance of said fraudulent scheme and contrivance to cheat and defraud the creditors of the said firm of Ketchum, Son and Company, the said firm by the respective members thereof, except said Edward B. Ketchum, in the name of said firm and of said individual members thereof, on the seventeenth day of August,

in the year 1865, made, executed, and delivered to Philo C. Calhoun and Edward Bement an instrument in writing, bearing date on the day and year last aforesaid, in which, in pursuance of said fraudulent scheme and contrivance, it was recited that Edward B. Ketchum, a partner of said firm, had absconded himself from his residence and from the place of business of the said firm, having appropriated to his own use a large amount of the assets of the said firm, by means whereof the said firm had become
947 embarrassed and had been compelled to suspend payment, and was unable to provide for its debts as fast as the same became due and payable, and by which instrument in writing they pretended and purported, in consideration of the premises and of the sum of one dollar to them in hand paid, to grant, bargain, sell, assign, transfer, and set over unto the said Philo C. Calhoun and Edward Bement, and to the survivors of them, all and singular the property, assets, and effects of the said firm of Ketchum, Son and Company, of whatsoever nature, or wheresoever situated the same might be, to have and to hold the same unto the said Philo C. Calhoun and Edward Bement, in trust, nevertheless, and to and for and upon the uses and purposes therein declared of and concerning the same, that is to say, in trust to reduce to their possession all and singular the property, assets, and effects thereby conveying and assigning, or intended to be, and
948 to convert the same into cash by sale or collection thereof, as the same might require, and to appropriate and apply the proceeds thereof.

First. To the payment of the expenses of making and executing the trusts thereby created, or pretended to have been created, including the lawful commissions and compensations of the said P. C. Calhoun and Edward Bement, and of such agents and servants as they shall lawfully employ in and about the execution of the said pretended trust, and then,

Secondly, to the payment, so far as such proceeds would go, of all the lawful debts and liabilities due and owing, or theretofore incurred, and then maturing by the said firm of Ketchum, Son and Company, to their creditor*ers* respectively rateable and in proportion to the several amounts of such debts respectively, until such debts should be fully paid and satisfied.

And they, the said Philo C. Calhoun and Edward Bement, be-
849 came parties to the said instrument in writing by signing the same, and therein and thereby severally, respectively, each for himself, pretended or purporting to accept the trust pretended to have been created by the said instrument in writing, and agreed faithfully to perform the same.

And your orators as survivors as aforesaid further show, aver and state upon information lately obtained and belief, that the said instrument in writing was signed by the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, Lyndon M. Swan, and by the name of Ketchum, Son & Company and, although purporting to be under their respective seals, was not in fact sealed by them, or either of them, and that said instrument in writing was acknowledged on the said 17th day of August, in the year 1865, before C. W.
950 Bangs, a notary public in and for the said city and county of New York, by the said Philo C. Calhoun and Edward Bement, and by the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, individually and further, that they had executed the same for and in the name of Ketchum, Son and Company as well as each of them in his own name; and that on the said

17th day of August, in the year 1865, the said instrument in writing was recorded in the office of the clerk of the city and county of New York, in the State of New York.

And your orators, as survivors as aforesaid, further show, upon information lately obtained and belief, that the said recitals contained in the said instrument in writing were untrue in fact, and were inserted and recited for the fraudulent purpose of representing to the
951 creditors of the said firm of Ketchum, Son & Company that the said
firm had been rendered insolvent by the abstractions of the said Edward B. Ketchum, and in pursuance of the said fraudulent scheme and contrivance hereinbefore set forth, and that, in truth and fact, at the time of signing and execution of the said instrument in writing, the said Edward B. Ketchum had absented himself from his residence and from the place of business of the said firm, with the knowledge and assent and by reason of the preconcerted scheme and contrivance of the said Morris Ketchum, Thomas Belknap, junior, Landon Ketchum, Franklin M. Ketchum, Lyndon M. Swan, and Edward B. Ketchum, to so absent himself, so that it might be given out that he had absconded with a large part of the property and assets of said firm, so as to enable the said firm to make a fraudulent settlement with its creditors, whereby the private fortune and property of the said Morris Ketchum
952 might be secured from being applied and appropriated to the payment
of the debts of said firm; and that at the time of the execution and delivery of the said instrument in writing it was, and for a considerable time prior thereto it had been, known to the said Morris Ketchum, Thomas Belknap, junior, Landon Ketchum, Franklin M. Ketchum, and Lyndon M. Swan that the said Edward B. Ketchum had appropriated to his own use some of the assets of the said firm, and the nature and extent of such appropriation by the said Edward B. Ketchum; and that such appropriation of the assets of the said firm by the said Edward B. Ketchum did not render said firm insolvent or unable to pay its debts and liabilities in full, and would not embarrass said firm in the private fortune and property of the respective members thereof, was applied and appropriated to the payment and liquidation of its debts and liabilities.

953 And your orators, as survivors as aforesaid, further show upon
information lately obtained and belief, that in pursuance of the said fraudulent scheme and contrivance, the said Morris Ketchum, Franklin M. Ketchum, Thomas Belknap, junior, Landon Ketchum, and Lyndon M. Swan, gave out and pretended that he, the said Morris Ketchum, did, on the sixteenth day of August, in the year 1865, by an instrument in writing, bearing date on that day, assign and transfer a part and portion of his individual and private property to Moses Taylor, Edward Bement, and Philo C. Calhoun in trust, to convert the same into money, and to apply the proceeds thereof to and for the benefit of his creditors and the creditors of the said firm of Ketchum, Son & Company; and that, by a further instrument in writing, bearing date the seventeenth day of August, in the year 1865, he, the said Morrit Ketchum, did assign and transfer to the said Edward Bemens
954 and Philo C. Calhoun the remainder of the individual and private
property and estate of said Morris Ketchum, in trust, to convert the same into money, and to apply the proceeds to and for the benefit of the creditors of the said Morris Ketchum and the said firm of Ketchum, Son & Company, whereas, in truth and in fact, as yours have very lately been informed and believe, although such instruments of assignment may have been made and executed they were not in fact de-

livered, and that no such assignments are recorded in the office of the clerk of the city and county of New York, in the State of New York, whe're by the laws of the State of New York relative to voluntary assignments by insolvent debtors, they are required to be recorded.

And your orators, as survivors aforesaid, further show that they have
been lately informed and believes that, in pursuance of said fraud-
955 ulent contrivance and scheme, the said Morris Ketchum, Thomas
Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and
Lyndon M. Swan, prepared, or caused to be prepared, a paper purport-
ing to be an inventory of the estate assigned, or pretended to be as-
signed, by the said firm of Ketchum, Son & Company to the said Philo
C. Calhoun and Edward Bement, by the said first-mentioned instru-
ment in writing, or assignment, at the date of the said instrument in
writing, and of all the estate of the said assignors, and purporting also
to be a full and true account of all the creditors of the said assignors,
which paper was prepared with a view to filing the same in pretended
pursuance of and compliance with an act of the legislature of the State
of New York, passed April 13, 1860, entitled "An act to secure to cred-
itors a just division of the estates of debtors who convey to assignees
for the benefit of creditors, and such paper was prepared and filed
956 in the office of the clerk of the city and county of New York, or
of the court of common pleas of said city and county, on or
about the fifth day of September, 1865, and was endorsed as follows:

"The firm of Ketchum, Son & Company having made an assignment
for the benefit of their creditors to Philo C. Calhoun and Edward
Bement, by an instrument dated August 16, 1865, and Morris Ketchum,
one of the said firm, and a resident of the State of Connecticut, having
assigned a part of his property to Moses Taylor, Edward Bement, and
Philo C. Calhoun for the benefit of the creditors of the said firm, by an
instrument dated August 17, 1865, and having assigned the remainder
of his property to the said Philo C. Calhoun and Edward Bement, by
an instrument dated August 17, 1865, in trust for the benefit of the
creditors of the said firm, the said debtors made this inventory
957 or schedule of the creditors of the said firm and of the estate of
said Ketchum, Son and Company and of said Morris Ketchum,
at the dates of the said assignments respectively, pursuant to the
second section of an act of the legislature of the State of New York,
passed April 13, 1860, entitled 'An act to secure to creditors a just
division of the estate of debtors who convey assignees for the benefit
of creditors.'"

And as your orators had been lately informed and believes, no inven-
tory, or paper purporting to be an inventory, required to be filed by the
said act of the legislature of the State of New York of the property
assigned, or pretended to be assigned, by the said two several instru-
ments pretended to be made by the said Morris Ketchum, one to the
said Moses Taylor, Edward Bement, and Philo C. Calhoun, and the
other to the said Edward Bement and Philo C. Calhoun, was ever filed
as required by the said act of the legislature of the State of New
958 York, except so far as it may be pretended that the said pre-
tended inventory and schedule, filed as aforesaid, was a compli-
ance with the requirements of the said act.

And your orators, as survivors as aforesaid, further show, upon information lately obtained, and belief, that the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, in pursuance of the same fraudulent and illegal schemes and contrivances hereinbefore stated and set forth, and for the

purpose of hindering, delaying, and defrauding the creditors of the said firm of Ketchum, Son and Company, purposely and carefully omitted from the said paper, called and styled an inventory or schedule, large amounts of property and assets belonging to the said firm and the said Morris Ketchum, among which is a claim of ninety thousand dollars, or thereabouts, against the New York and New Haven Rail-
959 road company; in which the said Morris Ketchum had an interest
of two-thirds, and of which he, the said Morris Ketchum, subsequently personally received between sixty and seventy thousand dollars, no part of which ever came to the hands of his said pretended assignees, any or either of them; and the said pretended inventory or schedule stated a balance of account due to said firm of Ketchum, Son and Company from J. A. Robinson, on transactions of gold coin, of twenty-seven thousand nine hundred and seventy-three dollars in currency, whereas, in truth and in fact, there was due from the said Robinson to the said firm of Ketchum, Son & Company that amount in gold coin; and also stated, as part of the assigned estate or property, an estate in fee in remainder, after the death of Mary Munroe, in premises in West Thirty-sixth street, in the city of New York, of the value of four thousand dollars, whereas your orators are lately informed, and believe, in truth and in fact, the said premises in West Thirty-sixth street
960 were the property of the said Morris Ketchum in fee absolute,
and that the said Mary Monroe had no estate or interest therein, but, for the purpose of deceiving and defrauding his creditors on the eve of the announcement of the insolvency of said firm of Ketchum, Son & Company, the said Morris Ketchum or procured to be made an instrument in writing purporting and pretending to give to the said Mary Munroe an estate for life in the said premises in West Thirty-sixth street, which papers was antedated, and which premises in West Thirty-sixth street were then reasonably worth the sum of twenty-five thousand dollars; and when, after having deceived his creditors as herein stated, and thereby procured a settlement with his creditors, as hereinafter stated, the said property in Thirty-sixth street came back to the said Morris Ketchum, freed from any life estate, and he sold and disposed of the same for the sum of twenty-five thousand dollars, no part of
961 which sum went in any way to the benefit of the said Mary Munroe.

And the said pretended inventory also stated, as a part of the assigned estate or property, two hundred and eleven shares of the capital stock of the Hartford Carpet Company, a manufactoring corporation; and for the purpose of deceiving the creditors of the said Ketchum, Son & Company, said stock was put down in the said pretended inventory as of the value of one hundred and four $\frac{36}{100}$ dollars per share, when in truth and fact the same was worth in the market at the time of the making and filing of the said pretended inventory, and could have been sold for the price or sum of one hundred and eighty-five dollars per share.

And that said pretended inventory also stated, as a part of the assigned estate or property, the individual property, real and personal, of the said Edward B. Ketchum, and that the same was subject to attachments issued against his property, and for the purpose of deceiv-
962 ing the said creditors of the said Ketchum, Son and Company, the
value of said property was, in said pretended inventory, stated at the sum of two hundred thousand dollars, when, in truth and fact, the said attachments were all afterwards set aside and vacated, and were expected to be set aside and vacated, and the then true value of

the said real and personal property of the said Edward B. Ketchum, individually, was the sum of at least three hundred and eighty thousand dollars.

And that by the said pretended schedule and inventory, the debts and liabilities of the said firm of Ketchum, Son and Company, and the said Morris Ketchum, are made to appear at the sum of three million nine hundred and forty-five thousand six hundred and eighty dollars, and the property and effects of the said Morris Ketchum and the said Ketchum, Son and Company at three million and ninety-three thousand six hundred and thirty dollars, and when in truth and in fact the
963 property of the said firm of Ketchum, Son & Company and the
said Morris Ketchum was of greater value and amount than the whole amount of the indebtedness of the said firm and of the said Morris Ketchum, as would have appeared by said pretended inventory if the whole amount of the property and effects of the said firm of Ketchum, Son & Company and of the said Morris Ketchum had been fully stated and set forth in the said pretended inventory had been therein set forth at its true and fair value.

And your orators, as survivors as aforesaid, further show, upon information lately obtained and belief, that the said pretended inventory or schedule filed as aforesaid, stated and set forth pretended liabilities of the said firm of Ketchum, Son & Company which did not exist, and other liabilities for a great deal larger amount than did actually exist, and was so made for the fraudulent purpose of deceiving the creditors of the said firm of Ketchum, Son and Company and inducing
964 them to believe that the liabilities of the said firm were largely
in excess of the true amount.

And your orators, as survivors as aforesaid, further show, upon information and belief, that in pursuance of said fraudulent scheme and contrivance, the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, on or about the fifteenth day of August, in the year 1865, sent to each of the creditors of the said firm of Ketchum, Son & Company a printed communication in the words and figures following, that is to say:

"OFFICE OF KETCHUM, SON AND COMPANY,
"No. 40 EXCHANGE PLACE,
"*New York, August 15th*, 1865.

"DEAR SIR: The developement, yesterday, of very heavy frauds practised upon us by E. B. Ketchum, a junior partner in our house, has forced us to suspend payment until we can collect and convert
965 our assets and ascertain our exact position. We hope that a
short time will suffice for this, and that we may soon be able to submit a proposition for the settlement of our affairs.

"Respectfully yours,

"KETCHUM, SON & CO."

And on or about the seventeenth day of August, in the year 1865, they sent to each of the creditors of the said firm of Ketchum, Son & Company another printed communication, in which they announced that, in consequence of hostile proceedings, they had been forced to make an assignment for the benefit of their creditors.

And in further pursuance of said fraudulent scheme and contrivance the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, on or about the 23rd day

of August, 1865, sent to each of their creditors a printed communication, in words and figures following, that is to say:

966 NEW YORK, *August 23rd*, 1865.

DEAR SIR: Since the events of last week, which disclosed to ourselves the unfortunate condition of our house, and drove us to an assignment, we have been busily engaged in efforts to secure our property to our creditors, and to give early information of the state of our affairs. We are now able to say, for the first time, that, according to the balances on our books, our liabilities are, in round numbers, $4,000,000, while the available assets applicable to the payment of our liabilities and the expenses of winding up the estate cannot properly realize more than $2,500,000 to $3,000,000, and, in a forced realization, probably less than either sum. Some claims, amounting to about $250,000, have been made upon us, which, we think, we are not liable for, and there is a faint prospect that our assignees may regain a very small amount of the assets of which we were fraudulently deprived. The amount 967 of funds and *and* securities abstracted from us, without our knowledge at the time and to our so great loss, is now definitely ascertained to have been not less than $2,800,000.

Under these circumstances we are urgently advised by many of our creditors to invite your attendance at a meeting of our creditors, to be held at our late banking house, No. 40 Exchange Place, at 12 o'clock m. of Friday, the first day of September, at which time we shall submit detailed statements of our liabilities and assets, and in the mean time we shall endeavor to be prepared with some proposition, which, if consented to by all creditors, will, we hope, facilitate the settlement of our affairs.

At this juncture the greatest promptness of action is necessary, and we beg that you will either attend in person or by a representative authorized and prepared to act in the premises.

In the mean time, and always, unless the voluntary action and 968 consent of our creditors shall justify a different course, our assignees will continue to act in preserving and disposing of our estate as the law requires.

Respectfully, yours,

KETCHUM, SON & COMPANY.

And your orators, as survivors, as aforesaid, further show, upon information lately obtained and belief, that said printed communications were sent to the creditors of the said firm with a fraudulent intent of representing to them, and inducing them to assume and to believe that the statements of fact therein contained were true, and procuring from them a compromise of their several claims and demands against the said firm of Ketchum, Son & Company, for a great deal less than the amount of said respective claims and demands, whereby the private estate and fortune of the said Morris Ketchum might be saved to him, and should not be taken or made use of for the payment of the debts and liabilities of the said firm; and that the 969 statements and representations contained in the printed communications, as your orators have been lately informed and believes, were wholly false and untrue, and were known to be false and untrue by the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, at the time of the sending of the said printed communications, and were made and sent by them to induce a settlement by their creditors for a less amount

than the property and effects of the said Ketchum, Son & Company and Morris Ketchum, if honestly appropriated to the payment of their debts and liabilities, would have paid their said creditors; and that the statements contained in the said first-mentioned printed communication, "that the development of yesterday (August 14th, 1865,) of very heavy frauds practiced by E. B. Ketchum forced a suspension of payment," and in the said last-mentioned printed communication, 970 "that the events of the then last week had disclosed to them the condition of their house, and drove them to an assignment," were untrue, and, on the contrary thereof, the events therein referred to had long been known to the members of the said firm of Ketchum, Son & Company, and were made use of as a means to enable them to make a settlement with their creditors, whereby the private fortune and estate of the said Morris Ketchum might be preserved from being used to pay the debts and liabilities of the said firm; and that the assignment referred to in said last-mentioned printed communication, and both of the said printed communications, were a part of the means adopted for the same end; and it was not true, as stated in first-mentioned printed communication, that the frauds practiced by E. B. Ketchum had been developed for the first time the day prior to the date of the said first-mentioned printed communication, 971 but, on the contrary thereof, they had for a long time been known to each and every member of the said firm of Ketchum, Son & Company; and it was not true that at the time of the sending of the said last mentioned printed communication the available assets applicable to the payment of the liabilities of the said firm could not probably realize more than three million dollars, and in truth and in fact the said available assets, as was then well known to the members of said firm of Ketchum, Son & Company, fully equalled the liabilities of the said firm, if the private fortune and estate of the said Morris Ketchum were included therein, and were quite sufficient, under any circumstances, to have paid all the liabilities of the said firm; and it was not true, as stated in the said last-mentioned printed communication, as was then well known to the members of the said firm of Ketchum, Son & Company, that the amount of funds and securities ab- 972 stracted from said firm without their knowledge amounted to not less than two million eight hundred thousand dollars, but on the contrary thereof the said abstractions by the said Edward B. Ketchum, which were the abstractions referred to in the said last-mentioned printed communication, amounting to less than the sum of two million dollars.

And your orators, as survivors, further show that at the time of the suspension of the said firm of Ketchum, Son & Co., as aforesaid, and at the time of the making of the said pretended assignments, your orators' said firm of Davis, Pope & Company was a creditor of the said firm of Ketchum, Son & Company in the sum of eleven thousand eight hundred and ninety-two dollars and twenty cents, in currency of the United States, for moneys in currency previously deposited by your orators with said firm *said firm* of Ketchum, Son & Company, as the bankers of your orators' said firm; and to be repaid to your orator said 973 firm on demand, no part of which said sum of eleven thousand eight hundred and ninety-two dollars and twenty cents has ever been paid or secured to the said firm of Davis, Pope & Company, or to your orators, as the survivors of said firm, except as is hereinafter particularly stated.

And your orators as survivors as aforesaid further show that, one of each of said printed communications, signed by the said firm of Ketchum, Son & Company, was sent to your orators, said firm of Davis, Pope & Company, at the city of Chicago, in the State of Illinois, and was received by your orators' said firm in due course of mail, and said last-mentioned communication was received by your orators' said firm shortly after the 28th day of August, 1865; and at the time of receiving the same and for a long time afterwards, your orators and said Edmund Aiken had no knowledge or suspicion of the fraudulent schemes, contriv-
974 ances, designs, acts, and practices of the said Morris Ketchum, and of the said members of the said firm of Ketchum, Son & Company, hereinbefore stated and set forth, or any or either of them; but, on the contrary thereof, believed that the said Edward B. Ketchum, without the knowledge of his co-partners, the other members of the firm of Ketchum, Son and Company, had fraudulently abstracted from the said firm property and assets of the value of about three million dollars, belonging to said firm, and that the respective members of said firm and said Morris Ketchum had thereby been deprived of sufficient means and property to pay their debts and liabilities in full, the said Morris Ketchum devoting all his private fortune and estate and the said firm devoting all its property and effects to that purpose.

And your orators, as survivors as aforesaid, further show, upon information and belief, that for the purpose of carrying out the
975 said fraudulent schemes and contrivances of the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, and to induce the creditors of the said firm of Ketchum, Son and Company to enter into an agreement with them for a compromise of their several claims and demands against the said firm, without examination into the affairs of the said firm, so that the private fortune and estate of the said Morris Ketchum might be preserved to him; and to deceive the said creditors, they, the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan conceived the further scheme that a meeting of the creditors of the said firm of Ketchum, Son & Company should be called, at which meeting a compromise agreement, previously prepared, should be presented to be signed by the said creditors, or as many of said creditors as could be induced to sign the same; and
976 to deceive those of said creditors that would be present at said meeting, some kind of a report should be made of the condition of the affairs of the said firm of Ketchum, Son & Company by persons whose standing and reputation would influence the minds and actions of those who should be present at said meeting; and in pursuance of the said last mentioned scheme and contrivance of the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, they sent to the several creditors of the said firm the printed communication bearing date the 23rd day of August, 1865, a copy of which is hereinbefore set forth; and at or about the date of the said last-mentioned communications had prepared and printed the compromise, agreement, or agreement to assign and transfer to Charles L. Anthony, bearing date New York, September 1st, 1865, a copy of which is hereinafter set forth; and on the 31st day of August, in the year 1865, addressed a letter to John J. Phelps, B. B. Sher-
977 man, Moses Taylor, Jonathan Sturges, and Edmond Howe, a copy of which is as follows:

NEW YORK, *August* 31st, 1865.

Mess'rs JOHN J. PHELPS, B. B. SHERMAN, MOSES TAYLOR, JONATHAN STURGES, EDMUND HOWE.

GENTLEMEN: In view of the calamity which has overtaken our house, so suddenly and unexpectedly, we venture to ask the favor of you, as representing in so high a degree the mercantile community, to examine into our affairs, and to state for the information of our creditors what you find to be our condition and what course you should recommend for a just and speedy settlement; if you should think that we can make more for our creditors than the assignment can do, will you suggest some plan by which that end may be accomplished, and oblige,

Respectfully, yours,

KETCHUM, SON & COMPANY.

And on the same day, they, the said John J. Phelps, B. B. Sherman, Moses Taylor, Jonathan Sturgess, and Edmund Howe, addressed
978 a letter to the said firm of Ketchum, Son & Company, a copy of which is as follows:

NEW YORK, *August* 31, 1865.

Mess'rs KETCHUM, SON & COMPANY:

GENTLEMEN: Upon the receipt of your letter of this date, requesting us to make an examination of your affairs, we have attended at the office of your assignee, and gone over the sworn inventory made up by you, and have ourselves made a careful valuation of your assets. It appears that the total of your liabilities is $3,985,608.35, including $250,000 in dispute, and $32,500 unadjusted, and that the total of your assets, together with those of your senior partner, is $3,093,639.63, including $243,500 disputed.

The conflicting claims between different classes of creditors which have already risen to some extent, and which will certainly rise to a greater extent if a speedy settlement is not effected, will greatly embarrass the assignee, and create a long delay in the final settlement of the estate.

979 Taking these circumstances into consideration, and bearing in mind the nature of your business, and the character of your liabilities and assets, we are of opinion you can make more of your assets than your assignees can, and that it is best for your creditors, as well as for yourselves, that by some arraingements you should be permitted to take the assets and settle with your creditors.

Upon the whole we advise you to offer and your creditors to accept 50 per centum in cash, and 10 per centum in your notes, at 12 months without interest, in full for your indebtedness, and this being done, that the estate be surrendered back into your hands.

Respectfully yours,

MOSES TAYLOR,
JONATHAN STURGES,
EDMUND J. HOWE,
JNO. J. PHELPS, AND
B. B. SHERMAN.

That said last-mentioned letter, signed by the said Phelps, Sherman, Taylor, Sturges, and Howe, was, as your orators' said firm lately informed and believes, prepared by the counsel and legal adviser
980 of the said firm of Ketchum, Son and Company, at or about the

same time the letter addressed to them by the said Ketchum, Son & Company was written, and that neither the said John J. Phelps, B. B. Sherman, Moses Taylor, Jonathan Sturges, or Edmund Howe, made any examination into the affairs of the said firm of Ketchum, Son and Company, except examining a copy of the said pretended inventory, filed in connection with the said assignments made by said firm for the benefit of creditors, and did not make any other valuation of any assets of said firm except such valuation as appeared by said inventory.

That said Phelps, Sherman, Taylor, Sturges, and Howe, could not in one day have made an examination of the affairs of the said Ketchum, Son & Company, and the request to them to make such examination was purposely delayed until the day before the *the* time fixed for the meeting of said creditors, so that they would be disabled from making any examination other than that of said pretended inventory, 981 and of such papers and figures as would be prepared for them by the said Ketchum, Son & Company, and in the expectation that they would rely upon the statements of the members of the said firm of Ketchum, Son & Company, all of whom at that time enjoyed a high reputation for integrity, and thereby the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, would be enabled to obtain a report from reputable persons that would mislead and deceive such of their creditors as attended at the then proposed meeting.

And your orators is lately informed and believes that the said Morris Ketchum has, since the said meeting of the creditors of the said firm, boasted of the success of the said scheme, whereby the said Phelps, Taylor, Stinges, Sherman, and Howe were beguiled into writing said letter, a copy of which is hereinbefore set forth, and of the effect said 982 letter had in influencing the creditors of the said firm to come into the proposed arrangement for a compromise.

And your orators, as survivors as aforesaid, further show that in pursuance of the said printed communication of the 23rd day of August, 1865, a meeting of the creditors of the said firm of Ketchum, Son and Company was held at the office of the said firm, in the city of New York, on the first day of September, in the year 1865, at about two o'clock in the afternoon, which meeting was presided over by William R. Cone, of Hartford, Connecticut, and of which meeting E. W. Blatchford was secretary, and by reason of said printed communication of the 23rd day of August, 1865, one of the members of your orators' said firm of Davis, Pope & Company attended said meeting of the creditors of the said firm of Ketchum, Son & Company, and at that time neither your orators or the said Edmund Aiken had any knowledge or information of any of the matters or things hereinbefore stated as having recently or 983 lately come to the knowledge of your orator, or as to which, as hereinbefore stated, they have recently or lately been informed, at which meeting of the creditors of the said firm of Ketchum, Son and Company there was present a large number of creditors, or the representatives of creditors, and the said Morris Ketchum and other members of the said firm of Ketchum, Son & Company, together with their counsel.

And your orators, as survivors as aforesaid, further show, upon information and belief, that, in pursuance of the said schemes and contrivances of the said Morris Ketchum, Thomas Belknap, j'r, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, and to influence and deceive the said creditors of the said firm of Ketchum, Son & Co.

that should be present at said meeting of creditors, they, the said Morris Ketchum, Thomas Belknap, j'r, Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan, within a few days prior to the 984 first day of September, in the year 1865, caused to be prepared a certain address or appeal by the said Morris Ketchum, and certain letters by Thomas Belknap, j'r, and Lyndon M. Swan, all of which were read at said meeting of creditors by the counsel of said firm, copies of all of which are as follows, that is to say:

NEW YORK, *August* 31, 1865.

To the Creditors of Ketchum, Son & Co.:

GENTLEMEN: A sudden and disastrous blow has prostrated our house. The conduct of one of its members, too painful for me to dwell upon, has deprived us of upward of $2,600,000. Securities belonging to others are abstracted, as well as those belonging to the firm. The former, we are advised by counsel and mercantile friends, it is our duty to replace. That being done, and trust funds secured, we have made an assignment of all our property for the equal benefit of our creditors. I have also assigned all my private property for the same 985 purpose.

Till the morning of the day after he absconded I never had the slightest doubt of my son's integrity. I never supposed him capable of doing wrong to any one, and, least of all, to me. Even now his conduct is inexplicable, and I cannot believe he was in his right mind when he so cruelly wronged you and me.

Since the failure of the firm the two following letters have been put in my hands; they explain themselves. The writers could never have supposed that the amount taken was beyond the ability of the house to replace, and the secrecy, therefore, was the dictate equally of good sense and kindness. I do not blame them, for they acted according to their best judgment and under trying circumstances. They have filled prominent positions in my house for many years, having, deservedly, my entire confidence, unimpaired by the decision they came to in their efforts to regain the securities abstracted. I have ventured to call you 986 together to render plain to you the state of our affairs and to ask your advice.

Five gentlemen whom you all know as of the highest character and ability as merchants, Mess'rs Moses Taylor, Jonathan Sturges, Edmund G. Howe, Benjamin B. Sherman, and John J. Phelps, have been invited to examine our affairs. The letters requesting this examination and their answer are subjoined. I cannot close this communication without expressing to you my deep regret that any of you should be a loser by our failure. In my prosperity I never supposed this would happen. It is not the loss of my own property which causes me the deepest regret, for now, if I could have my son back, with his good name, and you were all paid in full, I should die content.

MORRIS KETCHUM.

NEW YORK,
Monday Morning, August 28th.

MR. MORRIS KETCHUM:

DEAR SIR: The events and developments of the past fortnight 987 have been of such an overwhelming character, and the necessity for instant and incessant action in important matters has been so pressing, that I have been delayed in stating to you, as it is my duty to do, and in this form and without restriction upon your use of it, all that is within my knowledge respecting the transactions which have now resulted so ruinously to myself and all of us. I am especially impelled to do so by the consideration that without the greatest degree of frankness on my part, one of the junior partners in our house, M'r Swan, may be subjected to criticism which he ought not to bear alone, while your sons, Franklin and Landon, might suffer by the suspicion that they were aware of transactions of which I am confident they knew nothing.

In looking over the loans and securities about the first of June, M'r Swan found that there was missing some $430,000 U. S. $7\frac{3}{10}$ per cent. notes, $350,000 U. S. legal tender five per cent. notes, $195,000
988 in 5 20 U. S. bonds.

The current rumors of large stock speculations by our house, which he knew to be unfounded, had aroused his suspicions that Edward was speculating on his own account, and the suspicions now pointed to Edward as connected with the missing securities. Upon being taxed by M'r Swan, with their abstraction, Edward admitted it, and that he was speculating on *on* his own account, but asserted that the securities were within his control if a little time was afforded him. These bonds and notes appeared, on a thorough examination, to be the only property appropriated by Edward, and he solemnly protested that M'r Swan knew the entire extent of his defalcation. And yet I now believe from information about his dealings, gathered since he absconded, that his large losses must have been made before that time, and that his frauds upon us were as great as recently, but conducted in such a way that we did not detect them and may never know them all.

M'r Swan informed me of the case at once, and that Edward
989 stated that he would close up his speculations and return the
securities then lodged as collateral with his brokers. Having no conception of the magnitude of his stock speculations, M'r Swan and myself were both of the opinion that by holding over him the threat of exposure he would be induced to retire from speculations and make good his abstractions.

In this belief, and of course dreading the effect upon the firm, upon ourselves, though innocent, and upon yourself and the rest of Edward's relatives, of the publicity of such transactions as these, we permitted the matter to run along. Edward was not aware of any knowledge on my part, but was told that all the partners would be informed if he did not keep his promise to at once close his speculations and return our property, and then retire from the firm on some pretext or other.

All this he engaged to do with the utmost solemnity of word and manner.

Time passed on, however, and he failed to make good his prom-
990 ise, and about the 4th of this I told M'r Swan that he must
make one more effort to force Edward to a settlement, and if that failed must inform you of the facts.

M'r Swan, therefore, sent him the note, of which I now hand you a copy, and which was partly composed by myself, stating that if the property was not all returned by the 15th he should inform all the partners of the facts, and urging and imploring him to act as he had promised.

Before the 15th, the detection by other parties of facts of a different nature resulted in the flight of Edward, and the enormous nature of his past defalcations and the hopelessness of expecting to regain the securities taken was disclosed to us, the loss being sufficient, when augmented by the very heavy sums of money missappropriated by him

within a day or two of his departure, to cripple and destroy our house.

**M'r Swan's name alone appears on the note enclosed, but I am equally
responsible for his course, and must, with him, bear the conse-
991 quences. I have only to add that what we finally saw, that the
firm would, in all probability, lose heavily, we, neither of us, ever
for a moment contemplated the possibility of such losses from Edward's
dealings as could injure our creditors.**

Respectfully, yours,

THOMAS BELKNAP, J'R.

FRIDAY, *August 1st*, 1865.

DEAR EDWARD: I was in hopes that you would have before this closed up your outside operations, as you promised, and return the securities of the firm which you had been using for your own purposes.

I am satisfied, however, that you are as deeply engaged as ever in these speculations, and I tell you frankly that I know that the amount of your abstractions from the assets of the firm are much greater than you admitted to be the case when I first spoke to you on this subject; many securities been taken of which I have not spoken to you.

Now, I have no wish to injure you, and if you are in difficulty
992 you will find myself, and I have no doubt the other junior part-
ners, ready to do everything that can be done in the matter to
aid you, but your speculations are doing the firm great injury, and if they should turn unfavorably may ruin us all, as well as your father, and I cannot let things go on in this way any longer. If the securities which you have taken from the firm are not all returned by the 15th of this month, I shall lay all the facts of the case before the other members of the firm.

Now, Edward, I beg that you will at once set about closing up this business. I am sure that I can promise that all of us would do anything in our power to help you if you are in trouble. You are aware that it is for our own interest that no one of us should suffer in this way, for the exposure of such a matter as this, however brought about, would bring disgrace upon the firm that would cling to the individual
members as long as they lived, and be a worse injury to them
993 than any pecuniary loss that your operations may bring upon
them. If you will only close up and keep from all outside operations, and let us know how you stand, I am sure we can keep you along, and with our business you can, by devoting your attention to it, work out any money troubles.

This is certainly the only way in which this thing can be kept quiet. I can't but think that you will do this, if you reflect upon the trouble and sorrow that you bring upon your father and family, and upon your other partners and families, by pursuing any other course. You must know that it is a hard task for me to write to you in this manner, and on a subject like this, but you also know that I am bound to do what I think is my duty.

Yours, &c.,

L. M. S.

And your orators, as survivors aforesaid, further show upon informa-
tion lately obtained, and belief, that the statements contained in
994 the said address or appeal by the said Morris Ketchum were false
and untrue, and were fraudulently made by the said Morris
Ketchum to induce your orator and others of the creditors of the said firm of Ketchum, Son & Co. to make such a settlement or compromise

with said firm as would insure to the said Morris Ketchum the saving to and retention by him of his private fortune and estate, and in pursuance of said fraudulent scheme and contrivances hereinbefore set forth, and that it was not true that the conduct of the said Edward B. Ketchum, or of either of the members of said firm, had deprived said firm of $2,600,000; that although the said Morris Ketchum pretended to have assigned all his private property for the equal benefit of his creditors, he actually secreted large portions thereof, and fraudulently omitted to enumerate the same in the inventory in which he pretended to enumerate all his property and estate, with the intent of depriving his
995 creditors of the benefit and advantage thereof, and covered up other portions of his said property with a like intent.

That it is not true, as stated by the said Morris Ketchum, that till the morning of the day after he absconded he never had the slightest doubt of his son's (Edward B. Ketchum) integrity, and on the contrary thereof had for a long time previously been informed, and knew that he had stolen and abstracted from the said firm the money and property of the said firm, and securities left with said firm for safe keeping, or pledged to said firm as security for loans of money.

That it is not true that the said letters from Thomas Belknap, jr., and Lyndon M. Swan, had been put in the hands of the said Morris Ketchum since the failure of said firm of Ketchum, Son & Company, but, on the contrary thereof, the said letters had been prepared by the advise and direction of the said Morris Ketchum, and through his procurement, as a part of a scheme to deceive the creditors of the said firm and to excite their sympathy, whereby the said Morris Ketchum, at the
996 time he signed and issued this appeal or address, contemplated any loss of his own property, so far as the same was comprised in his private fortune and estate, but, on the contrary thereof, he then contemplated the saving to himself his said private fortune and estate, and issued said appeal or address to mislead and deceive the creditors of said firm, so that he should be enabled to carry into effect that object so then contemplated by him.

And your orators as survivors as aforesaid, further show upon information lately obtained and belief, that the statements contained in the said letter of the said Thomas Belknap, j'r, hereinbefore set forth, were false and untrue, and were fraudulently made by the said Thomas Belknap, j'r, to induce your orators, said firm, and others of the creditors of the said firm of Ketchum, Son & Company to make such a settlement and compromise with said firm, as would secure to the said Morris
997 Ketchum the saving to the retention to him of his private fortune and estate, and in pursuance of said fraudulent schemes and contrivances hereinbefore set forth, and that the said letter was written in the instance of the said Morris Ketchum, for the purpose of being read at the said meeting of creditors, and that it was not true that he had been delayed for any reason in stating to the said Morris Ketchum what was within his knowledge respecting the transactions of the said Edward B. Ketchum, which are therein stated to be the transactions that had resulted ruinously to the said firm and the members thereof; and, on the contrary, the said Thomas Belknap, j'r, had a long time previous to the date of the said letter, communicated the said transactions to him, the said Morris Ketchum, and that upon the first discovery of the abstraction from the said firm of Ketchum, Son & Company, by the said Edward B. Ketchum, or shortly thereafter, the said Morris Ketchum was fully informed thereof by the said Thomas Belknap, j'r, and the said Lyndon M. Swan.

998 That it is not true that the said Thomas Belknap, jr., had no conception of the magnitude of the stock speculations of the said Edward B. Ketchum, but, on the contrary thereof, at the time and times of said stock speculations, and before and after the first day of June, 1865, up to the time of the failure of the said firm of Ketchum, Son & Company, the magnitude of the stock speculations of the said Edward B. Ketchum were the subject of common talk in the streets and among stock operators, brokers, and others; and the said Thomas Belknap, jr., was informed and well knew that the said Edward B. Ketchum was then the largest stock operator in the city of New York; that it is not true that the said Edward B. Ketchum was not aware of his abstractions of the property and funds of the said firm being known by the said Thomas Belknap, jr., but, on the contrary thereof, the said Edward B. Ketchum well knew that the said Thomas Belknap, jr., had knowledge thereof.

999 That it is not true that on the fourth day of August, 1865, or at any other time, the said Lindon M. Swan sent the note or letter to the said Edward B. Ketchum which is mentioned and referred to in the said letter of the said Thomas Belknap, jr., or the said note or letter was partly composed by the said Thomas Belknap, jr., and on the contrary thereof, the said note or letter of the said Lyndon M. Swan, purporting to be written to the said Edward B. Ketchum, was never sent to him, but was concocted and got up by the said Morris Ketchum, Thomas Belknap, jr., and Lyndon M. Swan, shortly prior to the time appointed for the said meeting of creditors, and to influence and deceive said meeting.

And your orators, as survivors as aforesaid, further show that this meeting of creditors was very boisterous and confused, and was expected so to be by the said Morris Ketchum, Thomas Belknap, jr., Franklin M. Ketchum, Landon Ketchum, and Lyndon M. Swan 1000 when the same was called, and it was their expectation that by reason of the confusion that would probably exist at such meeting the papers and letters that were prepared as aforesaid to be read at said meeting would not be fully understood and critically canvassed and examined, and thereby they would be able to make use of the said letters of the said John J. Phelps, Moses Taylor, B. B. Sherman, E. G. Howe, and Jonithan Sturges by stating the same to be a recommendation to said creditors by men of mercantile character and repute, after a careful examination of the affairs of the said firm of Ketchum, Son and Company and of said Morris Ketchum, to accept the sum of sixty cents on the dollar of their respective demands against said firm.

That at said meeting the first business transacted, after the appointment of a chairman and secretary, was the reading of the said letter or appeal by the said Morris Ketchum, the said letter of Thomas Belknap, jr., and Lyndon M. Swan, the said letter to said John I. Philps, 1001 B. B. Sherman, Moses Taylor, Jonathan Sturges, and E. G. Howe, and their reply thereto, all of which were read at said meeting and are hereinbefore set forth.

And immediately thereafter great confusion and debate ensued, and it was then and there stated and represented at said meeting of creditors, by the said Morris Ketchum and other members of the said firm of Ketchum, Son & Company, and their said counsel for and on their behalf, to the creditors of said firm then present, including said firm of Davis, Pope and Company, represented by one of the members thereof, then and there attending for and on behalf of said firm, that the said

Edward B. Ketchum had abstracted from the funds and property of the said firm of Ketchum, Son & Company about two million eight hundred thousand dollars in amount and value, and that he had absconded and concealed himself, without the knowledge of the said firm or any member thereof; that he had remained concealed without any
1002 member of the said firm of Ketchum, Son & Company having
any knowledge as to his whereabouts, until his arrest by the police authorities of the city of New York, a few days before such meeting, and that neither member of the said firm of Ketchum, Son & Company, except as stated in said letters of said Belknap and Swan, had any knowledge, information, or reason to suspect that the said Edward B. Ketchum had abstracted any of the said property or effects from the said firm until after he had absconded as aforesaid; that by means of the said abstractions of the said Edward B. Ketchum the said firm of Ketchum, Son & Company had become insolvent and unable to meet its debts and liabilities, after devoting thereto all the property and effects of the said firm, and each individual member thereof; that the debts and liabilities of said firm of Ketchum, Son & Company amounted to the sum of three million nine hundred and thirty-five thousand six hundred and eight dollars, and the total assets and property
1003 of the said firm of Ketchum, Son & Company and the said Morris
Ketchum, together, amounted in value to the sum of three millions and ninety-three thousand six hundred and thirty dollars, or thereabouts, consisting in part of a large amount of real estate belonging to the said Morris Ketchum, in which his wife had an inchoate right of dower, the value of which had not been deducted, and that after appropriating all the property and effects of the said firm of Ketchum, Son & Company, and of the said Morris Ketchum, to the payment of the debts and liabilities of the said firm, the said firm would not be able to pay more than sixty cents on the dollar of such liabilities.

And thereupon, the said creditors were requested by the said Morris Ketchum and the other members of the said firm to settle and compromise their several claims and demands against the said firm of Ketchum, Son & Company, upon receiving sixty per cent., or sixty cents
1004 on the dollar, thereof; and, as a further inducement to the said
creditors to accept such proposition, it was stated and represented at said meeting by the said Morris Ketchum and the other members of said firm that the said proposed settlement was to be a general settlement with all the creditors of said firm; that no creditor of the said firm who was a creditor since the discovery of the said transactions by the said Edward B. Ketchum had been paid or settled with, and that no preference should be given to any creditor of said firm or of said Morris Ketchum, and that the said settlement, if made at all, was to be made uniformly with all the creditors at the same rate, and that no creditor should be paid more than another, and that the object of said proposed settlement was to enable the said Morris Ketchum and the said firm of Ketchum, Son & Company to obtain a reassignment of the said property and effects assigned by them as aforesaid, by means of which and
1005 their ability from their better acquaintance with the said property
and effects, its situation and condition, to manage the same, they, the said Morris Ketchum, and Ketchum, Son & Company, would be able to realize larger amounts than the said assignees could possibly do, and thereby be able to pay sixty per cent. of the said debts and liabilities of the said Morris Ketchum and Ketchum, Son & Company, which amount would not probably be realized by the creditors under and by virtue of the said assignment; and, in response to a question put to the said Morris

Ketchum, it was stated by the said Morris Ketchum to the said meeting of creditors, including your orator, said firm of Davis, Pope and Company, that neither the said Morris Ketchum, nor the said firm of Ketchum, Son & Company, had paid, secured, or in any manner satisfied any of the said gold certificates or checks forged and fraudulently issued by the said Edward B. Ketchum as aforesaid.

1006 And your orators as survivors as aforesaid, further show unto your honors that, at the said meeting of creditors of the said Ketchum, Son & Company, there was presented by the said Morris Ketchum, and the said Ketchum, Son & Company, a printed paper which had been previously prepared and printed in contemplation of said meeting, as hereinbefore stated, which the said Morris Ketchum, and Ketchum, Son & Company then and there requested their creditors to sign, and which is in the words and figures following to wit:

The parties whose names are subscribed hereto, being creditors of the firm of Ketchum, Son & Company, and of Morris Ketchum hereby, severally and respectively, each for himself, and neither for the other, in consideration of the sum of one dollar, to each in hand paid by Charles L. Anthony, of the city of New York, the receipt whereof is hereby acknowledged, and in further consideration of our mutual agreements herein set forth, do hereby covenant, promise, and agree to, and 1007 with each other and also to and with the said Charles L. Anthony, as follows, that is to say:

Each of us shall and will sell, and transfer, and deliver, as far as possible, to the said Cha's L. Anthony, for his own absolute use and benefit, all our respective claims and demands, cause and causes of action, credits, balances of account, lien, choses in action, vouchers, evidences of debts, suits, attachments, processes, and proceedings, which we now severally have, or which have heretofore, accrued, or are now accruing, to us respectively against the said Ketchum, Son & Company for the said Morris Ketchum by reason of any matter heretofore done, or transacted by the said Ketchum, Son & Company, or the said Morris Ketchum, or by reason of any omission, or neglect of the said Morris Ketchum, or the said Ketchum, Son & Company to perform any contract with or obligation to us respectively, or by reason of any other matter or thing 1008 whatever, and also to sell and transfer to the said Charles L. Anthony all and any property or effects belonging to us now in the hands of the said Morris Ketchum and Ketchum, Son & Company, respectively, or for which they, or either of them, are or is answerable to us respectively; and also all demands, &c., against Moses Taylor, Edward Bement, and Philo C. Calhoun, assignees of the said Ketchum, Son & Company and Morris Ketchum, respectively, and all our liens, distributive shares, and interest of and in the property in the hands of the said Moses Taylor, Edward Bement, and Philo C. Calhoun, or any or either of them, or to which they or any or either them are or is entitled as such assignees; such sale and transfer to be made, and deemed to be made, when, and provided that the said Charles L. Anthony shall, on or before the first day of November, eighteen hundred and sixty-five, pay, or cause, or procure to be paid to us respectively, in cash, a sum equal to fifty per cent. upon the amount or value of our said re- 1009 spective demands against said Ketchum, Son & Company, and of our respective assets or effects in their hands, and a further sum equal to ten per cent. upon the amount of such demands and property respectively in the notes of said Ketchum, Son & Company, to be made payable to their own order, and endorsed by them at twelve months from the first day of November, eighteen hundred and sixty-five; the said cash payment to be made in gold coin of the United States in every case in which the demand hereby agreed to be transferred shall have arisen against the said Ketchum, Son & Company by reason of transactions in gold coin, or in checks, or securities payable in gold.

And the amount upon which the said proportion of ten per cent. is to be calculated in every case in which the demand or property to be assigned arose from gold transactions, is to be determined by adding to
the par value of the debt or property in gold, a premium equal to
1010 the premium at which gold shall be selling in the city of New
York on the first day of November, 1865.

And we further severally agree, that in any case in which the demand to be assigned by virtue of this agreement did not arise from transactions in gold coin exclusively, but in which the balance due is by said Ketchum, Son & Company in currency, is partially offset by a balance due by either of us arising on gold transactions, the amount so due by us shall be adjusted by adding to the par amount of such balance in gold a like premium, and the balance so adjusted shall be deducted from the amount due to us respectively in currency.

In witness whereof we have hereunto set our respective copartnership or corporate names, and our individual and corporate seals, and have set opposite to our respective names the amount and value of the
debts, and demands and property hereby agreed to be assigned,
1011 the amount due as respectively on any transaction of gold coin
being stated at the par value of gold coin.

Dated New York, September 1, 1865.

And your orators, as survivors as aforesaid, further show that at the said meeting the said creditors were requested to settle with the said firm of Ketchum, Son & Company upon the basis proposed by the said printed paper presented at such meeting as aforesaid, and that your orators' said firm represented by the matters hereinbefore set forth, and the said statements and representations made by or on behalf of the firm of Ketchum, Son & Company, and the several members thereof, and believing all, each, and every of the statements, representations, and assurances so made as aforesaid to be true, and upon the faith thereof and believing that it would require the whole of the property and effects of the said Ketchum, Son & Company and the said Morris
Ketchum to pay to creditors of said firm sixty cents on the dol-
1012 lar of their respective claims and demands against said firm,
consented to unite with the other creditors of said firm in a general composition or settlement of their respective claims and demands against the said firm for sixty per cent., or sixty cents on the dollar thereof, upon the express understanding and belief that no creditor should have any advantage over any other creditor in such settlement or composition, and that all the creditors of said firm should unite in such settlement or composition for sixty per cent., or sixty cents on the dollar of their respective demands, then and there, at said meeting of creditors, signed the said printed agreement, prepared for and read at said meeting, bearing date the first day of September, in the year 1865.

And thereupon said Morris Ketchum and said firm of Ketchum, Son & Company paid to your orators' said firm, on or about the first day of
November, in the year 1865, the sum of five thousand nine hun-
1013 dred and forty-six dollars in currency, and gave to your orators'
said firm their promissory note for the sum of eleven hundred and eighty-nine dollars and twenty cents, payable without interest twelve months thereafter, which has been paid by them, said Ketchum,

Son and Company, or said Morris Ketchum, being, together, sixty per cent. of the said claims and demands of your orators' said firm against the said firm of Ketchum, Son & Company, and requested your orators' said firm to execute a paper writing, prepared by the said Morris Ketchum and the said Ketchum, Son & Company, which was in its nature and effect an assignment of the claim and demand of your orators' said firm against the said firm of Ketchum, Son & Company, to one Augustus A. Robinson, and they stated and pretended to your orators and said Edward Aiken that said printed agreement, signed by your orators' said firm had been assigned and transferred to the said Augustus A. Robinson, that an assignment of the claim of your orators against the said firm of Ketchum, Son & Company
1014 to the said Augustus A. Robinson, instead of in form a release of the claims of your orators. Said firm was necessary, for the reason that all claims and demands against said firm were required to be concentrated in one person to facilitate the transfer by the said pretended assignees under the said pretended assignments of the property pretended to be assigned thereby to the said Morris Ketchum, and the said firm of Ketchum, Son & Company, to enable them to convert the same, so that they might be able to pay the amount of such composition, and that all other claims and demands against the said firm of Ketchum, Son & Company had been, or would be concentrated by assignment in the said Augustus A. Robinson, and that the said Charles L. Anthony, named in the said printed agreement, produced at the said meeting aforesaid, had assigned and transferred to the said Augustus A. Robinson the agreements made by the creditors who had signed the said printed paper or agreement produced at said meeting as
1015 aforesaid, all rights, claims, and demands that he, the said Charles L. Anthony, had or might have under said agreements, and that the said paper or assignment to the said Augustus A. Robinson, so produced to and requested to be executed by your orators' said firm, as aforesaid, was, in effect, a release of the remainder of the claim of your orators' said firm against the said firm of Ketchum, Son & Company, and was to be made so to operate by the said Robinson, after the retransfer of the said pretended assigned estate had, in fact, been made, so that the said Morris Ketchum and the said firm of Ketchum, Son & Company were, in fact, repossessed thereof, and that he, the said Augustus A. Robinson, would then release and discharge the said Morris Ketchum and the other members of the said firm of Ketchum, Son & Company from the claim and demand of your orators' said firm against said firm.

And your orators' said firm, believing said last-mentioned
1016 statements and representations to be true, and that the true object and purpose in procuring the said assignment to said Augustus A. Robinson was to effect a release of the said firm of Ketchum, Son & Company from the claims and demands of your orators' said firm, and for no other purpose, upon receiving said sixty per cent. of its said claim and demand, your orators' said firm duly executed and delivered to the said firm of Ketchum, Son & Company a paper writing which purported, and in consideration of the sum of one dollar therein recited, to have been paid by Augustus A. Robinson, your orators' said firm granted, bargained, and sold, assigned, transferred, and set over unto the said Augustus A. Robinson, and his assigns, all and singular your orators' and said Aiken's claim and demand, cause and causes of action, credits, balances of account, liens, choses in action, vouchers, evidences of debt, suits, attachments, processes, and proceedings, as

your orators and said Aiken had, or which had theretofore accrued or was then accruing to your orators and said Aiken 1017 against Ketchum, Son & Company, or Morris Ketchum, by reason of any matter theretofore done or transacted by the said Ketchum, Son & Company or the said Morris Ketchum, or by reason of any omission or neglect of the said Morris Ketchum, or Ketchum, Son & Company, to perform any contract with or obligation to your orators' said firm, or by reason of any other matter or thing whatever, and also all and any property and effects belonging to your orators' said firm then in the hands of the said Morris Ketchum or Ketchum, Son & Company, of which they or either of them were answerable to your orators and said Aiken, and also all demands, cause, and causes of action, credits, and balances of account in favor of your orators' said firm, against Moses Taylor, Edward Bement, and Philo C. Calhoun, assignees of said Ketchum, Son & Company and Morris Ketchum respectively, and all your orators' and said Aiken's distributive shares and interests of, in, and upon the property in the hands of said 1018 Moses Taylor, Edward Bement, and Philo C. Calhoun, or any or either of them, or to which they, or any or either of them, are or is entitled as such assignee, to have and to hold the same unto the said Agustus A. Robinson and his assigns, to his and their own sole use, benefit, and behoof absolutely, forever.

And your orators, as survivors as aforesaid, further show, that at the time of the execution and delivery as aforesaid of said paper writing or assignment to the said Augustus A. Robinson, your orators and said Aiken were wholly ignorant of the fraudulent practices and pretences herein set forth, but, on the contrary thereof, believed the said statements and representations made, as aforesaid, to be true, and if your orators and said Aiken had then been informed of the matters in this your orators' bill of complaint set forth, or had any reason to believe that said representations and statements so made, as aforesaid, 1019 were untrue, your orators and said Aiken would never have executed or delivered the said paper writing or assignment to the said Augustus A. Robinson.

And your orators, as survivors as aforesaid, further show that the said Augustus A. Robinson, named in said paper writing, was a person without any means, and a cashier in the employ of said Ketchum, Son & Company, and that the said sixty per cent., or sixty cents on the dollar, paid to your orators' said firm, as aforesaid, was paid by the said Morris Ketchum, or the said Ketchum, Son & Company, or from means he had obtained from their several estates, and that no part thereof was paid by the said Augustus A. Robinson; and that said transfer of the claim and demand of your orators' said firm to the said Augustus A. Robinson, although in form to him, the said Robinson, was for the sole use, benefit, and behoof of the said Morris Ketchum, and the said Ketchum, Son & Company; and that in taking such assignment 1020 and transfer, the said Augustus A. Robinson acted for and on behalf of said Morris Ketchum, and the said Ketchum, Son & Company, and in no other way or capacity whatever; and that afterwards, as your orators are informed and believe, the said Augustus A. Robinson, in execution of the trusts upon which he received the said assignment of the claim and demand of your orators' said firm, at the request of the said Morris Ketchum, or the said firm of Ketchum, Son & Company, by an instrument in writing, duly executed by him, assigned and transferred the said claims and demands to one Charles J. Ketchum, or a son of the said Morris Ketchum, for and on behalf of the said Morris Ketchum, or the said firm of Ketchum, Son & Company, and to be held by him, the said Charles J. Ketchum, as the property of the said Morris Ketchum, or the said firm of Ketchum, Son & Company, and to be transferred to him or them on demand; and that the 1021 said Charles J. Ketchum never took or had any interest in said claims and demands, except as a trustee for the said Ketchum, Son & Company, or some member of said firm.

And your orators, as survivors, as aforesaid, further show, upon information and belief, that the said several pretended assignments by the said Morris Ketchum and the said Ketchum, Son & Company, and said letters to the creditors of the said firm hereinbefore mentioned or set forth, and said circular calling said meeting of creditors, and the said statements and representations made at and after said meeting to your orators' said firm and others, creditors of said firm of Ketchum, Son & Company, and the said printed paper produced at said meeting of creditors, and the said agreements with the said Charles L. Anthony, and the said assignment thereof to the said Augustus A. Robinson, and the said assignment of your orators and said Aiken to the said 1022 Augustus A. Robinson, and the said assignment by the said Augustus A. Robinson to the said Charles J. Ketchum, were made, done, and procured to be done, in pursuance of the said scheme and contrivance to effect a settlement with the creditors of Ketchum, Son & Company, without using or applying the private fortune or estate of the said Morris Ketchum to the payment of the debts and liabilities of the said firm, and were a part of the machinery made use of for the effecting of that purpose, and were made, done, and procured to be done with the preconceived purpose and design of cheating, defrauding, hindering, and delaying your orators and said Aiken and the other creditors of the said firm of Ketchum, Son & Company; and that all, each, and every of the said statements, representations, and pretences so made by the said Morrris Ketchum, and the said firm of Ketchum, Son & Company, and the respective members 1023 thereof, to your orators and said Aiken and the other creditors of said firm at and after the said meeting of creditors, were each and every one of them false and untrue at the time they were made as aforesaid, and were then known by the said Morris Ketchum and the respective members of the said firm of Ketchum, Son & Company, to be false and untrue, and that the said Edward B. Ketchum had not abstracted from the funds and property of the said firm of Ketchum, Son & Company about two million eight hundred thousand dollars, in amount and value, or anything like that sum, and that the said abstractions were less than two million dollars, as was well known to the said Morris Ketchum, and to the other members of the said firm of Ketchum, Son & Company, before and at the time of the said meeting of creditors, and that the said Morris Ketchum and the other members of the said firm of Ketchum, Son & Company were privy 1024 to the absconding of the said Edward B. Ketchum, at the time he absconded as aforesaid, and knew of his whereabouts during all the time he had concealed himself, as it was pretended that he was concealed, up to the time of his arrest by the police of the city of New York, as hereinbefore stated.

And that the said Morris Ketchum and the other members of the said firm of Ketchum, Son & Company knew of the said abstractions by Edward B. Ketchum of the property and effects of the said firm, before and at the time the same were so abstracted as aforesaid, and that the said abstractions from the said firm by the said Edward B. Ketchum did not render the said firm insolvent and unable to pay its debts and liabilities, if the property of the said firm and of the said Morris Ketchum was devoted to the payment and liquidation of the said debts and liabilities.

And that the debts and liabilities of the said firm of Ketchum, Son &
Company did not amount to the sum of three million nine hun-
1025 dred and thirty-five thousand six hundred and eight dollars, but
were a great deal less than that sum by many thousands of dollars; and that the total assets and property of the said firm of Ketchum, Son & Company and of the said Morris Ketchum exceeded the sum of three millions of dollars by several hundred thousand dollars, and that if all the property of the said firm of Ketchum, Son & Company and of the said Morris Ketchum had been honestly devoted to the payment of the debts and liabilities of the said firm and of the said Morris Ketchum, said debts and liabilities would have been paid in full.

And that it was not intended by the said Morris Ketchum and the members of the said firm of Ketchum, Son & Company that the said proposed settlement with their creditors by the payment of sixty cents on the dollar should be a general and uniform settlement at that rate
with all the creditors of said firm; but the said Morris Ketchum
1026 and the other members of the said firm of Ketchum, Son & Com-
pany so fraudulently pretended, making use of such pretence and the said false representations to induce as many creditors as they could influence thereby to come into such settlement, secretly intending at the same time to make such settlement with the other creditors of said firm as would not accept of sixty cents on the dollar as they could negotiate and make the same, although they would have to pay a great deal more than sixty per cent. or sixty cents on the dollar on their respective claims.

And that the said Morris Ketchum and said firm of Ketchum, Son & Company had, as hereinafter stated, just previously and in many instances after the said meeting of creditors, compromised and settled with many of their creditors—some by paying their claims and demands in full and others by making payments to them at a rate greatly ex-
ceeding sixty cents on the dollar of their respective demands;
1027 and that, notwithstanding the positive averment to the contrary
thereof by the said Morris Ketchum at the said meeting of creditors, he, the said Morris Ketchum, and the said firm of Ketchum, Son & Company, had actually paid and taken up said gold certificates or checks forged and fraudulently issued by the said Edward B. Ketchum, as aforesaid, to the amount of over two hundred and fifty thousand dollars, by paying the full amount thereof, to wit, over two hundred and fifty thousand dollars in cash, belonging to the said firm, to the holder and holders of the said gold checks and certificates; and notwithstanding the assurances of the said Morris Ketchum and other member of the said firm of Ketchum, Son & Company to the contrary, said firm had, and the respective members thereof intended thereafter to, make compositions and settlements with creditors of said firm whereby such creditors were or were to be paid or secured a greater
amount than sixty per cent. or sixty cents on the dollar of
1028 their respective claims and demands, notwithstanding the assur-
ances of the said Morris Ketchum and the other members of the said firm of Ketchum, Son & Company to the contrary thereof.

That if the whole of the property of the said Morris Ketchum and of the said firm of Ketchum, Son & Company had been honestly surrendered to assignees for the benefit of creditors, and had been honestly administered by such assignees, the same would have realized sufficient to pay in full all the debts and liabilities of the said firm, and of the said Morris Ketchum.

And that it was not true that it would require the whole that would be realized on the estates of the said Ketchum, Son & Company, and the said Morris Ketchum, to pay the creditors of the said firm sixty per cent., or sixty cents on the dollar, of their respective claims and demands against said firm; and that it is not true, as your orators have since been informed and believe, that an assignment of the claim and
1029 demand of your orator was necessary to facilitate such settlement
or the reassignment by the said assignees of any property assigned or pretended to be assigned to them, but as your orators, as survivors as aforesaid, aver the fact to be, the secret intent and object of the said Morris Ketchum, and the other members of the said firm of Ketchum, Son & Company, was to thereby raise an obstacle to your orators and said Aiken, all or either of them prosecuting proceedings at law against the said firm of Ketchum, Son & Company for the balance of their claim and demand against said firm, after your orator and said Aiken should have discovered the fraudulent statements and representations, pretences and practices of the said Morris Ketchum and of the other members of the said firm as hereinbefore stated, by alleging and stating that they claim and demand did not belong to your ora-
1030 tors' said firm, and had not been released, or undertaken to be re-
leased, but had been assigned to another party who had rights and interests therein.

And your orators, as survivivors as aforesaid, further show, upon information and belief, that, prior to the said meeting of creditors, the said Morris Ketchum and the said firm of Ketchum, Son & Company had paid to the National City Bank a corporation doing business as bankers in the city of New York, and others, the sum of two hundred and fifty thousand dollars and other sums for the purpose, and wherewith they did pay and take up gold checks or certificates forged and fraudulently issued by the said Edward B. Ketchum as aforesaid, purporting to be for more than said sum of two hundred and fifty thousand dollars; and also before the meeting of said creditors, and after the announcement of the insolvency of the said firm of Ketchum, Son
1031 & Company, the said firm paid to one Greenleaf a large amount of
money, amounting to several thousand dollars, and therewith and thereby paid and took up forged checks and certificates, forged and fraudulently issued by the said Edward B. Ketchum as aforesaid, purporting to be for the amount of moneys so paid.

And your orators as survivors as aforesaid further show that, as they are lately informed and believe, just prior to said meeting of creditors, the said firm of Ketchum, Son & Company paid the firm of Smalls, Bacon & Robinson the sum of fifteen thousand dollars, on account of their indebtedness to said firm, and at the said meeting of creditors concealed such payment and reported the balance of the claim of said firm of Smalls, Bacon & Robinson as entitled to the proposed payment of sixty cents on the dollar in compromise, and that said firm, and the respective members thereof, obtained signatures to said agree-
1032 ment to compromise from a number of the creditors of the said
firm, upon the secret understandings and arrangements with them, severally, that if they would sign said compromise paper they should receive a larger amount than sixty per cent. of their respective demands, which arrangements and understandings were not to be revealed to any of the remainder of the creditors at any time, and in pursuance of which the said firm of Ketchum, Son & Company and the said Morris Ketchum

paid or secured in full the respective claims and demands against said firm held and owned by George P. Bissell & Company, of Hartford, in the State of Connecticut; the Saugatuck Bank, of Westport, in the State of Connecticut; S. Moulton, of Westport, in the State of Connecticut; R. P. Spencer, of Deep River, in the State of Connecticut; J. W. Prior, of the city of New York; G. F. Davis, of Hartford, in the State of Connecticut; the Lafayette Bank, of Cincinnati, in the State of
1033 Ohio; Joseph C. Butler, of Cincinnati, in the State of Ohio; Samuel Bowne, of the city of New York; the National City Bank, of the city of New York; I. K. Small, of the city of New York, and other persons, firms, and corporations whose names are now unknown to your orators, and whose names they pray leave to hereinafter insert herein when they shall be discovered, each and every one of whom were creditors of the said firm of Ketchum, Son & Company at the time the said firm was announced to be insolvent as aforesaid, and at the time of said meeting of creditors.

And your orators as survivors as aforesaid, further show upon information lately obtained and belief, that the following named persons, firms and corporations, were, at the time of such announcement of insolvency by said firm as aforesaid, and of the said meeting of creditors, creditors of said firm, and that they severally refused to com-
1034 promise or make a settlement of sixty cents on the dollar of their respective claims and demands against said firm, and were, subsequent to said meeting of creditors, paid in full for their respective demands against said firm, and the said Morris Ketchum, and the said firm of Ketchum, Son & Company, that is to say, S. & C. H. Isham, of the city of New York, C. H. Isham, of the city of New York, William B. Isham, and Gallup, of the city of New York, the Glens Falls Bank of Glens Falls, in the State of New York, F. Cornish of the city of New York, the Home Bank of West Meriden, in the State of Connecticut, and others whose names are now unknown to your orator, but whose names, when discovered, your orators pray leave to insert herein; and that subsequently the said Morris Ketchum, being influenced by threats to expose the fraudulent practices, statements and representations hereinbefore set forth, has
1035 settled and compromised other claims and demands against the said firm of Ketchum, Son & Company, notwithstanding the same had been released or assigned, pursuant to the said arrangements proposed at the said meeting of creditors, by paying the same in full, or an amount on account thereof largely in excess of sixty per cent, or sixty cents on the dollar thereof, whose names are now unknown to your orators, but whose names, when discovered, your orators pray leave to insert herein.

And your orators as survivors as aforesaid further show that by means of said fraudulent practices, statements and representations in the manner and by the contrivances and machinery hereinbefore stated and set forth, the said Morris Ketchum and the said firm of Ketchum, Son & Company either paid and satisfied, or procured assignments and releases from all the creditors of the said firm and the said estate and property of the said Morris Ketchum, and of the said firm of
1036 Ketchum, Son & Company, after the pretended payment and satisfying of all debts and liabilities of the said firm, and the said Morris Ketchum, was transferred and paid over to the said Morris Ketchum, and notwithstanding the said Morris Ketchum endeavored to cover up the amount he actually received therefrom, by pretending to have paid large expenses in and about the winding up and settlement

of the business of said firm and of him, the said Morris Ketchum, including the sum of about one hundred thousand dollars pretended to have been paid for legal expenses, the most of which was retained by the said Morris Ketchum and appropriated to his own use, he, the said Morris Ketchum, received as a balance of the estate of the said firm of Ketchum, Son and Company, and of his own estate, after the pretended payment, satisfaction and settlement of all claims and demands against the said firm of Ketchum, Son & Company, or him, the said Morris Ketchum, over the sum of one million dollars, which he now uses, applies and appropriates to his own use, claiming and insisting that the creditors of the said firm, and his own creditors, have no rights or interests therein, and setting all his creditors at defiance when requested to make some explination in respect thereto. 1037

And your orators, as survivors as aforesaid, further show that as they are informed and believe, and therefore allege, by means of the promises and the said false and fraudulent representations made to your orators and said Aiken, and the other creditors of Ketchum, Son & Company, whereby your orators and said Aiken were induced to execute said assignment of their said claim to the said Augustus A. Robinson, as hereinbefore stated, and the said fraudulent concealments by the said Morris Ketchum and the other members of the said firm of Ketchum, Son & Company, which, if known to your orators and said Aiken, would have prevented your orators and said Aiken from executing or delivering said assignment, and by reason of the false, fraudulent and dishonest schemes, contrivances, machinery, statements, representations, and concealments, hereinbefore particularly stated and set forth, by means whereof, your orators and said Aiken were induced to execute the said assignment of their claim and demand, and by reason of the said Augustus A. Robinson, in taking and receiving such assignment, acting for and on behalf of the said Morris Ketchum and the said firm of Ketchum, Son & Company, and for their benefit and behoof, and not otherwise, and having assigned said claim and demand to said firm of Ketchum, Son & Company, or some member of said firm, or to the said Charles J. Ketchum, for or on behalf of said firm or said Morris Ketchum, that the said assignment of the said claim by your orators and said Aiken to the said Augustus A. Robinson was absolutely void and of no force, validity and effect whatsoever; and that your orators, as survivors as aforesaid, are remediless in courts of law; and can only come into a court of equity, where the said Augustus A. Robinson, Charles J. Ketchum, the said Morris Ketchum and the other members of the said firm of Ketchum, Son & Company, can be together imple'ded, and the said fraudulent schemes, contrivances, statements, representations and concealments can be inquired into, and the said assignment by your orators and said Aiken, to the said Augustus A. Robinson, may be adjudged to be void, and of no value, force or effect whatsoever, and your orators, as survivors as aforesaid, may be restored to the same position as if no such assignment had been made or executed. 1038 1039

To the end, therefore, that the said defendants, each and every one of them, may, if they can, show why your orators as aforesaid should not have the relief prayed, and may, upon their several and respective corporal oaths, according to the best and utmost of their respective and several remembrance and information, hearsay, and belief, a full, true, direct, and perfect answer make to each and every of the charges and statements in this bill of complaint contained, as if the same were hereinafter particularly repeated, and they there- 1040

unto distinctly interrogated; and that the said assignment made as aforesaid by your orators and said Aiken to the said Augustus A. Robinson of the said claims and demands of your orators' said firm against the said firm of Ketchum, Son & Company may be adjudged and decreed to have been procured fraudulently, and by means of false and fraudulent pretences and representations, and for the use and benefit of the said Morris Ketchum and the said firm of Ketchum, Son & Company, and to be absolutely void and of no force or effect whatsoever; and 1041 that the said assignments and transfers of the said claims and demands of your orators' said firm by the said Augustus A. Robinson to the said Charles J. Ketchum, may be adjudged fraudulent and void, and of no force or effect whatsoever, and that the said Charles J. Ketchum took said assignment only for the use and benefit of the said Morris Ketchum or the said firm of Ketchum, Son & Company; and that it may be adjudged and decreed by this honorable court that, notwithstanding said assignments by your orators and said Aiken and the said Augustus A. Robinson, your orators and said Aiken, as copartners or otherwise, have not assigned, transferred, or set over in any manner your orators' said claims and demands against the said firm of Ketchum, Son & Company, but, on the contrary thereof, that the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, Lyndon M. Swan, and Edward B. Ketchum, 1042 composing said firm of Ketchum, Son & Company, are now justly indebted to your orators as survivors as aforesaid for and on account of the moneys so deposited with said firm by your orators, as aforesaid, over and above all payments and set offs, in the sum of four thousand seven hundred and fifty-six dollars and eighty cents in currency, with interest thereon in currency from and after the first day of November, in the 117 year 1865.

And also in the further sum of one hundred and eighty dollars and thirty-five cents for the interest on the sum of eleven thousand eight hundred and ninety-two dollars, due and owing to your orators' said firm, in currency, as hereinbefore stated, from the fifteenth day of August to the first day of November, in the year 1865.

And in the further sum of eighty-three dollars and twenty-four cents, being for twelve months' interest on the promisary note given by 1043 the said firm of Ketchum, Son & Company to your orators' said firm for ten per cent. of their indebtedness to your orators' said firm, upon the execution and delivery by your orators and said Aiken of the assignment to Augustus A. Robinson, as hereinbefore stated and set forth, and that your orators, as survivors as aforesaid, may be restored to the same position in all things that your orators and said Aiken as copartners as aforesaid would have been in if the said assignment and transfer had not been made by your orators and said Aiken to the said Augustus A. Robinson.

And that your orators, as survivors as aforesaid, may recover from the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, Lyndon M. Swan, and Edward B. Ketchum, and they may be decreed and adjudged to pay your orators, as survivors as aforesaid, the sum of four thousand seven hundred and fifty-six dol- 1044 lars and eighty cents, with the interest thereon at the rate aforesaid, from and after the first day of November, in the year 1865, and said further sum of two hundred and ninety-three dollars and fifty-nine cents for interest as aforesaid. And that your orators, as survivors as aforesaid, may have such further and other relief in the premises as the nature of the case shall require and to your honors shall seem meet and proper—

May it please your honors to grant unto your orators, as survivors as aforesaid, the writ of subpœna issued out of and under the seal of this honorable court, directed to the said Morris Ketchum, Thomas Belknap, junior, Franklin M. Ketchum, Landon Ketchum, Lyndon M. Swan, Edward B. Ketchum, Augustus A. Robinson, and Charles J. Ketchum, commanding them, and each of them, under a certain penalty therein to be expressed, to be and appear, at a certain time to be therein
1045 named, before this honorable court, to answer your orators', as survivors as aforesaid, bill of complaint, and to do further and abide whatever this honorable court shall then direct. And your orators will ever pray, &c.

CHARLES J. DAVIS.
CHARLES B. POPE.

W'M F. SHEPARD,
Solicitor for Complainant.
LUTHER R. MARSH,
Of Counsel.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Charles J. Davis, of the city of Chicago, in the State of Illinois, being duly sworn, doth depose and say, that he is one of the complainants above named; that he has read the above bill of complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true, and that the matters and things contained and set forth in the said bill, so far as they relate to the acts and deeds of the complainants are true; and so
1046 far as they relate to the acts and deeds of other persons, he believes them to be strictly true.

CHARLES J. DAVIS.

Subscribed and sworn to this 23rd day of November, A. D. 1870, before me.

[SEAL.] SIMEON W. KING,
A United States Commissioner in and for said Northern District of Illinois.

T. W. S.

Filed April 7th, 1876.

N. W. TRIMBLE, *Cl'k.*

1047 All of which we have caused by these presents to be exemplified, and the seal of the said circuit court to be hereunto affixed.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, in the southern district of New York, this third day of April, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundredth.

JOHN J. DAVENPORT, *Clerk.*

I, Samuel Blatchford, judge of the said circuit court, do hereby certify that the foregoing exemplification is in due form of law.

(S'g'd) SAM'L BLATCHFORD.

Filed April 7th, 1876.

N. W. TRIMBLE, *Clerk.*

1048 *Consent of Wilson & Iselin, trustees, that present receivers remain in*

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

In the matter of Morris Ketchum et als. vs. William B. Duncan, Andrew Foster Elliot, Mobile and Ohio Railroad Company, et al, pending in said court.

R. T. Wilson and Adrian Iselin, trustees for the holders of the bonds of said railroad, known as Tennessee substitution bonds, named and mentioned in the bill of foreclosure against said railroad, pending in said court, now come and say that they are content that the present acting trustees and receivers in said foreclosure suit should remain in the execution of the offices and trusts, and do file this their assent thereto and their objection to the granting the application of said Ketchum et al.

(S'gn'd) ROB'T H. SMITH,
Solicitor for R. T. Wilson & Iselin, trustees.

Filed April 7th, 1876.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1049 *Letter of Charles Walsh.*

MOBILE, *March 5th*, 1875.

GEORGE N. STEWART, Esq.,
General Solicitor M. & O. R. R. Co.:

DEAR SIR: In reply to your request that I shall execute a power of attorney jointly with the two other trustees of the mortgage made by the Mobile & Ohio R. R. Co. on the first of November, 1853, to an agent or agents in New York, to enable the company to do what may be there needed in respect to the management of the interests of the company, and also for the prosecution and defence of such proceedings as may arise in the court there, to execute bonds when necessary to protect the property of the trust, &c., I have to say that I have fully considered of the subject, and I have come to the conclusion that neither the interests of the company nor mine would be benefited by my so doing.

I suppose it is probable that under the present difficulties of this road, as well as of all other roads at this time, that intricate litigations will arise, and when commenced I cannot foresee how long it will be before they can be closed. I am not myself in a situation to attend personally at New York or elsewhere to the complicated questions which may arise in adjusting the rights of all the conflicting trusts; and, to tell the truth, I do not feel willing to empower others to act for me in such matters on my responsibility. I prefer to resign the position of trustee, so that trustees in New York, on the spot, may be appointed, who can act promptly and furnish such affidavits and bonds as may be needed in judicial proceedings, which I am not in a condition to do. I have reason to believe that my course would not be considered injurious to the parties interested. As the matter now stands, the trustees are scattered, never can act together, and their action cannot be very prompt or effectual. At all events, I prefer to tender my resignation as a trustee, which I will thank you to forward to the president of the com-
1050 pany. I regret to have to take this course, but believe it best for all parties, under present circumstances.

Your obedient servant,
(Signed) CHAS. WALSH.

Letter of Alex. Jackson.

JACKSON, TENN., *March 9th*, 1875.

MR. GEORGE N. STEWART,
General Solicitor M. & O. R. R. Co.:

DEAR SIR: Having carefully considered the foregoing communication of Mr. Charles Walsh, and coinciding with his views, I hereby join in requesting that you will forward my tender of resignation as trustee to the president of the company, coupled with the request that in accepting my resignation all proper proceedings may be had necessary to exempt and relieve me from future responsibility as trustee.

Respectfully yours,
(Signed) ALEX. JACKSON,

Witnesses present:
GEORGE N. STEWART.
HOWELL E. JACKSON.

Letter of Geo. H. Young.

WAVERLY, MISS., *March 10th*, 1876.

TO GEORGE N. STEWART,
General Solicitor of the Mobile & Ohio R. R. Co.:

DEAR SIR: On consideration of the view expressed by Mr. Charles Walsh, and concurred in by Dr. Alexander Jackson, as within stated, I have to say that I fully concur with them in the opinion that it would be better for the interests of the company, its bondholders, and of my own, that I should also resign the position of trustee of the deed of trust within referred to, and I therefore request that you tender my resignation as such trustee to the president of the company; and I
1051 also make the request, as made by Dr. Alexander Jackson, that such proceedings be had that I shall be relieved from all future responsibility on account of said trusts.

(Signed) GEO. H. YOUNG.

Letter of Charles Walsh.

MOBILE, *March 12th*, 1875.

GEORGE N. STEWART, Esq.,
General Solicitor Mobile & Ohio R. R. Co.:

DEAR SIR: When I addressed to you my request that you should tender my resignation as trustee under the deed of mortgage and trust made by the Mobile & Ohio Railroad Company on the 23d of November, 1853, I did so with the great desire to be relieved for the future from the duties and responsibilities of said trust. Such is now still my earnest wish, but it was under the full belief that it would cause no injury or inconvenience to the company, but rather advance its interests.

I have now, however, been shown that the two other trustees having also resigned, the result is that the mortgage is left without any trustee to represent the interests of the beneficiaries, and that the trust, for want of a trustee, cannot be made effectual without application to a court of chancery, which would require much time, and the duty has been pressed on me that at least one trustee should remain, in order that the succession of trustees may be maintained; under this pressure on me, in view of the consequences and upon urgent solicitations of friends, I have been induced to say to you, as my determination to resign has not yet been presented by you for acceptance by the railroad company, that you will withhold it and consider it revoked until further instructions from me.

This course seems now a duty on my part under the circumstances, although I had hoped to be relieved from the trust, and such it is still my desire to effectuate so soon as future events will permit.

1052 Please consider my instructions to you in this respect as revoked and annulled.

Your ob't servant,
(Signed) CHA'S WALSH.

MOBILE, *April* 20, 1875.

J. J. WALKER, Esq.,
Vice-President of the Mobile & Ohio R. R. Co.:

SIR: I have heretofore, in a letter to Geo. N. Stewart, esq., expressed my desire to resign my position of trustee under the deed of mortgage and trust executed by the Mobile & Ohio Railroad Company, dated November 1st, 1853, known as the first mortgage of said company, but at your suggestion the said resignation has not been presented. I have, since that time, at the request of the company, and in accordance with what seems to be my duty under said deed, united with the company in the appointment of trustees in place of Messrs. Young and Jackson, trustees, whose resignation as trustees under the same deed have been accepted.

I now renew my intention of resignation, and request that I may be immediately relieved of all further duty and responsibility in the trusteeship by the acceptance of this my resignation, and that proper resolutions be adopted by the company for my security and protection.

Your ob't servant,
(Signed) CHA'S WALSH.

Filed April 7th, 1876.

N. W. TRIMBLE, *Clerk.*

1053 *Affidavit of Charles Walsh.*

U. S. circuit court, southern district of Alabama.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO R. R. CO. & AL.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles Walsh being duly sworn deposes and says as follows: I have heard read the portions of the bill of complaint in this suit which relate to me. The fact about M'r Duncan procuring from me a resignation is as follows: I had been acting as trustee for a long time. I had been a director in the company, and upon my firm having suspended its payments, I tendered my resignation as director a long time before it was accepted by the company; and in New York I stated to M'r Duncan that I was ready to tender my resignation as trustee.

He remarked to me that he did not care to have my resignation,
1054 but he would like to have the resignation of the other gentlemen in Mississippi, who were out of the way, and have some more

active men, or something of that kind occurred. I went to Mobile, and after I got there I sent my resignation in to the board, and M'r Stewart, the attorney there I believe, took it, and M'r Young and M'r Jackson, the other trustees, also resigned. After that was done M'r Stewart came to me and said it would not do to vacate all these trusteeships at once, and wouldn't I therefore allow its being withheld, as the board had not accepted it, and it was temporarily withdrawn; and afterwards when I had done what was necessary to fill the two vacancies created by the resignation of Mess'rs Young and Jackson, the board accepted my resignation; I was placed in a position where I could not have retained my trusteeship. I said I must persist in my resignation.

The only reason for withholding was to enable me to act in filling the vacancies in accordance with the deed of trust. The other two resignations were accepted, and mine was held only for the purpose above stated, with the intention on my part from the beginning of insisting upon it. I was a trustee and acted as a trustee from the time of my appointment shortly before 1864, up to the time of my resignation being accepted by the board, and during that time I had no knowledge of M'r Ketchum ever having applied to me on the subject. I signed deeds, and performed all the other duties during that period.

I was, as a trustee, party to suits, and acted and was recognized by the courts as such. I never received any compensation for my services.

(Signed) CHA'S WALSH.

Subscribed and sworn to before me, the 3d day of April, 1876.

[SEAL] (Signed) JOSEPH GUTTMAN, J'R,
U. S. Commissioner, S. D. N. Y.

Filed April 7th, 1876.

N. W. TRIMBLE, *Clerk.*

1055 *Guesnard's affidavit as to paym't coupons.*

United States circuit court in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE,
vs.
MOBILE & OHIO RAILROAD COMPANY ET AL.

UNITED STATES OF AMERICA,
Southern District of Alabama:

Theodore Guesnard, being duly sworn, deposes and says:

That he has been for many years past, and now is an owner and holder of first mortgage sterling bonds of the Mobile and Ohio Railroad Company.

That on the first day of May, 1874, or thereabout, at the time when the semi-annual coupons on said bonds became due, he presented his said coupons at the office of the Mobile and Ohio Railroad Company in the city of Mobile.

That the said coupons were received from him by the treasurer of the company, who delivered to deponent in payment thereof, a check
1056 to deponent's order on the Bank of Mobile, which was paid in the usual manner of paying checks by said bank.

That deponent's said coupons had always theretofore been paid by the Mobile and Ohio Railroad Company in the manner first above stated.

That deponent never heard until very lately, since the litigations concerning the road commenced, that it was claimed by anybody that the coupons for May, 1874, had been bought by any person whatsoever, and the claim was a great surprise to deponent, and deponent never supposed he was selling, nor did he ever sell his said coupons to anybody, but was paid the same by the company in the ordinary manner of paying their coupons.

That he has been informed to-day for the first time that it is claimed by the, or some of the officials of the company, that there was a notice placarded in the office of the company to the effect that the said coupons were being bought.

1057 And deponent says that he never saw such notice or heard of it except as above, and never saw or heard any similar notice until to-day; that his attention was not called to any notice when his coupons were paid, or since, by any official of the company, or except as above on this day.

That when deponent's coupons for November, 1874, were presented by him, on the first day of that month, or thereabout, the treasuref, A. L. Willoughby, put the coupons in an envelope, marked the envelope with the numbers thereof and with deponent's name, and said to deponent, "Take this to the Bank of Mobile, and they will pay you."

That deponent took them to said bank, and the paying-teller thereof entered the amount thereof then and there on deponent's deposit-book to deponent's credit.

That deponent did not then suppose or surmise in any way that he was selling his coupons to any one, but regarded the payment
1058 thereof through the accustomed agency of the Bank Mobile as a payment of the coupons by the Mobile and Ohio Railroad Company, and never had any other idea about the matter until within a few weeks past, during these litigations.

(S'gn'd) THEO. GUESNARD.

Subscribed and sworn to before me this 6th day of April, 1876.

(S'gn'd) HENRY S. SKAATS,
U. S. Commissioner.

Filed April 7th, 1876.

N. W. TRIMBLE, *Clerk.*

Affidavit as to Ketchum's responsibility.

United States circuit court, fifth judicial circuit, southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE of the Mobile and Ohio Railroad Company, et al.,
against
THE MOBILE & OHIO RAILROAD COMPANY et al.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

1059 John A. Stewart, Benj. B. Sherman, Philo C. Calhoun, William L. Jenkins, John J. Cisco, and J. D. Vermilye, each being duly sworn, deposes and says, each for himself, That he is acquainted with Morris Ketchum, esq'r., the complainant within, and has been acquainted with him for several years past;

That M'r Ketchum has been prominently identified with the banking and commercial community of the city of New York for many years past, and is known and respected among the members thereof as a man of unquestioned integrity, of considerable financial ability, and of close devotion to business affairs.

That M'r Ketchum was selected as a trustee of the well known land-grant mortgage of the Illinois Central Railroad Company, and has discharged the duties of that position, as well as that of many other important trusts, to the thorough satisfaction of all parties interested therein.

(S'gn'd) JOHN A. STEWART.
" BENJ. B. SHERMAN.
1060 (S'gn'd) P. C. CALHOUN.
" W'M L. JENKINS.
" JOHN J. CISCO.
" J. D. VERMILYE.

Sworn to before me this 6th day of March, 1876, by the said Stewart, Sherman, Calhoun, Cisco, and Vermilye, and affirmed to this same day by the said Jenkins.

(S'gn'd) EDWARD L. OWEN.
U. S. Commissioner for the Southern Dist. of New York.

Filed April 1st, 1876.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

1061 *Affidavit of A. L. Willoughby.*

Circuit court of the United States at Mobile.

MORRIS KETCHUM
vs.
MOBILE & OHIO RAILROAD COMPANY ET AL.

Alonzo L. Willoughby, being duly sworn on his oath, saith: He was the secretary and treasurer of the Mobile & Ohio Railroad Company during the year 1874, and for some years before, and so continued till the trustees took possession of the railroad and property, and is now treasurer of the trustees and receivers.

That the coupons of the first mortgage bonds on their face are payable in London, though some of them, by special agreement attached thereto, are made payable in Mobile at the treasury of the company. None are payable in New York.

That before the coupons falling due in May, 1874, matured, the managers of the company became aware they would not have the means to pay them. This was largely produced by the depression of business in connection with the panic, which began in September, 1873. The managers were hopeful that if they could obtain time, and the assistance of friends, the business of the company would still revive, and enable them to take them up in the course of a few months. An arrangement was made with Messrs. Duncan, Sherman & Co., whereby they undertook to purchase the coupons falling due in May, 1874, through the agency of the Bank of Mobile.

When coupons falling due May, 1874, were presented at my office, I received them, assorted them, put them in an envelope, returned them to the holder with the statement that if he presented them at the Bank of Mobile, he would get the money for them.

The money so used was not the money of the company, and the transaction was not intended by the company to be a payment of the coupons. Said coupons so obtained by the Bank of Mobile were never returned to the company, and are not its property, and had never been canceled by the company. Same coupons have since been presented to me by the Bank of Mobile for payment, and payment demanded, which, however, was never made for want of funds.

When the November, 1874, payment approached, the company still found itself short of means, its hopes of improved business not realized. A similar arrangement was again made with Duncan, Sherman & Co. for themselves and friends, who agreed to purchase the coupons falling due in November, 1874, and to hold them for a time to enable the company to obtain the benefits of an increased business, for which they still hoped.

When holders of coupons then due, presented them to me at the treasury for payment, I received, assorted them, and returned them as before in an envelope, with the information that if they presented
1062 them at the Bank of Mobile they would get their money. Among
the coupons presented at that time for payment were coupons which matured the May, 1874, previous, which were treated in the same way.

When I received coupons, as I sometimes did by mail, for payment, I, myself, presented and received money for them from the Bank of Mobile as other holders, and returned by mail to the sender a cheque by the Bank of Mobile, stating collection as stated in letter hereto attached, which is a copy of the form I used.

At this time there was attached to my counter, in full sight of the parties presenting the coupons, a notice to the effect that all coupons then presented were purchased by the Bank of Mobile, and not paid by the company. This was done under the arrangement hereinbefore stated.

These November coupons, like the May coupons, have never been returned to the company, nor canceled, nor paid by it. They have since been presented by the bank to the company for payment, and payment demanded, but refused for want of funds, and said coupons, both May and November, 1874, have never been the property of the company.

This affiant has no knowledge of how the matters were transacted in London or New York. All he knows is that payments there were not made with the money of the company, and therefore he gave no directions concerning them, as he had done formerly in all cases where the company had paid the interest.

(Signed) A. L. WILLOUGHBY.

Subscribed and sworn to before me this 6th April, A. D. 1876.

(Signed) N. W. TRIMBLE,
Clerk U. S. Circuit Court, Southern District of Alabama.

Filed April 7th, 1876.

N. W. TRIMBL, *Clerk.*

1063 *Answer of William B. Duncan.*

U. S. circuit court fifth judicial circuit southern district of Alabama

MORRIS KETCHUM
vs.
MOBILE & OHIO RAILROAD CO. ET ALS. } No. 97.

Comes William Butler Duncan, who being duly sworn, on his oath saith:

He does not admit that complainant is the trustee of the first mortgage sterling bonds of the Mobile & Ohio R. R. Co. Said Ketchum was one of the parties originally appointed trustees in said deed. Deponent on information, which he believes to be true, states, that said Ketchum did not faithfully perform the duties of the trust, but neglected the same, and sought to use his powers as trustee to his private advantage; refused upon the death of his co-trustees to unite with said company in the appointment of proper successors, and demanded conditions of the company, which were dangerous to the trust, and injurious to the company, and the trust property. The said company then sought his removal from said trust, by bill in the court of chancery at Mobile for good causes alleged in the bill and in the mode pointed out by the laws of Alabama, copies of the letters from the president of the company to M. Ketchum and Mr. O. S. Beers, then auditor of the R. R. Co. 1064 which were furnished to counsel, with instructions to file the bill, are herewith produced A. B.

Upon said bill a decree was rendered removing said Ketchum, and appointing new trustees, to wit: Charles Walsh, George H. Young and Alexander Jackson in the room and stead of said Ketchum, and the deceased trustees—a full and not a partial copy of the record of said course and proceedings will be produced herewith. No appeal has ever been taken from said decree, and no proceedings have been had to vacate or in any manner qualify said decree, and deponent is advised, that the same remains and is a valid and binding decree.

Said new trustees accepted the trust, performed the duties thereof, as valid & lawful trustees without question, or challenge by said Ketchum, or any person whatever, till their resignation in April, 1875, when deponent and A. Foster Elliott were appointed trustees, under said mortgage and deed of trust, by the then continuing trustee, and the said corporation, in the mode and manner prescribed by said deed, and have executed the duties of the trust, with right and title unassailed by any person, and not at all by Ketchum, till the filing of his bill in this cause on 14 March, 1876.

The charges of collusion, and deceit made in the bill, as to the mode in which respondent and his co trustee were appointed, are un- 1065 true. They were regularly in good faith, and for honest purposes, and upon resignation in good faith tendered and accepted, appointed to their present position of trustees.

It is not true that deponent and Elliot were or are partners in business in New York. Mr. Elliot was not a member of that firm of Duncan, Sherman & Co., and had no interest in its capital, profits, or business.

It is not true that the only ground alleged by the corporation for the removal of Ketchum from the trusteeship was the charge of his being an alien enemy to the Confederate States. Good causes for his removal existed in his own conduct with regard to the trust-property.

Said Ketchum has, at no time since the conclusion of the late war, and while the courts and the county have been fully open to him, in any manner whatever, asserted his rights as trustee under said mortgage. He has performed none of the duties of the trust; he has not offered to perform any of them; has not sought to perform them; and has, in fact, as this deponent is informed and verily believes, made no communication or application on the subject to said R. R. company, or any officer thereof, or to the said above-named trustees, or any of them. He has taken no step, and has done no act of any kind whatever in
the nature of a single duty under said trust. Said Ketchum, in
1066 plain fact, during all this time, has abandoned the said trustee-
ship, and, so far as he was concerned, has allowed the whole business to shift for itself, without any care or consideration extended to it by him.

This respondent is informed by the deposition of said Ketchum, on file in this court, that said Ketchum is not the holder of any bonds of said corporation, or of its stock, so that this deponent saith that said Ketchum has no interest in this suit and trust fund, either as trustee or beneficiary.

This deponent saith, that under the powers of the deed, with the assent of the corporation, and on the request of holders of coupons and first-mortgage bonds of said company, in May, 1875, he and his co-trustee took possession of all the property embraced in said mortgage, and have been in possession ever since. That by reason of the nature of the property, its location in four States, and the different liens thereon by mortgages of different dates, and judgments against the company, and the existence of debts of almost every conceivable variety of form, the trustees found themselves in absolute need of the instructions and protection of the courts having jurisdiction over the property; said trus-
tees, with the approval of the corporation and of many of the hold-
1067 ers of the bonds secured by said mortgage, made that application
by bills in equity to the several courts, and for the security of all parties offered to account as receivers, and under such sanction as the court might direct. Such orders have been made, and are part of the records of this court, and under them this deponent and his associate has been acting; they have filed reports and accounts, as directed by the court; these accounts and reports are now under orders of this in process of examination by a master regularly appointed for that purpose. This deponent denies all collusion in obtaining these orders; they were all obtained on notice to the parties of record, all the parties whom said trustees and receivers could put upon the record. No information has been withheld from persons entitled to knowledge and sought it. The best skill that could be obtained has been secured, and is now busy about the management of the trust property. The utmost economy has been used in business thus confided to this deponent and his associate. Deponent attaches hereto a letter he addressed to some enquirer, bondholders, and shown to others, and which by their request has been published.

Deponent, with this, also presents to the court, the written approval of a large number of bondholders, and a letter of approval by the agent of the English holders, such as could be gathered at the short notice
allowed to deponent.

1068 This deponent denies all charges of misappropriation of the
moneys of the trust; he denies all favoritism to any party, or any class of creditors, and that he is seeking the advantage of any party

or class. All charges and insinuations of that character he denounces as untrue and false, and known to be so by the parties making them.

The statements of the complainant as to the coupons due in May and November, 1874, are not true; said coupons were not paid by the company, nor by deponent, or his firm, or by any other person for the company; they were not after payment delivered to Alexander Duncan, or any other person; they were never paid by or for the R. R. Co. at all. They were not payable in New York, but in London, and those with a special agreement thereon at Mobile.

The company knew they could not meet their interest in May, and applied to the firm of deponent to purchase the coupons for that month and retained them. Said firm agreed to do so, the directors of the company being sanguine that their business, then greatly depressed, would revive, and that a little time only was needed to enable them to redeem the coupons so purchased. To effect this, Duncan, Sherman & Co. purchased said coupons, and afterwards borrowed the money so used from Alexander Duncan and others, mainly from Mr. Duncan, and 1069 subsequently transferred the coupons to them. The same hopefulness existed in the directors, as to the interest falling due in November, 1874, and the same arrangements were made regarding them. Neither the coupons for May and November, 1874, were paid by the company at all, nor were they dealt with in the usual manner. At Mobile, after being verified as correct, they were returned by the treasurer of the company to the holder, with the information that the Bank of Mobile would advance the value of them. At London those for May were purchased by the Union Bank of London, correspondents of Duncan, Sherman & Co., who charged the costs thereof to the account of that firm, and remitted to them the coupons uncancelled. Those for November were purchased by the Credit Foncier of London, in like manner. Some were purchased by deponent's firm in New York, but usually at a discount for trouble of remittance and collection, and no attempt was made to mislead the holder; and any statement to the contrary is false. All said coupons for May and November, 1874, purchased by or for Duncan, Sherman & Co., Alexander Duncan, or any other party now the holder of the same, were afterwards presented to the Mobile and Ohio Railroad Company and payment demanded, but which was refused.

Deponent cannot answer what knowledge complainant had of 1070 the matter. He doubts if he had any knowledge, and verily believes he took no interest in the matter; and now puts the glass he applies to the transaction, not on any knowledge at all, but at the suggestion of parties hostile to deponent, and whose course is not dictated by regard for the bondholders, but to advance selfish schemes in the possession and management of this trust-fund. But whether he knew or not, the fact that these coupons had not been paid by the railroad company, but now still outstanding, was distinctly stated in the last annual report of the stockholders at the annual meeting in April, 1875, and which was immediately thereafter published and extensively circulated among all persons interested.

Deponent repeats that said coupons were not paid by the R. R. company, nor by any moneys of the company, either owned by or loaned to the company; they were purchased at the request, and from friendly regard to the company, and by means in which the company had no interest, and by independent parties, with the design not to press payment then, but holding them with all rights and liens belonging to them for their security, that the R. R. company might have a reasonable time

to recover its business and pay them off. Any other representation of the purchase of these May and November coupons, 1874, is entirely untrue, and, as made in complainant's affidavit, is false.

1071 If it is intended, as seems from these statements of complainant, to charge these parties with the intention to pay this claim at the expense of holders of prior claims, or to use the trust power in their hands for that purpose, it is false. The claims of the holders of these coupons has been brought to the attention of the court, and the merits of these and all other claims upon the trust property in the hands of the trustees has been referred to the master for his examination and report. Deponent has been advised that such course was his duty, and he has cheerfully submitted this, with all other questions of rights and priorities, to the decision of the court, and will as cheerfully obey its instructions.

Further, deponent admits that unsecured claims, alleged to be for money, supplies, and materials, have been presented to the trustees, and pressed upon them. It is equally true that these claims have not been recognized by them. They have submitted the rights claimed, to the court for its direction and instruction. The court has referred the facts for investigation to the master, who has returned his report thereon, and upon which the court will doubtless, at a proper time, make its judgment. Deponent denies that the receivers and trustees have thereby done anything other than they should have done. Their duty is
1072 not to pay any claim not clearly right, and as such within the
orders of the court. They have not paid the claims thus complained of. Said claims stand now as unrecognized by these receivers as they have always stood. Receivers are in no way committed to them, or their recognition as to them; they propose to do what the court may direct after learning the facts on which the claims are based, and in view of the mortgages and liens, all of which are fully set out in the bill they have filed in the cause.

Deponent denies that in their conduct in this respect they have done other than their duty as receivers of the property, which they hold for the benefit of such parties as the court may find and decree to be entitled thereto.

The statement that deponent has been a dealer and speculator in floating claims against the company is false; it is false that he has misapplied moneys which were remitted for payment of interest to the payment of floating claims held by him, or his firm of Duncan, Sherman & Co., and which had been purchased at discount.

Deponent, nor his firm, nor any connection of them, or either, was never engaged in such business, and neither he, nor Wm. D. Shipman for him, in his right, nor any other person for him, holds any such claim.

1073 Deponent did at sundry times, by himself or firm, advance money for the company on the trust prior to 26 July, 1875. The item of $9,740, mentioned in the supplemental affidavit of Ketchum, is for money advanced to pay interest on bonds, known as convertible. To this amount his firm is a creditor of the company, and it must share the fate of claims of its class after the payment of the 1st & 2d mortgage debts. Neither deponent, nor his firm, nor any person for them, has advanced any other claim for its payment.

The item of $16,429.23 is money advanced to pay for iron purchased for trustees, for the use of the road, and is an item for necessary disbursement in the business of the trust.

The item of $29,945.57 is for money paid to the Government of the

United States for a judgment obtained by them in compromise of a claim of over $60,000 principal for duty on iron, imported by the R. R. Co., and for which suit was pending when the trustees took possession, and for which the United States claimed a lien or the iron in the track. This payment was a necessary disbursement by the trustees, and made with the approval of the court.

The item of $20,000 in schedule bills discounted, mentioned in complainant's affidavit, represents an unsettled overdraft on deponent's firm.
No portion of this has been paid by receivers, and the amount
1074 and merits of the claim remain to be settled under the orders of
this court. with the class to which it belongs.

The item of $78,968.78, Walsh, Crawford & Co., is an unfortunate mercantile debt, in no way connected with claims against the R. R. Company, and is introduced without reason into this matter, and for malicious motive and intent.

The claims above were not obtained on speculation by this deponent, nor were any others. They were all in legitimate business, and are original claims, and not acquired from third parties.

Any attempt to implicate deponent or his firm with the dealing in floating debt of the company, or to obtain payment of the same for themselves or friends by any influence or opportunity as trustees or receivers, is without any foundation in fact.

Deponent has not sought, attempted, or intended any such thing. He and his co-receiver have sought to obtain the instruction of the court, not to advance their own claims, but in good faith, for the performance of their whole duty as receivers of the court, and upon presentation of the facts. The virtuous criticism of complainant upon their course is not justified by the facts; and his judgment upon the bearing of the
settlement, if proper to be made upon the success of a future re-
1075 organization of the corporation, has about the same value.

The reduction of the floating debt from $1,166,492.19 in January, 1875, to $529,598 in May, 1875, is not correctly stated; but if made, as alleged in said affidavit, was made before deponent and Elliot became trustees of the property, or had the right to the possession on default of the R. R. Company, and therefore the inference attempted to be made of neglect of duty and misappropriation of trust-funds is false. No such application of the income of the trust-property was made by them; and the statement that a large proportion of said payments were made to Duncan, Sherman & Co. for floating debt held by them is false.

Deponent denies that the conduct of himself and co-trustee and receiver, with regard to this floating debt and the application of trust money, has been at all wrong or objectionable. He denies that any of the trust fund which has been received by them has been wasted or in any manner misapplied; he denies that anything but the strictest integrity has been practiced by them about the business of the trust fund and property and the floating debt of the company.

He denies all the statements of improper conduct with regard to the
coupons due in May and November, 1874. He avers that in all
1076 their conduct in these particulars, and all others connected with
this trust, that he and his associate, Elliott, have conducted themselves and the business with fidelity, integrity, and care, and that they have in all respects been loyal to the duties of their position and the interests confided to them. He denies that there is in their past management any reasonable ground to allege any risk or damage, of loss or injury to the property in their hands, or that there is any cause to fear such. He denies that their character or past conduct justifies any suspicion

or fear of any malpractice or breach of trust on their part, or that they, or either of them, will do other than deal justly and faithfully with all the interests intrusted to them by the court. He denies that they are so interested in the lower securities of the company as to render them, or either of them, unfit to be continued in the trusts and confidence heretofore reposed in them by the court, or that the commercial misfortunes of deponent have placed him in any such position of dependence as unfits him to execute the duties of receiver of the Mobile & Ohio R. R. Company. He has not neglected the duties of his office, but has given them his regular attention, and has frequently attended at Mo-
bile whenever his personal presence has been required for any pur-
1877 pose whatever, and the same is true of his associate, Elliot, who
resides within six hours' run of the chief office of the company,
where its general business is transacted. Deponent is frequently on the line of the road, and keeps himself carefully informed of all the matters of its business. The daily details are in the care of competent clerks and subordinates, and the general supervision of the traffic & business of the line, as a common carrier of freight and passengers, is in the charge of a trained, experienced, and educated railroad engineer and manager, with whom deponent, when not present personally, is in daily and almost hourly intercourse by mail and telegraph.

The accounting department is in the care of a thoroughly trained, educated, and experienced railroad accountant, and deponent with pride points to the fact that perfect discipline and order prevails among the employees of the company. The trains are run regularly and safely, the road has been gradually improved with the rolling and locomotive stock, and is being brought to a condition of great efficiency, so as to ensure the largest returns with the smallest outlay. All employees & contractors are regularly paid their just demands, and the dwellers along the line are generally satisfied with the business & workings of the road.

Deponent admits that he has met with commercial misfortunes,
1078 and as is not unusually the fact in such case, he has been subjected
to many harsh and unjust charges and suspicions, and has been
subjected to some annoying suits and legal proceedings.

He denies that he has failed in the performance of any duty or obligation upon him in any fiduciary capacity; on the contrary, he avers that he has faithfully met and performed all such obligations, and with pride refers to the judgment of his character and integrity which has been formed of him by men of high commercial & financial character, who express their approval of his appointment as receiver, and their protest against the change prayed for in this complainant's bill, in the paper herewith produced to the court. For a more particular answer to the several allegations of complainant's affidavit, as to deponent's private business and that of his firm, this deponent refers to and adopts his answer on file in this court to the petition of Georgie Warnes, and the affidavits and documents therewith filed as to the late refusal by the supreme court of New York, or one of its judges, to vacate an order of arrest against this deponent, as alleged in complainant's affidavit, this deponent states an appeal has been taken to the general term of that court, with the approval and concurrence of the judge who made
the order, who desires the law of case settled. The matter in con-
1079 troversy is less than $2,000, and deponent is contending for prin-
ciple and to prevent unscrupulous process of black-mail upon him.

This deponent and his co receiver Elliot have invited the fullest investigation of their dealings with this trust property and with the

Mobile & Ohio Railroad Company and of their accounts therewith, and the same has been ordered by the court, with directions to the master, if desired, to inspect all the books of account of the receivers.

This deponent thus offers the fullest security against peculation and misappropriation which can be given. All the books, vouchers, accounts, and reports in the possession of the receivers are now at the service of the master appointed by the court for examination and investigation.

Deponent denies that any means of concealment or deception on the master have been reserved to himself and associate, and denies that he or his associate have anything to conceal; and denies there is any ground or reason why any change should be made in the receivership or management of this property.

This deponent and his associate have given all the bonds required by the court. Their sufficiency has not been assailed by the complainant, and cannot be so assailed.

1080 This deponent further states that said Ketchum is not a fit person for either the trusteeship or receivership, as is abundantly shown by the allegations of the bill filed for his removal, a copy of which the complainant does not give, and by the protest of the bondholders herewith produced.

(Signed) W. BUTLER DUNCAN.

Subscribed and sworn to before me this 7th day of April, A. D. 1876.

HENRY S. SKAATS,
U. S. Commissioner.

1081 (Copy.)

NEW YORK, *July* 20, 1860.

MORRIS KETCHUM, Esq.:

DEAR SIR: After fully considering the construction you seem to put on our deed of mortgage, and the exercise of power you claim as surviving trustee under it, it becomes my duty to reply and state the conclusions of my mind on the subject.

The mortgage gives no power to the trustees to sell lands, or control the proceeds of sales, unless the company make default in payment of interest or principal of the mortgage bonds, or be guilty of some fraud or misapplication of the funds. The mortgage provides that the trustees shall have power to make sales & direct the application of the proceeds as a sinking fund & appoint agents to superintend the same. But this power is only conferred in case of forfeiture, for it is expressly provided that until default in payment no sales of land can be made except by the consent of the company.

When, therefore, sales take place before default they must be made in accordance with the mutual consent and agreement of the company and trustees acting together for the benefit of all parties interested in the fund. In giving this consent & making this agreement, as to the manner & terms on which sales are to be made, and the mode of investing proceeds are of course to be arranged. This is the way in

1082 which it was done in the sales heretofore authorized, and is the only way in which sales can be legally made. But now Mess'rs Palmer & Hallett being gone, & you being the sole surviving trustee, you propose to change the entire system, and claim a power which if granted would put an entire land-fund under your personal control. You claim the power to appoint agents & conduct sales & invest proceeds without consulting the company, or obtaining their approval as to the mode of doing it. You have already informed me that you design to put a M'r Wilson (if I don't mistake the name) in possession of the land department; whether his seat of power is to be at Mobile or at New York you did not inform me, but I suppose at New York, as that seems to be the point to which you intend in future to transfer the management of our land-fund.

In the lifetime of your co-trustee, Col. Hallett, you refused to allow him or any one else, to make deeds in Mobile for lands sold, by which much trouble & unnecessary expense to the company might have been saved. Since I have been in this city you were pleased to express great respect for my business capacity and integrity, & taking advantage of this seeming confidence, I requested you to authorize me to execute deeds, & offered to give, if desired, bond in any amount you would name
that everything should be correctly done. My object was to
1083 save the company unnecessary trouble and expense. But you
declined this also, saying that deeds must & should be executed in New York.

Under instructions from the board of directors, I proposed the names of Mr. Charles Walsh, the successor of Col. Hallett in the presidency of the Bank of Mobile, and Mr. Parker (another gentleman distinguished for his business capacity and integrity) as trustees, to fill the vacancies occasioned by the deaths of Col. Hallett & Mr. Palmer. You made no objection to the fitness of either of them for the faithful execution of the trust; but you enquired what compensation or salary would be paid to them & you in the event you consented to their appointment. I replied that no such question had been raised, but that whatever might be paid to either of them would, of course, be paid to you. That certainly no such question ought to be raised as a condition on which you would give your consent to their appointment. You seemed not to be satisfied with this, and took time to consider the matter until next day.

At our meeting the next day you informed me that you had come to the conclusion to send a communication to the board of directors, ratifying the appointment of either Mr. Walsh or Mr. Parker, but leaving the other out, & nominating myself in his place. To this I interposed
candid & earnest objections; but you overruled my objections,
1084 and said I need feel no delicacy about it, because the movement
was your own, & would be most satisfactory to the bondholders. At last, at your apparent earnest solicitations, and in my extreme desire to put an end to further conflict, I consented that you might nominate me as one of the trustees. In giving this consent, I felt sure that Messrs. Walsh & Parker, and all others who knew me, would appreciate my object, & acquit me of all selfish motives.

As soon as I had distinctly given my consent, you said you would then address the board of directors, making the nominations, and proposing "the terms" on which they were to be confirmed. I promptly enquired what "terms" you alluded to. You replied that you thought it most proper that you and the board should arrange the matter between yourselves, and that the board should dispose of it, in my absence, and without my knowledge, until after it was closed. I replied that this seemed proper enough, but that if any "terms," as a condition of my appointment, were to be imposed, it was proper that I should know what these terms were. You then disclosed to me that the "terms" to which you referred were that the compensation to be given to the trustees should be first settled. I replied that or myself I intended to accept no compensation, & could not allow my name presented

1085 to the board with any such terms or conditions annexed. You then declined nominating me, and also declined to confirm the nominations of Messrs. Walsh & Palmer, unless your compensation was fixed in advance.

I then appealed to you to consent that the company might sell lands for bonds, the bonds to be cancelled & immediately delivered up, as this measure was of great importance, as well to the bondholders as to the company, but you declined giving your consent, & our conference closed. I deeply regret this condition of things, but I have done my whole duty & can do no more. To allow a trustee under a mortgage, every time a measure is proposed necessary for the success of our enterprize, to append, before he will give his consent, a condition for his personal benefit, would put us on the road to ruin, over which so many American enterprizes by similar means have gone.

As to the question of compensation, the trustees have done nothing but sign the mortgage bonds, and two or three papers authorizing the sale of lands. For years the company have appealed to you to give your assent to measures of the greatest importance to our success, but no response has been given, and we have been left to struggle on with no "aid" or "comfort" from you. During the last three years,
1086 if not longer, there is not to be found, and you cannot exhibit, a single act of the trustees in connection with the affairs of the company or its land-fund. The mortgage requires annual reports by you to the company, & you never have made one. Regular reports of our sales have been made to you, and you never have acknowledged the receipt of one. It was your duty to make deeds, but not one has been made. By this our sales have been retarded, because purchasers feared they could get no titles. Purchasers of land previously sold refused to make payments until deeds were ready for delivery, and we were thereby deprived of the use of money in times of our greatest need. Fifty thousand dollars would not compensate our company for the damage by this neglect.

The trustees saw proper to retain in their hands eighteen thousand dollars of our bonds, with back coupons to the amount of several thousand, making in all some twenty two or three thousand dollars. This is far, very far beyond any reasonable compensation for the services performed, and hereafter to be performed, to say nothing of the positive damage inflicted on us by a total neglect of duty to which I have referred. To buy peace and avoid an open rupture, I have proposed to give this up & let it be retained, provided no further claim for services is set up, now or hereafter.

1087 But this seems not to be satisfactory. You claim the right to decide on the value of your own services, & to fix your own compensation. You further declare you will appoint your own agents, and of course fix their salaries & have them responsible to you alone. You further declare that the land-fund must pass through your hands and through the hands of agents appointed by you, and responsible to no one but you.

These facts & this extraordinary claim of power brings us to a crisis. To have an open rupture with our only surviving trustee is bad enough, for he has the power to do us harm and force us to make an appeal to the courts of the country for protection & relief. But to submit to this astonishing claim of power would be worse. It would transfer our entire land-fund from the control of our company & put in hands having no interest in the enterprize beyond the fees and emoluments to be extracted from it.

The trustee would fix his own compensation from time to time, & the company must pay it. He would appoint his own agents, without limit as to number, & fix their compensation, & the company must foot the bills. The expenses of our land system would be run up to ten times what it now is.

The seat of power & responsibility would be transferred from Mobile to New York, & the assets of the company would be put beyond
1088 the jurisdiction of the courts of the States in which the trust was created & through which the road runs.

But I have extended this communication beyond my original design. In conclusion, I desire to make one more appeal to you and request you to reconsider the position you have taken. I think there is not a bondholder in Europe or America who will not, when rightly informed of the facts, say that all we have requested you to do is reasonable, and to their interests.

Respectfully, yours,
(Signed) MILTON BROWN,
Pres't M. & O. R. R. Co.

1089 (Copy.)

NEW YORK, *July* 21, 1860.

M'r BEERS:

DEAR SIR: Your dispatch met me on my arrival here on the 18th, but the papers referred to have not yet arrived; but Mr. Ketchum has read me his copy, and we have had two long interviews on the subject, besides dining together at his house. His first effort was an appeal to my fears as to the consequences if I did not agree forthwith & fix his salary, and pay up from the signing of the mortgage until now. This failed. He then changed his attack by making it an appeal to my vanity. He praised my firmness, my ability, & my great success. He said that from the time of my election he knew the enterprise would succeed; that no man had built up such a reputation as I had, and concluded by inviting me to dine with him, saying that he had no doubt we could arrange all our differences satisfactorily. I eat his dinner and drank his wine, and with a warm and confiding shake of the hand we parted to meet next day. We met accordingly, and he began to hope that by his appeals to my stomach through his dinner and wine, and to my vanity by his speeches, he had me in a good condition, and if he could also get my avarice enlisted by the hope of a salary as
1090 trustee, that he & I, acting together, "could make a good thing of it," as the Yankees say when they are about to do a smart thing by cheating somebody. The result of our interview, and the facts relating to the whole affair, are carefully stated in my written reply, a copy of which I herewith enclose. It presents a case of corrupt motive and dishonest purpose never before surpassed. His character is worse than I supposed. No one who knows him has the least confidence in his integrity. In a conversation with M'r Osborn, president of the Illinois Central, the death of Col. Hallett was referred to, & I remarked that it left M'r Ketchum sole trustee under our mortgage. He replied, "Then you are in a hell of a fix." He then went on to tell me that he was one of the trustees under their mortgage, & also a director in the road; that he managed first to get a fixed salary of fifteen hundred dollars a year; then not contented with that, taking advantage of his position, he carried his frauds so far that the other two trustees had to take the trust into their own hands, and

the board of directors refused to consult with him. In face of all this he had the impudence to appear at a meeting of the board.

On his entering the room he (Osborn) rose and said to him,
1091 "How dare you show your face at a meeting of this board?" He
enquired if the board allowed the president to use such language towards him, and no reply was given. He then retired, but he still holds on to his office as trustee. The other two trustees perform the duties & he collects his salary.

Osborn thinks he never will consent to fill the vacancies except upon conditions that will put the company in his power, or unless at least one of those to be appointed is under his influence & will unite with him in his frauds. But I think he will soon find himself powerless, & if he can get no funds in his hands, as he certainly cannot beyond what he has, he will probably resign. Of course we can agree to no appointments, except such as are in Mobile, or on the line of the road, and are beyond his fraudulent influences. He is very uneasy about the danger of his paying costs in the bill filed against him & the company at Mobile, & in other cases that may be commenced.

Tell our counsel to see to the question of costs & make him pay them, & if necessary take proof as to his conduct. Tell M'r Hamilton to examine the facts contained in the copy of my letter to Ketchum, & other facts of the case, & write me to Jackson, Tennessee. 1. As to
the power of the Alabama courts to remove him; 2. How we
1092 shall reach him for damage already done; 3. How we can enforce
the appointment of trustees to fill the vacancies, & such other suggestions as may occur to him. File the copy I send you for the inspection of our board & counsel, and any that may desire to see it.

Yours, truly,

(Signed) MILTON BROWN,
Pres't M. & O. R. R. Co.

P. S.—I understand Ketchum is now hunting up your report of sales, and says he will stop the suit at Mobile by making a deed, & that he will make deeds in all cases. But if he does, costs already incurred he must pay, for he could have made these deeds long before suit, as well as now. By setting up to do things himself, without consulting us, he will be apt to make great mistakes. To execute the deeds, he will have to advance the fees. He is getting into trouble.

M. B.

1093

C.

A transcript of the record and proceedings had in a certain cause heretofore pending in the honorable court of chancery held at Mobile for the first district of the southern chancery division of Alabama, wherein the Mobile and Ohio Railroad Company, a body politic and incorporate, was complainant, and Morris Ketchum, a citizen of the city and State of New York, was defendant.

Original bill.

To the Hon. N. W. Cocke, chancellor of the southern chancery division of the State of Alabama, presiding at Mobile:

1. The Mobile and Ohio Railroad Company, a body politic and incorporate, chartered by the laws of Alabama, and also by the States of Mississippi, Kentucky, and Tennessee, respectfully shews to your honor

that, by virtue of its powers so granted by said States respectively, it has constructed a line of railway from Mobile to the mouth of the Ohio River, and is now running and operating the same.

2. The said company further shows that under and by virtue of
1094 purchases and by grant from the Congress of the United States
of America, it has obtained title to and possession of a large quantity of land and real estate. Among this property so owned by the company is a large quantity of vacant land in the States of Alabama and Mississippi, which this company obtained from the source above named for the purpose of aiding said company in the construction of said road.

3. The said company further shows that to enable it to proceed and complete its said railway, said company has been compelled to borrow large sums of money for the payment of said loan; and also, in some instances, in payment for work and materials furnished the company by sundry parties, it has issued its bonds for the sum of two hundred and twenty-five pounds of the currency of Great Britain, each, which are commonly known in the market as sterling bonds. These bonds are made payable in London, England, in the year 1883, at the office of George Peabody & Co., and bear interest at the annual rent of six per cent., which is payable semi-annually, at the place aforesaid, on the first days of May
and November. Six thousand of these bonds have been executed,
1095 amounting to the sum of thirteeen hundred thousand six hundred and fifty pounds sterling, English currency.

4. Further your complainant respectfully shews to your honor, that on the first day of November, 1853, said Mobile & Ohio Railroad Company, by its deed of that date, conveyed to Morris Ketchum and John J. Palmer, of the city and State of New York, and to William R. Hallett, of the city of Mobile & State of Alabama, the better to secure the payment of the bonds hereinbefore described, and every part thereof, with the interest accruing thereon, the following described property, to wit:

All the said Mobile and Ohio Railroad lying between its respective termini, constructed and to be constructed, together with all and singular the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned and which may hereafter be owned by said company, including the said lands donated by the Congress of the United States; that is, 419,528.56 acres of land in
the State of Alabama, and 737,130.36 acres of land in the State
1096 of Mississippi; total, 1,156,658.92 acres; saving and excepting
therefrom so much as lies in township 4 S., R. 1 W., of lands subject to entry in the S't Stephens land-office, being 692.78 acres more or less; saving and excepting also the lots and tracts in the county of Mobile, outside of the line of the railway outside of its depots, and outside of the corporate limits of the city of Mobile, being lots and lands derived by private not yet fully paid for, and not included in the list of lands in Mobile County derived under and by the act of Congress, and saving and reserving the rights and liens that may attach to the roadway and construction therein in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that State, in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz, one hundred and eighteen miles, not exceeding ten thousand dollars per mile. All which will more fully appear by reference to said deed which is on record in the office of the judge of probate of Mobile, and a copy whereof in print is herewith filed as an exhibit to, and part of this bill.

5. Said deed was executed to said Ketchum, Palmer and Hallett,

1097 their survivor or successors, for the benefit, security, and advan-
tage of the person or persons, or corporations or any other party who shall or may be holders of the before described bonds, or any o them, in trust for that purpose, and with certain powers over said property in said deed fully set forth.

It was therein provided that of the said 1,156,658$\frac{97}{100}$ acres of lands donated by the said Congress, the said trustees should be deemed to be in immediate possession, with authority to devise and determine rules of management, of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the payment of said bonds, said trustees to render annually, on 1st January of each year, to the said railroad company, accounts of their doings in the matter of the trust; said trustees were authorized to appoint an agent to attend to said land business; but that no sale of said lands should be made so long as said grantor was not in default on any obligations connected with said bonds, except by and with the advice and consent of said com-
pany. The other property named in said deed was to remain
1098 under the control of said company, unless said company became
in default for the payment of said bonds or interest.

6. Your orator further shows to your honor, that said deed also contains a provision that if either of the said trustees should at any time or times thereafter die, or become from any cause incapable of acting in the premises, or resign his said office, the said company and the surviving or continuing trustees should select some other person to fill the vacancy occurring, and should thereupon make, execute, and deliver such other instruments or assurances as might be necessary to enable such selected person to act in the premises.

7. Your orator shows that said trustees assented to said deed and took upon themselves the burthen of its execution; that since then two of said trustees have departed this life, to wit, William R. Hallett, of Mobile, who died in July, 1860, and John J. Palmer, who died before the said Hallett, and that the only surviving trustee is the said Morris Ketchum; and that said Ketchum is a resident citizen of the State of New York, and an alien enemy of the Confederate States of America.

1099 Your orator also shows that, at sundry times before the 15th
April, 1861, your orator, in pursuance of the terms of said deed of trust, applied to the said Ketchum to unite with your orator in the appointment of trustees to fill the vacancies occasioned by the death of said Hallett and Palmer, but said Ketchum has refused to unite in the appointment of such trustees, and the places of said deceased trustees still remain vacant.

8. Your orator charges that said conduct, on the part of said Ketchum, is a breach of the spirit and letter of said trust-deed, and that it has proceeded from selfish and interested motives on his part, and that he has pursued a course of conduct in relation to the trust that has embarrassed and operated to the injury of your orator.

Your orator shows that no provision is made in said deed for compensation to the trustees, except in event of a forfeiture thereof, which has not occurred, and which your orator hopes will not occur. No services have been rendered by said trustees beyond the simple acts of
signing the mortgage-bonds and a few other papers directing and
1100 authorizing the sale of a small portion of the lands. Said trust-
ees have not made any of the annual reports called for by the deed. It was the duty of the trustees to have directed the sale of lands, but they have failed to do so, except to a small extent, hereinafter

named. Such plain duties they have disregarded, whereby great injury has been done to your orator and to the bondholders, retarding and preventing the sale of lands, and thereby impairing the market value of the bonds which were to have been received in payment for lands.

The said Hallett, before his death, resided in Mobile, but when applied to he declined acting, stating that the active management of the trust was with his co-trustee, Ketchum, always referring your orator to said Ketchum, and professing to refer all communications to him. This having the active management of said trust business, the said Ketchum has used his power oppressively to your orator, and for selfish purposes. When said bonds herein described were signed, the said Ketchum, in the name of himself and co-trustees, retained eighteen of said bonds of
the par value of eighteen thousand dollars, on the pretence of com-
1101 pensation for signing said bonds; and thus against the wishes of
your orator, and notwithstanding the protest of your orator, which was then made and been repeatedly renewed, said bonds, with all the coupons for interest thereon, have been withheld from your orator. Said Ketchum has, in addition, also demanded regular salaries at high rates. While your orator would not object to reasonable compensation for actual services, it has refused to accede to the demands, because they were exorbitant, and could not be yielded to without submitting to gross wrong. Since the death of his co-trustees said Ketchum has refused to unite in the appointment of new trustees, except on condition that he shall retain what he has already obtained, and also have a fixed salary at some high rate, to begin about the year 1855 and continue till the maturity of the trust in 1883.

Said Ketchum also claims the right to move the management of the land department from Mobile to New York, and then to organize it by committing it to officers appointed by himself, and has notified the president of this company of his having appointed the chief agent or superintendent thereof. Your orator, to induce said Ketchum to consent to the appointment of new trustees, has obtained the request
1102 of a majority of the bondholders for that purpose, but without
avail. Said Ketchum has still persisted in his refusal to unite in the appointment of such new trustees.

Your orator charges that these actings and doings of said Ketchum are in violation of his duties as trustee, and that he is an unfit person to continue in his position of trustee.

9. Your orator further shows that by a writing under date of 10 January, 1855, the said Ketchum, and other trustees, advised and directed the sale of lands embraced in the trust, not exceeding 100,000 acres, *in* such terms as to price and time of payment as said company by its board of directors should approve, and promised to ratify such sale and execute proper deeds to the lands so sold.

In pursuance of said authority, orator has sold a large quantity of land to sundry purchasers, who have complied with the terms of sale, and paid most of the purchase-money.

Orator has made due reports of said sales to said Ketchum, and has in all things performed the conditions on which such sale was to be
made, and called for deeds for the purchasers. Said purchasers
1103 have demanded of your orator deeds for their lands, and one has
filed his bill in this honorable court to compel the specific performance of the contract with him. Others of said purchasers are threatening to pursue a similar course, and so your orator has been subjected to annoyance and costs, and is likely to be still further injured by the misconduct of said Ketchum in his said office of trustee.

These matters have been urgently presented to said Ketchum by your orator, but he has given no heed to their applications, and not even acknowledged its reports to him, and when personally applied to, refused to execute the necessary deeds except on condition of his demands for past compensation and future salary being complied with.

10. Your orator shows that it is highly important that further sales of land should be made, that such was originally intended to be made, for the purpose of completing said road, and it was expressly declared that the said sterling bonds, so issued by the company, should be received in payment of lands to be sold.

This can only be done by the agency of trustees under said deed of trust.

1104 That the lands lie in the States of Alabama and Mississippi, and their management should be confided to persons who can and will superintend their management in those States and in the city of Mobile, where the trust-deed was executed, when the chief business of your orator has necessarily to be executed, and where the trust will have to be executed; and that the removal of the control and direction of this business should be to the manifest detriment and injury of your orator and all others concerned.

It shows that the security of the bondholders requires the active agency of suitable and a full board of trustees to look after their interest in this property, and that interests so large should not be left in the control of one person alone—that the deed was originally to three—and good faith to the creditors of your orator, the cestui que trust, requires that the office should be full.

Your orator charges that said Ketchum has proved himself an improper person to manage this property as trustee thereof; that he has been unfaithful to said trust.

1105 It also charges that said Morris Ketchum is an alien enemy; said property is wholly in the Confederate States, and consists of real property and franchises, and personal property whose chief value arises from its connection with the realty, and can be properly managed only by resident citizens of these Confederate States.

11. Your orator prays that said Morris Ketchum may be removed from his said position of trustee under the said deed of trust herein described; that the vacancies created by the deaths of John J. Palmer and William R. Hallett may be filled, and that some suitable person be also appointed trustee in the place of said Morris Ketchum, and that said trustees so to be appointed be clothed with all the powers conferred by said deed upon the said Ketchum, Palmer, and Hallett.

Your orator prays that said Morris Ketchum be made a party hereto,
and that publication be made as provided by the statute in the case of
application for the appointment of trustees, and for such other
1106 and further relief as may be consistent with equity and the nature of the case, and, as in duty bound, will ever pray, etc.

HAMILTONS & OWEN,
Sol'rs Compl't.
GEORGE N. STEWART,
Sol'r for Compl't.

Comes Milton Brown, who being duly sworn, saith he is president of the Mobile & Ohio Railroad Company; that said Morris Ketchum is of mature age, and is a resident citizen of the State of New York, in the United States of America; and, further, that he, said affiant, has read the foregoing bill of complaint, and the allegations thereof are true to the best of his knowledge, information, and belief.

MILTON BROWN.

Sworn to and subscribed before the undersigned, this 3d January, A. D. 1862.

F. M. BRINDLEY,
J. P. M. C.

(Copy.)

Whereas William R. Hallett and J. J. Palmer, two of the trustees under our first mortgage executed to secure our sterling bonds, have departed this life; and whereas Morris Ketchum, the surviving trustee, has attempted and, so far as in his power, practiced gross fraud
1107 on this company and the bondholders; and whereas said Ketchum is a citizen of the United of New York, and an alien enemy, and in all respects disqualified and unfit to act as a trustee:

Therefore, resolved, That our counsel be instructed to apply to the chancery court, or such court as may be most suitable, to have three trustees appointed to act under said mortgage, with power to order sales of land, directing, if they deem it best, the taking of sterling bonds in payment, and to make deeds for lands already sold and to be hereafter sold, and to do all and everything necessary and proper to be done in the due execution of said trust; and be it further resolved that we recommend the appointment of Charles Walsh, of Alabama, George W. Young, of Mississippi, and Alexander Jackson, of Tennessee, said trustees under said mortgage.

I certify the foregoing to be a true copy of a resolution passed by the board of M. & O. R. R. Co. at a meeting of said board on 5th December, 1861.

Jan'ry 6th, 1862.

{ CORPORATE SEAL }
{ M. & O. R. R. CO. }

J. P. RUTLAND,
Sec'ty.

1108 MOBILE, *Jan'y* , 1862.

I hereby acknowledge myself complainant's security for the costs in this cause.

M. H. BLOODGOOD.

Filing.

Filed January 6th, 1862.

JNO. M. TAYLOR,
Register.

Exhibit to bill.

Printed copy deed of trust.

1109 *Order of publication.*

AT RULES, REGISTER'S OFFICE,
Mobile, Ala., January 6th, 1862.

This being a regular rule-day of the court of chancery aforesaid, the following order was made by the register of said court in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE. } # 2480.

At rules, register's office, Mobile, January 6th, 1862.

In this cause it appearing that the defendant, Morris Ketchum, trustee, is of mature age, and that he resides beyond the limits of the State of Alabama, to wit, in the city and State of New York, in the United States of America, it is ordered that he answer or demur to the allegations of the bill of complaint on file, on or before the 1st day of March next.

It is further ordered that this order be published once a week for four consecutive weeks, in the Mobile Daily Tribune.

Attest:

JNO. M. TAYLOR,
Register.

1110 *Decree pro confesso.*

AT RULES, REGISTER'S OFFICE,
Mobile, Ala., March 30th, 1863.

This being another regular rule day of the court of chancery aforesaid, the following order was made by the register of said court in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE. }

At rules, register's office, Mobile, March 30th, 1863.

In this cause complainants, by their solicitors, presents the printed notice of publication heretofore made against the defendant, Morris Ketchum, and proves, by affidavits thereto attached, that said publication was regularly made, published once a week for four consecutive weeks in the the Mobile Daily Tribune (a newspaper printed and published in the city of Mobile), and that a copy thereof was posted up at the court-house door of Mobile County, all within twenty days of the date of this order of publication; and it appearing that said defendant has failed to appear and plead, answer, or demur to the allegations of the bill of complaint in this cause, it is ordered that the allegations of the same be taken as confessed against him. 1111

Attest:

JNO. M. TAYLOR,
Register.

Decree of reference, &c.

At a special term of the court of chancery aforesaid, held in the city of Mobile, commencing on the first Monday of April, 1863, being the 6th day of said month, honorable Nathaniel , chancellor of said court, present and presiding, and on the 7th day of April, 1863, the same being a regular day of said special term, the following decree was rendered in this cause, to wit:

MOBILE AND OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

This cause was submitted on the bill, exhibits, and decree pro confesso. The object of the bill is to appoint trustees under a certain deed of trust exhibited by the complainant, of the date of 1st November, 1853, a copy of which is attached to the bill, in place of William R. Hallett and John J. Palmer, who are dead, and also to remove the surviving trustee, Morris Ketchum, for breaches of duty as trustee,
1112 and also because he is an alien enemy and incompetent to act.

The court is satisfied of the death of said Palmer & Hallett, and of the fact that said Ketchum is an alien enemy; it is therefore ordered, adjudged, and decreed that said Ketchum be removed from his said trusteeship, and further, that the prayer of the bill be granted for the appointment of trustees in place of said Ketchum, Hallett and Palmer, be granted.

And the said complainant suggests as proper persons to be appointed in place of the former trustees, Charles Walsh, George H. Young, and Alexander Jackson, all citizens of the Confederate States. It is accordingly referred to the master to ascertain and report whether the above-named parties be suitable persons to receive the said appointment of trustees aforesaid.

Master's report.

And on the 8th day of April, 1863, the same being still another day of the said special term of said court, the following report was read by the master in this cause, to wit:

1113 MOBILE & OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

The master came into court and reported as follows:

This cause comes before the master with instructions to ascertain and report whether Charles Walsh, George H. Young, and Alexander Jackson are suitable persons to be appointed trustees in place of William R. Hallett and John J. Palmer, former trustees, who are dead, and of the defendant, who has been removed.

The master reports that he gave notice of the time and place of considering the matter referred to him, and was attended by complainant's solicitors; that he examined reliable witnesses introduced, and is satisfied from their testimony that the said Walsh, Young, and Jackson are fit and proper persons to be appointed trustees under the deed of November 1st, 1853, and in place of the former trustees, Hallett, Palmer, and Ketchum.

Respectfully submitted.

JNO. M. TAYLOR, *Master.*

April 8th, 1863.

And thereupon it is ordered that said report lie over one day.

1114 *Final decree.*

And on the 9th day of April, A. D. 1863, the same being another of the special April term aforesaid, honorable Nathaniel W. Cocke, chancellor of said court, present and presiding, the following decree was rendered in this cause, to wit:

MOBILE & OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

In this cause the master, in pursuance of the former order of this court, having made his report at a former day of this term, and the same having been read in open court more than one day, and no exceptions being filed, it is ordered that said report be in all things confirmed. It is thereupon ordered, adjudged, and decreed that said Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, who consent thereto, be appointed trustees under the deed described in the bill of complaint, in room and in place of Wm. R. Hallett and John J. Palmer, former trustees, deceased, and of 1115 Morris Ketchum, former trustee, who has been removed by decree of this court.

It is further ordered, adjudged, and decreed that said trustees hereby appointed be clothed with all the rights, powers, and privileges named in said deed of trust, and that they be charged with all the duties by said deed imposed upon the trustees in the same manner and to the same extent as if they were the original appointees, and that they proceed and execute the trusts declared in said deed, according to the terms and provisions thereof; and as to all other matters of complaint and prayers in said bill contained, it is ordered that said bill be dismissed without prejudice to complainant's rights to relief therein, or to any matter of account.

It is ordered that the complainant pay the costs of this proceeding.

1116 THE STATE OF ALABAMA,
Mobile County:

I, Joseph Hodgson, register of the court of chancery, for the first district of the southern chancery division of the State of Alabama, do hereby certify that the foregoing twenty-three pages, together with the printed pamphlet attached, contain a full, true, and complete transcript of the record and proceedings had in a certain cause heretofore pending in said court, wherein the Mobile and Ohio Railroad Company, a corporation, is complainant, and one Morris Ketchum is defendant, as the same now appears of record in my office.

I further certify that the annexed pamphlet, marked "Exhibit to Bill," is, from pages to inclusive, a duplicate and fac-simile copy of the pamphlet filed in said case and now on file as one of the papers thereof.

Witness Joseph Hodgson, register of the court of chancery, at Mobile, this 6th day of April, A. D. 1876.

[SEAL CHANCERY COURT.] JOSEPH HODGSON,
Register.

1117 (Copy.)

D.

NEW YORK, 30 *March.*

DEAR SIR: I have to acknowledge the receipt of your esteemed favor of the 27th ult., which reached me when I was absent in Mobile.

I only returned from there a few days since. I am giving my careful personal attention to the affairs of the Mobile and Ohio Railroad. The present situation is as follows:

As you are aware, in May last, on the demand of some of the holders of the first-mortgage bonds and coupons, the latter being in default, the road was delivered into the custody of the trustees of the said mortgage, Duncan & Elliot, who subsequently applied to the circuit court of the United States, and were clothed by it with the powers of receivers, which consequently placed the road under the protection of the said court, thus freeing it from the interference of local courts, and affording a complete protection until the claims at issue shall be determined. This was of vital importance, for there is no estimating the confusion and damage that would have arisen had this property become subject to
the jurisdiction of such local courts; and for this purpose it was
1118 also essential that the proceedings should be taken ab initio in
the United States court, it being the highest authority.

I enclose you herein the original order (marked "A,") with the supplemental order in Tennessee and Kentucky (marked "B").

When the road came into my possession, as trustee, it had a large floating debt, partially unsecured; but of this we were instructed by the court to pay a portion, namely, that due for labor and supplies maturing within three months of the beginning of these proceedings. At that period of the year, however, the receipts of a southern railroad are at their minimum, and the experience of the Mobile & Ohio Railroad is, that the receipts of those months barely equal the current expenses, and this was especially the case in 1875.

With Southern railroads the summer months is the period when, the days being long, and the road comparatively free from traffic, extraordinary repairs, if required, should be made, and under all circumstances these roads should then be put in good condition for the pressing business of the autumn months, as such repairs and betterments can be then
most economically done.

1119 It became, therefore, necessary to apply to the court for authority to borrow money to make the payments ordered by the court, and such authority was also intended to cover the making of extraordinary repairs, which latter should and would have been made had not I been notified by some of the parties in interest that they were entirely opposed to such extraordinary repairs, however requisite, being paid out of other than the receipts of the road itself. I accordingly availed of the authority granted by the court to a limited extent, for I appreciated these objections to receivers' liens, and as the betterments were not absolutely necessary, I preferred to conform to the views of the parties objecting. The order permitting the issuance of receivers' certificates is enclosed (marked "C").

The result has been that I did not issue certificates under this authority to any great extent at any one time, and they are now all repaid, and will not be reissued.

I also enclose (marked "D") the report to the court of the operations of the road to October 31st, 1875, and ere long I expect to issue a report
of its operations for the entire year of 1875, both under the man-
1120 agement of the company from January 1st to May 1st, 1875, and
subsequently from May 1st to December 31st under the management of the trustees.

The statement will show:

Gross receipts for 1875	$1,914,342
As against " " 1874	2,391,016
Decrease	476,674

This decrease is to be accounted for, among other causes, by the general depression existing throughout the whole country; by the fact that after the first of January, 1875, the shipments of cotton almost entirely ceased, the receipts of November and December, 1874, showing a relative increase, and showing also that the crop of that season had been hurried to market; by the fact also that in the autumn of 1875 the rivers competing with the Mobile & Ohio Railroad were in navigable order from the middle of September, while in 1874 they were navigable for only a very limited period; and by the reductions in rates which have been made by the trustees, as it was hoped that such reductions would increase the volume of business and attract settlers on the line of the road; and lastly, though by no means least, by the loss in business resulting from the extension of the N. O., St. L. & C. R. R., from Jackson, Tennessee, to Cairo.

1121 The opening months of 1876 are encouraging, showing that even at these reductions the business is improving, and the gross receipts show a monthly increase over last year.

The experience of other roads also show that the decrease of 1875 was not exceptional.

As furnished in the text of the enclosed report, I am now engaged in putting the road in good order and remedying many of the neglects of past years. The important expenditure to accomplish this is mainly in the cost of new rails.

As you are aware, the Mobile & Ohio Railroad is an unballasted road, there being no gravel or stone ballast on its line, and to obtain such would entail considerable expense—an expense which should sooner or later be incurred, but which can for the present be deferred.

Under this state of things it is imperative to the economical operation of the road that it should be put into good serviceable condition. The road-bed, originally well constructed, had been allowed to somewhat deteriorate. The ties are in fair condition, but the iron is defective and badly worn.

To remedy this it will be necessary to relay about one hundred
1122 and twenty miles, and I am engaged in laying from six to seven thousand tons of iron during the coming summer. The same expenditure in 1877 would repair the entire road, and thereafter the replacing of ordinary wear and tear—say three thousand five hundred to four thousand tons per annum—would maintain the road in excellent condition; and such a result would insure its economical working more effectually than by any other course, especially in repairs to rolling-stock and machinery, which, you will notice, are at present large.

To exemplify this, let us take ten miles of road, the first mile being perfect in every particular, the second mile being less so, and so on, until the last mile shall be a common dirt road; now, start a first-class engine on the first mile, and say that it can haul a train of forty cars at a minimum cost, the second mile it would be obliged to drop five cars, and the cost would increase, and so on until the last mile, at which point it would not be able to haul itself, no matter at what expenditure. So much for mere traction; but on smooth iron and good road-bed the

engine would run with scarcely appreciable wear. As the iron and road
became worse and rough the machinery and cars would pound
1123 themselves to pieces, while destroying the road itself still further;
in fact, it really needs no argument to prove the entire economy
of such expenditure. Thus much are the trustees doing in the care of
the property.

Next, as to what shall be done in reorganizing or taking the property out of the custody of the court.

No one contends that it is the legitimate duty of a court to run and operate a railroad, and it can only be excused for so doing pending the determination as to who are the real owners of the property when that is questioned; and pending the legal proceedings necessary to a judicial foreclosure and sale, or until the success of negotiations for a reorganization without a foreclosure.

The trustees of the first mortgage, claiming their rights, have commenced proceedings for foreclosure and sale of the property, and the distribution of the proceeds to the parties entitled to the same. The first step was to file a bill for that purpose, making all the parties interested parties to the bill. This has been done.

In the answer of some of the parties defendant, it is set up that there
are questions as to who are entitled to the proceeds of the property;
accordingly, the court has appointed a master to take the evi-
1124 dence submitted, and to report to the court the nature of such
evidence. I enclose a copy of the order which explains itself,
marked "E."

Previous to this, however, some of the holders of the floating debt, amounting in the aggregate to about five hundred and fifty thousand dollars, secured by a pledge of the securities of the company, including some of the first and second mortgage bonds the property of the company, applied to the trustees to have their claims recognized as preferred claims, claiming, amongst other things, that the money had been so borrowed for the purpose of enabling the company to pay the interest on its bonds and to purchase material and supplies necessary to the life and existence of the road. The trustees, having no discretion to deal with these claims, appealed to the court, and the court appointed a master to report (marked "F") thereon, and he has so reported, his report being now on file subject to exceptions of any of the parties interested.

There is some force in the argument used, more especially where it
would result in turning over to the trustees valuable securities affect-
ing their trust, which would otherwise be sacrificed to the detri-
1125 ment of the trust itself; and another important consideration is,
that this debt is held by parties residing on the line of, and who
are daily dealing with, the road; and if it can be disposed of by compro-
mise for a small percentage it would undoubtedly be most desirable.
This, however, is a matter for the court to determine, and the trustees
and receivers must and will abide by its decision.

You will observe that the master is required to report in October next; the regular sessions of the United States court are in June and December, and the time fixed is the earliest possible within which the report can be acted upon. Arguments may be made before the master or upon exceptions taken to his report.

You will also observe that the master is asked to report any plan of reorganization which shall have the endorsement of three-fourths of the parties interested.

This property must, some day or other, be reorganized, and it will either be by the purchaser who shall purchase under foreclosure sale in

his own right, or by the purchaser who shall purchase under foreclosure sale for a scheme of reorganization which shall have been agreed upon, or by a scheme of reorganization, which, with the consent of all parties,
1126 shall o'tain from the court the surrender of the property before and without a foreclosure sale.

This latter is, of course, the most to be desired, as the simplest and speediest. There may be difficulties in the way of its accomplishment, but with the assistance of the court under these proceedings these difficulties may be overcome.

My first effort has been to secure the good management of the property, so that when it has resorted to the sanction of the court by purchase or amicable arrangement it will be in condition to avail itself of the new life which a new organization will bring to it.

As an officer of the court, I regard myself as stakeholder, as it were, for all the parties in interest; but as trustee of the first-mortgage bonds, I do not hesitate to urge, in the interest of those whom I represent, the recognition and payment of their just dues, and with the view of reaching this these proceedings in foreclosure have been commenced.

Under the most favorable circumstances, such a foreclosure suit, involving so many adverse interests, is subject to many and tedious delays, but the proceedings are being pressed with all the speed possible.

As I have before stated, it seems to me that the best result can be
1127 reached by means other than hostile foreclosure; but, while I am of this opinion, my duty as trustee compels me to proceed with such foreclosure with all diligence, while at the same time expressing a hope that its final consummation will be unnecessary, or, if it be necessary, that the purchase under it be made for the purpose of a reorganization which shall have been agreed upon by and between all or a majority of the parties at present interested; and it is with this hope that the board, in their circular of March 8th, which I enclose, have suggested that the several classes of securities be represented by committees, whose duty it shall be to provide a scheme and recommend it for adoption; such recommendation would without doubt be accepted by all.

The chartered rights and franchises of the Mobile and Ohio Railroad Co., granted within the States of Alabama, Mississippi, Tennessee, and Kentucky, are extremely valuable, and I do not myself doubt but that they would pass to a purchaser under foreclosure. The fact, however, that in some quarters there is an inclination to test this question is one of the many considerations which induced me to urge so strenuously an amicable readjustment, if such be possible.

The circular of March 8th gives the general principles which
1128 should govern such reorganization, and I am in hopes it will result in the adoption of some practical scheme.

I remain, yours, truly,

W. BUTLER DUNCAN,
Trustee and Receiver M. & O. R. R.

MARCH 31, 1876.

To W. BUTLER DUNCAN,
Trustee and Receiver of the Mobile and Ohio R. R. Co.:

We have read your reply, under date of 30 instant, to the inquiry as to the present and future prospects of the Mobile & Ohio Railroad, and approve of its contents, and would recommend its publication for the information of parties interested.

MORAN BROTHERS,
JAMES TINKER,
PLOCK & CO.,
G. T. BONNER & CO.,
H. C. HARDY,
And others.

1129 D.

U. S. circuit court, southern district of Alabama.

WILLIAM B. DUNCAN AND ANDREW F. ELLIOT, trustees, etc.,
vs.
THE MOBILE & OHIO RAILROAD CO. ET AL.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD CO. ET AL.

The undersigned holders of the first-mortgage bonds of the Mobile & Ohio Railroad Company having learned of the matters in controversy in these two causes, and of the application of Morris Ketchum to remove Mess'rs W'm Butler Duncan and Andrew Foster Elliot, as trustees and receivers under said first mortgage, approve the appointment of said Duncan & Elliot as such receivers, and protest against their removal and the substitution of any appointee of the said Morris Ketchum as subreceiver, believing that such change would be injurious to the interests of all classes of creditors of the Mobile & Ohio Railroad Company.

New York, 1st April, 1876.

1130 (Signed) MORAN BROTHERS,
(Holders of $225,000 1st mg. bonds; 29,500 do. sub. bonds.)

In the presence of—
JAMES H. FAY.

PLOCK & CO.,
(Representing $185,000 1st mg. bonds; 5,400.)

Witness—
JAMES H. FRY.

A. ISELIN, JUNIOR,
($87,000 1st mtg.; $3,000 int. b'ds.)

Witness—
JAMES H. FRY.

E. PAVENSTEDT & CO.,
(Representing about $180,000 1st mortgage.)

Witness—
JAMES H. FRY.

JAMES TINKER,
(Representing $5,000 1st mtg. bonds, & over $[illegible]00,000 int. bonds.)

Witness—
JAMES H. FRY.

REC. 879——25

G. J. BONNER & CO.,
(Representing over $100,000 1st mtg. bonds; over 30,000 1st mtg. int. bonds.)

Witness—
JAMES H. FRY.

W. H. HAYS,
(Holder of $100,000 do.)

Witness—
JAMES H. FRY.

F. D. TAPPAN,
Pres't Gallatin Nat. Bank.
(31,000 1st M. £ bonds; 40,000 int. bonds.)

Witness—
JAMES H. FRY.

H. O. HARDY,
(Representing over 250,000 bonds, principally 1st mortgage.)

Witness—
JAMES H. FRY.

SAM. F. PHELPS,
(About $20,000.)

Am't $1,390,900.

1131 STATE OF NEW YORK,
City and County of New York, ss:

On this first day of April, 1876, before me personally came James H. Fay, to me known, and known to me to be the subscribing witness to the execution of the foregoing instrument, who, being by me duly sworn, did depose and say, that he resides in the city of New York; that he knows Charles Moran, of the firm of Moran Brothers; Otto Plock, of the firm of Plock & Co.; Adrian Iselin, junior, G. Mosle, of the firm of E. Pavenstedt & Co.; James Tinker, George T. Bonner, of the firm of George T. Bonner & Co.; W. H. Hays, F. D. Tappen, president of the Gallatin National Bank; H. O. Hardy, who executed the foregoing instrument; that he was present and saw them sign and execute the same, and that deponent thereupon became a subscribing witness thereto.

[SEAL.]

JOSEPH GUTMAN, J'R,
United States Commissioner, S. D. N. Y.

1132 E.

50 WALL ST., *April 1st*, 1876.

W'M B. DUNCAN, Esq., present:

DEAR SIR: I have signed the petition to the court approving your being retained as receiver of the Mobile & Ohio R. R., and disapproving the substitution of any appointee of Morris Ketchum as sub-receiver for the bonds held by Sir Curtis Sampson & my firm.

I am not specifically authorized to act for Messrs. Crawshay, Forman, & other large London bondholders, but if it became necessary to obtain their signatures to this paper I should recommend them to sign it, and I have no doubt they would do so.

Yours, truly,

JAMES TINKER.

1133 **(Copy of bond.)**

No. .] UNITED STATES OF AMERICA. [No. .

First-mortgage bond of the Mobile and Ohio Railroad Company.

£225 st'g.] Six per cent. bond of £225 sterling for superstructure and equipment of their railroad from Mobile to the Ohio River. [£225 st'g.

This certifies that the Mobile & Ohio Railroad Company is indebted to , or bearer, in the sum of two hundred and twenty-five pounds sterling, for value received. In consideration whereof the said Mobile and Ohio Railroad Company do hereby promise and agree to pay to , or bearer, the said sum of two hundred and twenty-five pounds sterling, on the presentation of this bond at the counting-house of George Peabody & Co., London, on the 1st of November, A. D. 1883. And the said Mobile and Ohio Railroad Company do hereby promise and agree to pay interest thereon at the rate of six per centum per annum, semi-annually, on the first days of May and November, in each and every year ensuing the date hereof, until said principal sum shall be paid, upon the presentation and delivery of the coupons
1134 hereto annexed, at the counting-house aforesaid, as they severally become due and payable.

This bond is one of six thousand, of like tenor and date, issued by the authority of the board of directors of the said Mobile and Ohio Railroad Company, and in accordance with its charter, for a loan of thirteen hundred and fifty thousand pounds sterling for the superstructure and equipment only of said road. And the holder is entitled to the security to be derived from a deed of trust, bearing even date herewith on the said railroad, its rights and franchises of every description, on the real estate of said company, and on the lands donated by act of Congress of date 20th September, 1850, to the States of Illinois, Mississippi, and Alabama, to aid in the construction of a railroad from Chicago, State of Illinois, to Mobile, State of Alabama. Said lands have been selected and located to the extent of 1,156,658 acres, as described in the certificate of the General Land Office, approved and certified by the honorable Secretary of the Department of the Interior at Washington, 4th February, 1853. The fee of said lands has been transferred by the legislatures of Alabama and Mississippi to this company, with full power and authority to so dispose of them as shall secure the construc-
1135 tion of said railroad, as will more fully appear in said deed of trust, executed and delivered to John J. Palmer and Morris Ketchum, of New York, and William R. Hallett, of Mobile.

The said Mobile and Ohio Railroad Company further agree that this bond, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery.

In witness whereof the said railroad company have caused this bond to be signed by their president and treasurer, and the corporate seal to be affixed at their office, in the city of Mobile, this first day of November, A. D. 1853.

[SEAL.] SIDNEY SMITH.
President.

A. F. IRWIN, *Treasurer.*

1136 **(Copy of endorsement on the bond.)**

£225 sterling.

UNITED STATES OF AMERICA.

Mobile and Ohio Railroad Company.—Bonds for superstructure and equipment.

Six per cent. interest, payable semi-annually. Coupons, each £6 15s., payable at the counting-house of George Peabody & Co., London, £6 15s. on 1st of May and £6 15s. on 1st November.

The principal secured by a first mortgage of railroad, equipments and chartered rights, and by a deed of trust, viz:

100,000 acres town-sites and 1st quality land, worth 42 shillings per acre	£210,000
1,056,658 acres of other lands, various qualities and heavily timbered, worth 10 shillings per acre	£528,329
Subscriptions partly paid, and all payable by 1st January, 1855, in cash and completed contracts	£924,264
1137 Total value of lands and cost of railroad, exclusive of Tennessee loan of £196,000, is	£2,990,000
Total issue of bonds is	£1,350,000

Countersigned:

MORRIS KETCHUM,
J. J. PALMER,
W. R. HALLETT,
Trustees.

Each bond may be used in the purchase of any of the company's land designated for sale, and at the selling price. The proceeds of all lands sold, except for bonds, to be invested by the trustees as a sinking fund, for the redemption of the bonds.

INTEREST SECURED

By a pledge of the surplus income from the earnings of the completed portions of the road and the other property of the company.

Trust deed recorded in the office of records of Mobile County, State of Alabama; an authenticated copy of the same in the hands of George Peabody & Co., London.

1138 *Exhibit to bill.—Copy of deed of trust.*

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and fifty-three, between the Mobile and Ohio Railroad Company, of the first part, and Morris Ketchum and John J. Palmer, of the city of New York and State of New York, and William R. Hallett, of the city of Mobile and State of Alabama, of the second part, witnesseth:

Whereas the legislature of the State of Alabama passed an act of incorporation, approved the third day of February, 1848, creating certain associates therein named and their survivors a body politic and corporate, by the name of Mobile and Ohio Railroad Company, and by

that name to sue and be sued, plead and be impleaded, to make and have a common seal, and the same break, alter, and renew at pleasure; vested with all powers, privileges, and immunities which are or may be necessary to carry into effect its purposes and objects; authorized and empowered to locate, construct, and finally complete a single,
1139 double, or treble railroad or way from some suitable point in the
city of Mobile, in a western or northwesterly direction to the mouth of the Ohio River, in such route as shall be deemed most expedient, and to transport, take, and carry property and persons upon said railroad or way by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them which said company may choose to apply; and for the purpose of constructing said railroad or way, the said company is authorized to lay out the road, not exceeding one hundred feet wide, through the whole length; and for the purposes of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation in relation to the business of said company, and also to make joint stock with any other railroad corporation.

Further, the State of Mississippi incorporated the said Mobile & Ohio Railroad Company by act of its legislature, approved the seventeenth day of February, 1848. The State of Tennessee did also incorporate
1140 said Mobile and Ohio Railroad Company, by act of the legisla-
ture, approved the twentieth day of February, 1848; and also the State of Kentucky invested said Mobile and Ohio Railroad Company with corporate rights by an act of its legislature, approved the twenty-sixth day of February, 1848, constituting the Mobile and Ohio Railroad Company a full and complete corporation through the said States, authorized to purchase, hold, and dispose of real and personal estate; to borrow money; to make contracts for the loan of money; and to give evidence of debt, and securities for the payment of the same, by pledge, mortgage, or otherwise, as it shall deem necessary and proper.

And whereas said Mobile and Ohio Railroad Company, in pursuance of the authorities vested by said charters, have surveyed and located the line of said road from the city of Mobile to or near the junction of the Mississippi and Ohio Rivers, secured the rights of way, obtained depot-grounds and valuable assets, all of which are of record in the records of said company, and of record in the counties intersected.

And whereas the said roadway is under contract for the com-
1141 plete work of the road bed from its respective termini, and in pro-
gress of construction, the said Mobile and Ohio Railroad Company, parties of the first part, resolved by vote of the board of directors, and in pursuance of the power and authority in said company vested, to raise a sum of money not exceeding six millions of dollars for the purpose of completing said road, viz, the purchase of the iron and laying the same, the necessary turnouts, depots, and equipments; and for that purpose to execute, issue, sell and transfer the bonds of said company in sums of two hundred and twenty-five pounds sterling each, of even date with these presents, payable in thirty years from date, each with coupons attached for interest, payable semi-annually; each coupon being for £6 15s. sterling; both the principal and coupons, and interest on said bonds until paid, payable at the counting-house of Geo. Peabody & Co., bankers, in London, England, each of said sterling bonds being the same as one thousand dollars, money of the United States of America, and not exceeding six thousand bonds, each

to be numbered respectively from number one to six thousand inclusive,
and, for security for the payment of said bonds, to transfer
to the said parties of the second part, all and singular, all
1142 the rights and franchises of said company, together with all its
personal property of a fixed character, real estate, including its
depots, warehouses, lots in town and country, and especially all lands
donated by act of Congress, under date of the twentieth day of September,
one thousand eight hundred and fifty, transferred in fee-simple
to the said company, party of the first part, by act of the legislature of
the State of Alabama, approved December first, one thousand eight hundred
and fifty-one; by act of the legislature of the State of Mississippi,
approved January twenty-eight, one thousand eight hundred and fifty-two;
said lands having been duly selected, set apart, and confirmed to
said railroad company, party of the first part, and designated by described
tracts, as will appear by the act of the Commissioner of the General
Land Office at Washington, certified, affirmed, and ratified by the
act of the honorable the Secretary of the Department of the Interior,
one of the executive departments of the Government of the United States
of America, dated Washington, D. C., February the fourth, A. D. one
thousand eight hundred and fifty-three:

Now, therefore, this indenture further witnesseth, that the said
1143 Mobile and Ohio Railroad Company, the better to secure the payment
of said bonds, and every part thereof, with interest according
to the tenor thereof, and in consideration of the sum of five dollars
unto the said company well and truly paid by the said Ketchum, Palmer,
and Hallett, at or before the ensealing and delivery of these presents,
the receipt whereof is hereby acknowledged, have granted, transferred,
set over, and conveyed, and by these presents do grant, transfer, set
over, and convey unto the said Ketchum, Palmer, and Hallett, the survivors
or successors of them, in fee-simple, all and singular of the rights
and privileges of every name and kind, as hereinafter set forth, being
the first and only conveyance of title, grant, or mortgage, hereby guaranteeing
and warranting the described items, assets, and real estate,
free from all liens or incumbrances, done or suffered to be done by the
said party of the first part. The said items as set forth are as follows:

All the said Mobile and Ohio Railroad lying between its respective
termini, constructed and to be constructed, together with all and singular
the railways, rails, bridges, fences, warehouses, fixtures, privileges,
1144 rights, real estate, and all other property owned, and which
may hereafter be owned by said company, including the said lands
donated by act of Congress hereinbefore referred to, and which reference
is to be taken as a full and correct description of the lands derived
from Congress, amounting, as by the certificate of the Department of
the Interior, to 419,528$\frac{56}{100}$ acres in the State of Alabama; to 737,130$\frac{36}{100}$
acres in the State of Mississippi—total, 1,156,658$\frac{92}{100}$ acres; saving and
excepting therefrom so much as lies in township four south, range one
west, of lands subject to entry in the St. Stephen's land office, Alabama,
being 692$\frac{78}{100}$ acres, more or less; saving and excepting also the lots and
tracts in the county of Mobile, State of Alabama, outside of the line of
the railway, outside of its depots, and outside of the corporate limits of
the city of Mobile, being lots and lands derived by private purchase,
not yet fully paid for, and not included in the list of lands in Mobile
County, derived under and by the act of Congress; and saving and
reserving the rights and liens that may attach to the roadway and
construction thereon, in favor of the State of Tennessee, which will
exist and attach as a prior lien by statute of that said State, in the

1145 **event of said State aiding in the construction of so much of the roadway as lies in said State, viz, one hundred and eighteen miles, which aid is provided for by law of that State, and if used by said Mobile and Ohio Railroad, the said prior lien in favor of said State will be to the extent of said State aid, not exceeding ten thousand dollars per mile.**

To have and to hold the said premises hereinbelore set forth to the said Ketchum, Palmer and Hallett, their survivors or successors, for the benefit, security, and advantage of the person or persons, or corporations or any other party who shall or may be holders of the before-described bonds, or any of them, conditioned as follows:

The said Ketchum, Palmer and Hallett shall at once have possession and control of the lands donated by act of Congress, and set forth in the before mentioned certificate of the Secretary of the Interior of February fourth, one thousand eight hundred and fifty-three, for 1,156,658 $\frac{92}{100}$ acres, and any other lands that may be obtained for the said company, by the present or by future act of Congress, with authority to devise and determine rules of management, of sale, of investing the net
1146 **proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds, said Ketchum, Palmer and Hallett rendering an exhibit and account of their doings on or before the first days of January of each and every year during the period of the trust herein made to the said parties of the first part.**

The said Ketchum, Palmer and Hallett shall have full authority to appoint an agent or agents to attend to said land business, who shall account for his or their doings to them, paying over to them all the proceeds of sales, or rents, or profits derived from said lands.

It is provided, however, that unless the said railroad company should be in default on any obligations connected with said bonds, no sale of said lands shall be made except by and with the advice and consent of said company.

The said party of the second part, themselves, or regularly constituted attorney, are hereby vested with authority to issue proper and sufficient deeds or muniments of title. As to other items of assets of real estate, tolls, or income of said company, except the said company become in default for the payment of said bonds or interest, or any portion thereof; in such case the said party of the second part is hereby
1147 vested with full authority to take possession and control of all and singular the entire estate and properties of whatsoever name or kind, and hold the same for the benefit of any and all creditors, with such other action and disposition as shall be equitable to all concerned, provided the said party of the second part shall not claim to take such possession and control, unless said company remains in default of payment of the said bonds or interest for the space of three months after being due and payable.

The Mobile and Ohio Railroad Company further covenant and agree to make to said party of the second part, their survivors or successors, any further assurance or instrument as may be necessary, at any future time, to carry out the equitable intentions of this deed; and the said company, for themselves, their successors and assigns, do hereby covenant and agree with the said Ketchum, Palmer and Hallett, or their successors, in behalf of the bondholders, that the money received on the said bonds shall be applied in good faith, on the construction and completion of said road, and putting the same into operation.

And on the failure of said company to do and perform any and
1148 all the covenants herein agreed, the said Ketchum, Palmer and

Hallett, or survivors or successors, upon the request in writing of any one or more of the bondholders, may and shall take actual possession of all said railroad, and the other property and effects of said company hereby conveyed, transferred, and assigned, or so intended to be, and through the agency of such person or persons as they may from time to time appoint, may receive and collect the tolls, incomes, and profits of the same, for the purpose of the security hereinbefore declared, and may sell and dispose of the said road and other property hereby mortgaged, conveyed, or assigned, or so intended to be, and all benefit and equity of redemption of the said company therein, always with the benefit of franchise, and subject to the conditions thereof, at public auction, giving reasonable public notice of the time and place of sale, and as the attorney or attorneys of the said company for that purpose, by these presents duly constituted, to make and deliver to the purchaser or purchasers thereof, good and sufficient deed or deeds of conveyance for the real estate, in fee simple or otherwise, according to the title of said company therein, and good and proper transfer and assignments of
1149 the personal property, and out of the money arising either from
the income or profits of the said road and other mortgaged, conveyed, or assigned property or effects of the sale thereof, after deducting the expenses incurred in carrying on the business of the road, and in keeping the same in repair, together with the costs, charges, and counsel-fees incurred in their proceedings, and a reasonable compensation to themselves for their services, in case of such sale, to apply so much of the residue as may be necessary to pay the principal and interest, which may be due on said bonds issued as aforesaid, rendering the balance of such moneys, if any shall remain, to said company.

And the sale so made shall be a perpetual bar against the said parties of the first part, and persons claiming by, from, or under them. Provided, however, and it is hereby expressly understood and agreed, that neither of them, the said Ketchum, Palmer, and Hallett, or their successors or assigns, shall in no manner be liable or responsible for any act of the other to which he does not expressly assent; and that they shall be accountable only for the exercise of reasonable care and diligence in their management in the premises.

1150 And it is further covenanted and agreed between the said parties
that if either of them, the said Ketchum, Palmer, or Hallett, shall at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company and the said Ketchum, Palmer, and Hallett, or either of them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver all and singular such other and further instruments or assurances as may be necessary to enable such person or persons so selected to act in the execution of these presents. But until such selection of some person or persons to fill such vacancy or vacancies, and the execution of the papers requisite to enable him or them to act, the act or acts of the other shall, notwithstanding such vacancy, be in all respects legal and valid.

And it is expressly understood that the conveyance made by this indenture is only on and for the present rights, interest, and property, and in the future to be acquired rights, interest, and property, and appurtenances of the parties of the first part, as do or may exist on the line of said railroad from the city of Mobile to the mouth of the Ohio River.

1151 And it is hereby further provided, and these presents are upon
the express condition, that, upon the payment or satisfaction of

the principal and interest of the aforesaid bonds, the estate hereby granted and conveyed to Ketchum, Palmer, and Hallett, their survivors or successors, and the property and effects mortgaged, conveyed, or transferred to them shall cease and become void; and the said company shall thereupon be fully and immedeately reinvested with the same, both in law and equity, and in fact, without any entry or other act whatever.

In witness whereof the parties of the first part have caused these presents to be acknowledged by their president and attested to in their behalf by their president and secretary, and their common seal thereunto affixed; and the said parties of the second part hereunto set their hands and seals the day and year first above written.

[SEAL.]

President,
MOBILE AND OHIO RAILROAD COMPANY.

Secretary M. & O. R. R. Co.

We accept the above trust.

Trustees.

Filed April 7th, 1876.

N. W. TRIMBLE, *Clerk.*

1152 *Order overruling motion to remove receivers.*

In the circuit court of the United States for the southern district of Alabama.

SATURDAY MORNING, *April 8th, A. D.* 1876.

Court met pursuant to adjournment. Present, Hon. William B. Woods, judge presiding.

MORRIS KETCHUM
vs.
WILLIAM BUTLER DUNCAN, ANDREW FOSTER Elliott, et als., Mobile and Ohio Railroad Co.
} No. 97. In equity.

This day comes the plaintiffs, by his solicitor, and the defendants, Duncan & Elliott and the Mobile and Ohio Railroad Company, and the motion of the said plaintiff to remove the said Duncan and Elliott from the office of receiver and to appoint another receiver having been heard on the bill, plea, affidavits, and documents filed, the court, upon consideration thereof overrules the said motion, and that the said plaintiff pay the costs of the motion.

Ordered, that complainants have leave to renew said motion as he may be advised.

1153 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

M. KETCHUM
vs.
MOBILE AND OHIO R. R. COMPANY, WM. B. Duncan et als.
} No. 97.

MAY 1, 1876.

We hereby enter appearance for Wm. Butler Duncan.

P. & T. HAMILTON,
J. A. CAMPBELL,
Sol'rs.

M. KETCHUM *vs.* MOBILE AND OHIO R. R. CO., W'M B. DUNCAN et als. } No. 97.

I enter appearance for W'm D. Dunn, William Dickson, and R. C. Crawford, and John Reid, j'r, trustees.

W'M G. JONES, *Sol'r.*

1154 *Notice of motion.*

UNITED STATES CIRCUIT COURT,
Southern District of Alabama:

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &C., *vs.* MOBILE AND OHIO RAILROAD COMPANY ET AL. } No. 97.

On the papers already served, and on such papers as will be served before the hearing herein, and on all the papers and proceedings on the part of the complainant on file in this cause,

We hereby, in pursuance of the direction of his honor M'r Justice Bradley, give notice that we will, at noon on May 15th inst., or as soon thereafter as this motion can be heard, move the circuit court of the United States, at the United States court room in the custom-house in the city of New Orleans, for an order and decree in the above cause to place the complainant, Morris Ketchum, in possession, as trustee, of the line of road and all the property of the Mobile and Ohio Railroad Company, and for such orders as may be appropriate to maintain such 1155 possession and administer the trust estate thereunder, and also for orders of receivership of the property of the defendant corporation, and for orders requiring the surrender and delivery, by all persons in possession thereof, of the property of the corporation defendant, and for such other and further and different relief and orders as may be equitable.

E. L. ANDREWS,
Solicitors for Complainant.

B. F. JONAS, LABATT, ARONI & CLINTON,
Of Counsel.

Filed May 5th, 1876.

N. W. TRIMBLE, *Clerk.*

Marshal's return.

Rec'd in marshal's office May 5th, 1876, and served on Mr. Peter Hamilton same day, and on Mr. Geo. N. Stewart, May the 9th, 1876.

GEORGE TURNER,
U. S. Marshal,
By F. Y. ANDERSON,
Deputy.

1156 ***Amendments.***

United States circuit court, fifth judicial circuit, southern district of Alabama:

MORRIS KETCHUM *vs.* MOBILE AND OHIO RAILROAD COMPANY ET AL.	No. 97.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama:

Amendments to an original bill in equity entitled as above and heretofore filed in this court on the 14th day of March, 1876.

On the 2nd line of the 1st page of the body of the bill, after the words "of the" insert "town of Westport, and on the same line after the words "State of" insert the word "Connecticut"; on the 5th line of the same page after the words "railroad company" insert the words "a citizen of the State of Alabama, having its principal office in
the city of Mobile in the said State, and against William B. Dun-
1157 can, Samuel L. M. Barlow, Robert T. Wilson. all residents of the
city of New York, and against Andrew F. Elliott, a resident of the city of New Orleans and a citizen of the State of Louisiana, and against William D. Dunn, Robert C. Crawford, and John Reed, jr., residents of the city of Mobile and a citizen of the State of Alabama.

After the foregoing amendments insert as follows:

"And thereupon your orator complains and says that your orator is a resident of the town of Westport, and is a citizen of the State of Connecticut, and that the defendant, the Mobile and Ohio Railroad Company, is"——

On the 10th line of the 2nd page, after the words "aforesaid acts," insert "and the said Mobile & Ohio Railroad Company is a body politic and corporate and incorporated under the laws of the State of Alabama, and is a citizen of the State of Alabama, and its corporate existence has been recognized by the laws of the States above mentioned, and it
has and holds property in said States, and the said corporation
1158 became and is a single and the same corporation and should be
held as an entirety, and all the property held under the mortgage hereinafter mentioned is held as an entirety, and the said Mobile & Ohio Railroad Company has its principal office and place of business in the city of Mobile and State of Alabama."

On the 17th line of the 2nd page, after the word "Mississippi," insert "that the defendants, William B. Duncan, Samuel L. M. Barlow, Robert T. Wilson, and Adrian Iseline are citizens of the State of New York; that the defendants, William D. Dunn, William Dickson, John Reed, jr., and Robert C. Crawford are citizens of the State of Alabama; that the said George H. Young is a citizen of the State of Mississippi; that the defendant Andrew F. Elliott is a citizen of the State of Louisiana."

On the 22nd page of the 25th line, after the words "your orator," insert the following words: "And your orator, upon information and belief, also avers that the said Mobile & Ohio Railroad Company executed a
mortgage of the premises and property secured by the first mort-
1159 gage aforesaid, and situated in the State of Tennessee, being that
part of the line of said railroad situated in said State. That the said mortgage was executed to Adrian Iselin, William B. Duncan, Robert T. Wilson, aforesaid, as trustees, for the holders of certain bonds which have been issued and are now outstanding in whole or in part, and that

the said mortgage constitutes a subordinate lien upon the property mortgaged to secure the bonds represented by your orator."

And upon information and belief your orator further avers that the said Mobile & Ohio Railroad Co. has a mortgage upon its line of railroad known as the Gainesville branch, to William D. Dunn, Robert C. Crawford, and John Reed, jr., as trustees for the holders of certain bonds, which have been issued and are now outstanding in whole or in part, and the holders of bonds secured by your orator's mortgage are entitled to the surplus of the income from said Gainesville branch after the payment of the interest on said bonds, and are entitled to the surplus arising from the sale of said Gainesville branch after the
1160 payment of the principal of said Gainesville branch bonds.

Strike all of the paragraph on the 22nd and 23rd pages, commencing at 27th line of the 22nd page, and ending at 7th line of the 23rd page.

On the 26th page, 16th line, after the words "toll and income," insert the following: "That your orator is a trustee as aforesaid, and that he has no personal interest in the said bonds; that his sole object, purpose, and desire is to perform his duty as trustee towards the bondholders, and to protect their interest and defend the trust; that many doubtful questions arise as to his duties in the premises; that he needs and claims the protection of the court and its instructions, so that he may properly discharge his trusteeship in accordance with law."

Insert on the 2nd line on page 2nd, after the word "may," the words "upon its corporate oath and according to its best and utmost;" and after the words "incumbrance" insert the words "information and belief;" and after the word numbered, on the 25th line of the 26th
1161 page, insert the word "mentioned;" and after the word real, on the 26th line of the 26th page, "as by the note hereunder written it is required to answer, that is to say."

UNITED STATES OF AMERICA,
Southern District of New York:

Morris Ketchum, being duly sworn, deposes and says that he is the complainant in the above-entitled action, and the same person mentioned in the original bill of complaint in this cause; that he has read the original bill of complaint and the amendments thereto; that the same are true to his own knowledge, except as to those matters therein stated on information and belief, and as to these he believes it to be true.

(Signed) MORRIS KETCHUM.

Sworn to before me this 27th day of April, 1876.

(Signed) JOSEPH GUTMAN, J'R.
United States Commissioner S. D. N. Y.

Filed May 10th, 1876.

(Signed) N. W. TRIMBLE, *Clerk.*

1162 United States circuit court in and for the fifth judicial circuit, southern district of Alabama.

MORRIS KETCHUM, TRUSTEE, &C.,
against
MOBILE AND OHIO RAILROAD COMPANY ET AL. } In equity.

To the honorable the judges of the circuit court of the United States in and for the fifth judicial circuit and southern district of Alabama:

Your petitioner respectfully shows to this honorable court that he has heretofore filed in this court a bill of complaint in the above-entitled

suit for the foreclosure of the first mortgage of the Mobile and Ohio Railroad Company, and he refers to said bill as a part of this his petition.

That he is advised by counsel and verily believes that it is proper that the certain amendments, a copy of which are hereto annexed, 1163 should be made to said bill of foreclosure to conform to the facts, and for the furtherance of justice under said proceeding.

That the said amendments could not be prepared at an earlier period, though great diligence has been used.

Wherefore your petitioner prays that the said amendments may be allowed by this court, nunc pro tunc, as of the time of the filing of said original bill, and be taken to be a part of said original bill, and for such other relief as may be just.

(Signed) MORRIS KETCHUM.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Morris Ketchum, being duly sworn, deposes and says that he is the petitioner in the above entitled suit; that he has read the foregoing petition and knows the contents thereof; that the said petition is true of his own knowledge, except as to the matter therein stated on 1164 information and belief, and as to said matters he believes it to be true.

MORRIS KETCHUM.

Sworn to before me this 31st day of March, 1876.
[SEAL.] JOSEPH GUTMAN, JR,
United States Commissioner, S. D. N. Y.

United States circuit court, fifth judicial circuit, southern district of Alabama.

MORRIS KETCHUM, AS TRUSTEE, &c.,
vs.
MOBILE AND OHIO RAILROAD CO. ET AL.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

An amendment to an original bill in equity entitled as above, and heretofore filed in this court on the day of March, 1876.

1165 On the 2nd line of the first page of the body of the bill, after the words "of the" insert "town of Westport," and on the same line, after the words "State of" insert the word "Connecticut."

On the 5th line of same page, after the words "railroad company," insert the words "a citizen of the State of Alabama, having its principal office in the city of Mobile, in the said State, and against William B. Duncan, Samuel L. M. Barlow, Robert T. Wilson, all residents of the city of New York, and citizens of the State of New York, and against Andrew F. Elliott, a resident of the city of New Orleans, and the State of Louisiana. and against William D. Dunn, Robert C. Crawford, and John Reid, j'r, residents of the city of Mobile, and citizens of the State of Alabama."

After the foregoing amendment, insert as follows: "And thereupon your orator complains and says that your orator is a resident of the town of Westport, and is a citizen of the State of Connecticut, 1166 and that the defendant, the Mobile and Ohio Railroad Co. is."

On the eighth line of 2d page, after the words "aforesaid acts," insert, "and the said Mobile and Ohio Railroad Co. is a body politic and corporate, incorporated under the laws of the State of Alabama.

And its corporate existence has been recognized by the laws of the States above mentioned, and it has and holds property in said States, and the said corporation became and is a single and the same corporation, and should be held as an entirety, and all the property held under the mortgage hereinafter mentioned is held as an entirety, and the said Mobile and Ohio Railroad Company has its principal office and place of business in the city of Mobile and State of Alabama."

On the 17th line of 2d page, after the word "Mississippi" insert "that the defendants, William B. Duncan, Samuel L. M. Barlow, Robert T. Wilson, and Adrian Iselin are citizens of the State of New York;
1167 that the defendants, William B. Dunn, William Dickson, John Reid, j'r, and Robert C. Crawford are citizens of the State of Alabama; that the said George H. Young is a citizen of the State of Mississippi."

On the 22d page, 4th line, after the words, "your orator," insert the following:

"And your orator also avers that the said Mobile and Ohio Railroad Co. executed a mortgage of the premises and property, secured by the first mortgage aforesaid, and situated in the State of Tennessee, being that part of the line of said railroad situated in said State; that the said mortgage was executed to Adrian Iselin, William B. Duncan, and Robert T. Wilson aforesaid, as trustees for the holders of certain bonds which have been issued and are now outstanding, in whole or in part, and that the said mortgage constitutes a subordinate lien upon the property mortgaged, to secure the bonds represented by your orator.

"And your orator further avers that the said Mobile & Ohio Railroad Co. has a mortgage upon its line of railroad, known as the
1168 Gainesville Branch, to William D. Dunn, Robert C. Crawford, and John Reid, j'r, as trustees for the holders of certain bonds which have been issued and are now outstanding, in whole or in part, and the holders of the bonds secured by your orator's mortgage are entitled to the surplus of the income from said Gainesville Branch, after the payment of the interest on said bonds, and are entitled to the surplus arising from the sale of said Gainesville Branch, after the payment of the principal of said Gainesville Branch bonds."

Strike out all the paragraph on the 22d page, commencing at 6th line and ending at 14th line.

On the 25th page, 9th line, after the words, "tolls and income," insert the following:

"That your orator is a trustee, as aforesaid, and that he has no personal interest in the said bonds; that his sole object, purpose, and desire is to perform his duty, as such trustee, towards the bondholders, and to protect their interests and defend the trust. That many
1169 doubtful questions arise as to his duties in the premises; that he needs and claims the protection of the court and its instructions so that he may properly discharge his trusteeship in accordance with law."

Insert on the 22d line of page 26, after the word "May," the words "upon its corporate oath and according to its best and utmost;" and after the words "information and belief," and after the word "numbered," on the 25th line of the 26th page, insert the word "mentioned;" and after the word "seal," on the 26th line of the 26th page, "as by the note hereunder written, it is required to answer, that is to say."

(Signed) EDWARD L. ANDREWS,
Solicitor for Complainant & of Counsel.

Filed May 11th, 1876.

N. W. TRIMBLE, *Clerk.*

1170 *Affidavit of deputy marshal as to service of papers.*

Circuit court of the United States in and for fifth judicial circuit southern district of Alabama.

MORRIS KETCHUM
vs.
M. &. O. R. R. Co. ET ALS. } **No. 97. In equity.**

Personally appeared before me, Henry S. Skaats, a U. S. commissioner, appointed by said circuit court for said southern district of Ala., F. Y. Anderson, who, being duly sworn, says, that he is the deputy marshal for said district, and in that capacity he served upon W'm G. Jones, esq're, solicitor for W'm D. Dunn & W'm Dixon, R. C. Crawford, and Jno. Reid, j'r, trustees, &c., on this the 12th May, 1876, copies of certain papers in the above entitled cause, as follows:

Notice of motion, affidavits (3) of Morris Ketchum, and (1) affidavit of Thomas Belknap, j'r, with the exhibits attached thereto, together with a partial transcript of the record of the chancery court, first dist. sou. div. of Ala., at Mobile, in a cause wherein the M. & O. R. R. Co. was pl't'ff and Morris Ketchum, trustee, def't.

1171 **F. Y. ANDERSON,**
U. S. Marshal.

Subscribed and sworn to before me this 12th day of May, 1876.
HENRY S. SKAATS,
U. S. Commissioner.

Filed May 12th, 1876.

N. W. TRIMBLE, *Clerk.*

1172 *Answer of M. & O. R. R. Co. to motion for removal of trustees.*

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Custom house of the United States in the city of New Orleans. In the court-room of the circuit court of the United States, at noon, 15th May, 1876.

The Mobile and Ohio Railroad Company, of the State of Alabama; W'm Butler Duncan, a citizen of the State of New York, A. Foster Elliot, a citizen of the State of Louisiana, under protest and for a special and particular purpose, appear at the time and place above mentioned to show cause upon a notice they have respectively received, and a copy of which is appended to this answer.

The notice is entitled—

United States circuit court, southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET AL. }

1173 **In the notice it is affirmed "that, in pursuance of the direction of his Honor M'r Justice Bradley, the notice is given of a motion to be made on 15th May, 1876, to the circuit court of the United States, at the United States court-room in the custom house in the city of New Orleans, for an order and decree in the above cause to place the complainant, Morris Ketchum, in possession, as trustee, of the line of road and all the property of the Mobile and Ohio Railroad Company," &c., &c.**

These respondents aver that there is no order, direction, or other proceeding in the circuit court of the United States for the southern district of Alabama signed by his Honor Judge Bradley, nor by his authority, nor evidence whatever *whatever* of the truth of the statement in the notice, that it was directed by his Honor Judge Bradley; and they further aver that as a matter of fact it is wholly and entirely without a foundation in fact to warrant it.

1174 The records of the said circuit court indicate that M'r Justice Bradley has been absent from the said court during this entire year. And it is notorious that he has been engaged in the Supreme Court of the United States, at Washington City, during the whole session of that court for the whole of the term until its adjournment on 8th May, inst.

Wherefore and because of the want of any authority from the said circuit court or any judge thereof for issuing the notice aforesaid, and because of the unfounded averments that such an order or direction had been made, the parties aforesaid pray the dismissal of these proceedings with costs.

II.

And the said respondents still appearing under protest and for a single purpose, aver that the cause mentioned in the said notice is pending in the circuit court of the United States for the southern district of Alabama. By the terms of the statutes of the United States the
1175 sessions of that court are appointed to be held in the city of Mobile. That it is not competent for said court to transfer the cause aforesaid from the circuit court aforesaid to the circuit court of the United States for the district of Louisiana. Nor is it competent to the circuit court of the United States for the district of Louisiana to make any order or give any directions relative to the said cause, or to any proceeding in it under any law of the United States. And that the circuit court of the United States for the district of Louisiana is without jurisdiction of the subject of the said matter.

Wherefore the same should be discharged, and all cognisance thereof refused.

III.

And the Mobile and Ohio Railroad Company says that the said corporation was served at the city of Mobile with process of subpœna
1176 in the said cause, in March, 1876, and in the first week of April, 1876, appeared and filed in the circuit court of the U. S. a special plea in bar of the prayer of discovery and relief, denying the title of the said plaintiffs, which plea is not disposed of, but is still pending in the said court.

That the railroad and other property of the said corporation is immovable property for the most part, and is within the judicial district of Alabama, aforesaid, in so far as it is within the jurisdiction of the said court; and that the domicil of said corporation is at the city of Mobile. That the said defendant is not, under the laws of the United States, subject to suit for their property aforesaid elsewhere than in the said judicial district in the courts of the United States. And that the said corporation cannot be required or coerced into the jurisdiction of the circuit court of the United States for the district of
1 77 Louisiana, nor be held to answer to any claim or demand upon their property beyond the limits of the said district by any other

court, nor by the judges of the same court without their consent. And for the reason that the said motion has been wrongfully and vexatiously made to a tribunal which has no jurisdiction of the same, the defendant prays that it may be discharged with costs.

IV.

And the said W'm Butler Duncan says that he is a citizen of the State of New York, and was served within the limits of that State with a notice of the motion (a copy of which is filed) within the present month.

This respondent says that he has appeared to the cause in the circuit court of the United States for the district of Alabama after the service of a subpœna, and is in no default.

11.8 That there was no order nor direction of the said circuit court for the district of Alabama, to authorize any service upon him of notice of this motion in the State of New York, to appear at the time and place stated and for the purpose stated in said notice; and that the statement that there was such a direction by any judge is not true.

The respondent denies the title of the said plaintiff to make the said motion or to give the notice of the motion aforesaid, and the jurisdiction of the circuit court to entertain the same in the manner and at the place and on the notice aforesaid.

V.

The said Andrew Foster Elliot says that he has not been served with subpœna in the cause designated in the said notice, nor does he know of any attempt to make him a party to the cause in any other form than that of serving a subpœna, nor has he entered any appearance to the said bill.

He states he was served with a copy of the notice in the State
1179 of Louisiana within the present month.

He denies the authority of the plaintiff to make him a party to the proceedings and to bind him to appear in the manner and form herein set forth.

He denies the authority and jurisdiction of the circuit court of the United States for the district of Louisiana to hear the said motion or to make any judgment to affect him in the premises.

He denies the validity of the notice and of its service on him, and that there was any direction of the associate justice to give the notice or to authorize the service upon this respondent of the notice aforesaid.

VI.

The said parties further state that at the December term of the said circuit court of the United States for the southern district of Alabama,
and in April last, the said plaintiff made, in the circuit court
1180 aforesaid, a motion of the same import and to obtain the orders
and decrees specified in the said notice; that the said Mobile and Ohio Railroad Company and the said W'm B. Duncan were notified thereof, and answered to the said motion in open court, and that the same was heard upon the pleadings and affidavits, and upon the hearing of the same in the said circuit court the motion was denied and the plaintiff ordered to pay the costs; that the said judgment was in full force and has not been in any respect vacated, altered, or modified by the said circuit court.

And these defendants state that no order, direction, nor authority has been given by the said circuit court, nor by any judge thereof, either at rules at the clerk's office, or chambers, or elsewhere, for the renewal of the said motion, or to serve these respondents with notice of the same. And that the said motion to bring the case into the
1181 circuit court of the United States at New Orleans, and to obtain
these orders and decrees, is without any warrant from the laws, the courts, and the judges of the courts, and they pray that the same may be dismissed at the cost of the said plaintiff.

The undersigned, as counsel for the parties mentioned in this answer, appear especially and for the only purpose of protesting against the proposed motion as unwarranted by the laws of the United States and the rules in equity of the Supreme Court of the United States, and to deny the authority and jurisdiction of the court to hear the matter.

(S'gn'd) P. & T. HAMILTON.
" J. A. CAMPBELL,
Of Counsel.

1182 United States circuit court, southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &c.,
vs.
MOBILE AND OHIO RAILROAD COMPANY ET ALS.

On the papers already served, and on such papers as will be served before the hearing herein, and on all the papers and proceedings on the part of the complainant on file in this cause—

We hereby, in pursuance of the direction of his honor M'r Justice Bradley, give notice that we will, at noon on May 15th, or as soon thereafter as this motion can be heard, move the circuit court of the United States, at the United States court-room, in the custom-house in the city of New Orleans, for an order and decree in the above cause to place the complainant, Morris Ketchum, in possession as trustee of the line of road and all the property of the Mobile and Ohio Railroad Com-
1183 pany, and for such orders as may be appropriate to maintain such
possession and administer the trust thereunder, and also for orders of receivership of the property of the defendant corporation, and for orders requiring the surrender and delivery by all persons in possession thereof of the property of the defendant corporation, and for such other and further and different relief and orders as may be equitable.

(S'gn'd) F. L. ANDREWS,
Sol'r for Compl't.

B. F. JONAS, LABATT, ARONI & CHATEN,
Of Counsel.

Filed May 5th, 1875.
(S'gn'd) N. W. TRIMBLE, *Clerk.*

(Endorsed:) Copy rec'd 1.30 p. m. May 5th, 1875.

1184 THE STATE OF LOUISIANA,
City of New Orleans:

Personally appeared before me, A. Foster Elliot, who maketh oath and saith that he was served with a copy of the notice attached hereto, the copy served on him being in the hands of his counsel, and that he was served in the city of New Orleans. He further states that W'm Butler Duncan has been in the State of New York during this entire month, as he is informed and believes, and has not been in the States of Louisiana or Alabama. He further saith that the statements of fact in the foregoing answer are true, in substance and matter of fact, according to his knowledge, information, and belief.

(S'gn'd) AND. FOSTER ELLIOT.

Subscribed and sworn to before me this 17th May, 1876.

(S'gn'd) F. A. WOOLFLEY,
Comm's'r U. S. Circuit Court District of Louisiana.

Filed as of 17th May, 1876, by order of Judge W. B. Woods.

(S'gn'd) N. W. TRIMBLE, *Clerk.*

1185 *Motion to dismiss bill, &c.*

JUNE THE 5TH, 1876.

MORRIS KETCHUM
vs.
W. B. DUNCAN, A. F. ELLIOT, THE MOBILE & Ohio Railroad Co., W. D. Dunn, & others.
} No. 97. In equity. 1st Mo., June, 1876.

The Mobile & Ohio Railroad Company, defendant, having filed its plea in bar of the bill of complaint of the complainant on the 7th of April, 1876, and no replication, demurrer, or other answer to the same either in law or fact within the time prescribed by law. the defendant now prays that the said complainant's bill be dismissed. that this defendant be allowed to go hence without day and be allowed its costs in this behalf expended.

June 5th, 1876.

(S'gn'd) GEORGE N. STEWART,
Sol'r for Mobile & Ohio Railroad Co., D'f't.

1186 *Motion for further time for Dunn and Dickson to answer, &c.*

JUNE 5TH.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO R. R. CO., & ALS.
} In equity.

The defendants, W'm D. Dunn and W'm Dickson, move the court to allow them further time to plead, answer, or demur to the bill in this cause.

June 5th, 1876.

(S'gn'd) W'M G. JONES,
Sol'r for Defendants Dunn & Dickson.

1187 *Motion for leave to file demurrer.*

MORRIS KETCHUM
vs.
M. & O. R. R. Co.
}

Complainant asks leave to file his demurrer to the plea of the M. & O. R. R. Co., the delay having occurred by circumstances that should relieve the complainant from the default.

June 10th, 1876.

(S'gn'd) E. L. ANDREWS,
Sol. for Compl't.

1188 *Order substituting copy of bill.*

In the circuit court of the United States for the southern district of Alabama.

WEDNESDAY MORNING, *January 24th*, 1877.

Court met pursuant to adjournment. Present, the Hon. John Bruce, judge of the district courts of the United States for the State of Alabama, sitting as circuit judge.

MORRIS KETCHUM, AS SURVIVING TRUSTEE,
vs. } No. 97.
MOBILE AND OHIO RAILROAD COMPANY ET AL.

This cause coming on to be heard on the bill, plea, and demurrer, and the defendants, W. B. Duncan and A. F. Elliott and The Mobile and Ohio Railroad Company, having objected to the hearing upon the ground that the original bill has not been before the court; and the complainant having tendered the affidavit of the deputy clerk of this court 1189 in reference to the disposition of said bill; and having also moved on the said affidavit, showing that a paper annexed thereto is a true copy of the said bill, that the said copy of the bill be substituted in place and stead of the original, to be taken together with the original amendments now on file: It is hereby ordered (the said motion being made in open court, in the presence of counsel for the respective parties) that the said bill be, and it is hereby, taken and directed to be filed as the bill in this cause, as of the time of the filing of the original bill, nunc pro tunc.

1190 *Bill No. 77.*

In the circuit court of the United States in and for the fifth judicial circuit and southern district of Alabama.

To the honorable the judges of the circuit court for the fifth judicial circuit and southern district of Alabama:

Your orator, Morris Ketchum, a resident of the county and State of New York, and a citizen of said State, brings this his bill of complaint against the Mobile & Ohio Railroad Company, a body corporate, constituted by and organized under an act of the general assemb'y of the State of Alabama, approved February 3rd, 1848, entitled "An act to incorporate the Mobile & Ohio Railroad Company," and under an act of the legislature of the State of Mississippi, approved Feb. 17, 1848, & entitled "An act   ," and under an act of the general assembly of the State of Tennessee, approved February 20, 1848, entitled "An act to incorporate the Mobile and Ohio Railroad Company, and the Tennessee Railroad Company," and under an act of the legislature of the State of Kentucky, approved February 26, 1848, entitled "An act to authorize the Mobile and Ohio Railroad Company to extend their railroad from the south boundary-line of the State of Kentucky to 1191 the Mississippi & Ohio Rivers," and under the acts of the legislatures of the said States amendatory of and supplemental to the aforesaid acts, and against William B. Duncan and Andrew F. Elliott, as receivers of the Mobile & Ohio Railroad Company as aforesaid; and against William D. Dunn, George H. Young, and William Dickson, the said Dunn & Dickson being residents and citizens of the State of Alabama, and the said Young a resident and citizen of the State of Mississippi.

That in and by the acts of the legislatures of the States above referred to, the said Mobile and Ohio Railroad Company was authorized to purchase, hold, and dispose of real & personal estate, to borrow money, to make contracts for the loan of money, and to give evidences of debt and securities for the payment of the same by pledge, mortgage, or otherwise, as it should deem necessary and proper.

That on or about the first day of November, in the year 1853, the said defendant, the Mobile and Ohio Railroad Company, purposed to contract and negotiate a loan of six millions of dollars to complete and equip its said railroad, and to that end prepared to execute and dispose of by sale six thousand bonds, a copy of one of which bonds is hereto attached, as forming a part of this bill of complaint, and is marked "Exhibit A."

1192 That each of the said bonds was to be for the sum of two hundred and twenty-five pounds sterling, and payable in thirty years from the date thereof, with coupons attached for interest payable semi-annually, and each coupon being for six pounds fifteen shillings sterling, and the said bonds were to be numbered from No. one to No. six thousand inclusive.

That to provide a full, fair, and available security for the principal and interest of the said loan, and for the bonds & coupons representing the same, and to insure to those who might invest therein the payment of the interest and principal money thereof in all respects, according to the true intent and meaning of the said bonds, was the chief and leading purpose of the conveyance hereinafter recited.

That therefore, and in consideration of the premises & the sum of five dollars, the said Mobile & Ohio Railroad Company granted, bargained, sold, aliened, assigned, transferred, conveyed, & confirmed to your orator, Morris Ketchum, and to John J. Palmer & William R. Hallett, by the conveyance of said company, duly executed and delivered to your orator, the said Morris Ketchum, and to said Palmer and Hallett, bearing date the first day of November, 1853, the following property, part of which was at the time of the execution of the said conveyance constructed, and part of which was to be thereafter constructed, purchased,
acquired, held, possessed, & owned by the said Mobile and Ohio
1193 Railroad Company, and which said property is described and set
forth in said conveyance in the words and figures following, to wit: "All and singular of the rights and privileges of every name and kind, as hereinafter set forth, being the first and only conveyance of title, grant, or mortgage, hereby guaranteeing and warranting the described items, assets, and real estate, free from all liens and incumbrances, done or suffered to be done by the said party of the first part, and "all the said Mobile and Ohio Railroad Company, lying between its respective termini, constructed, or to be constructed, together with all and singular the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned, and which may hereafter be owned, by said company, including the said lands donated by act of Congress, hereinbefore referred to, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting as by the certificate of the Department of the Interior to 419.528$\frac{56}{100}$ acres in the State of Alabama, to 737,630$\frac{36}{100}$ acres in the State of Mississippi; total, 1,156.658$\frac{92}{100}$ acres, with certain exceptions of lands, and certain reservations of a lien in favor of the State of Tennessee; and for a fuller description of the property, rights,

and franchises conveyed by said deed of mortgage your orator refers to
the true copy of said mortgage annexed hereto, as forming a part
1194 of this bill of complaint, and marked "Exhibit B."

That your orator and said Palmer and Hallett were, as provided in said conveyance, "to have and to hold the said granted and described premises, property, and franchises, in trust, nevertheless, for the benefit, security, and advantage of the person or persons, or corporations, or any other party who might become holden of the bonds hereinbefore described, or any of them issued or to be issued by the said company, and for the payment of the interest-coupons thereon, as the same should respectively fall due."

That your orator, Morris Ketchum, and the aforesaid John J. Palmer and William R. Hallett, duly accepted the conveyance of the property above described, and the deed above mentioned, and likewise accepted the trusts therein set forth, and thereupon became the mortgagees of the said property in trust for the holders of the bonds above described.

That said Mobile and Ohio Railroad Company, after the execution, delivery, and acceptance of said conveyance by said trustees, and after the same was in due form of law recorded in the proper counties in Alabama, Mississippi, Tennessee, and Kentucky, in which the said property thereby conveyed was and is situated, did execute large amounts of its said bonds of the denominations and to the purport in said mortgage
mentioned, and the said Mobile and Ohio Railroad Company did
1195 afterwards negotiate said bonds to bona-fide holders thereof, the
same being made negotiable by delivery, and the said bonds or most of them are now outstanding, and are valid claims against said company, and valid liens against and upon the property and income and assets of said company.

That the holders of said bonds, and of the interest thereon unpaid by said Mobile and Ohio Railroad Company, are entitled, by reason of the premises, to payment of said interest, as well as of the principal thereof so conveyed to your orator, and to Palmer and Hallett aforesaid, in trust for the holders of said bonds, and have by virtue of said conveyance in trust the elder and prior and paramount lien on said premises, and the income thereof, and are entitled to payment out of the same in preference to any and all other claims against said company arising in any manner whatsoever.

That in and by the third paragraph of the mortgage above referred to it is provided, in reference to the lands conveyed as security for the bondholders, as follows:

"The said Ketchum, Palmer, and Hallett, shall at once have possession and control of the lands donated by act of Congress, and set
1196 forth in the before-mentioned certificate of the Secretary of the
Interior, dated Feb. 4th, 1853, for 1,156,658.92 acres, and any other lands that may be obtained for the said company by the present or by future act of Congress, with authority to devise and determine rules of management of sales, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds." And it is further provided in said mortgage that the party of the second part, themselves, or regularly constituted attorney, are hereby invested with authority to issue proper and sufficient deeds and muniments of title."

That on or about the first day of February, 1861, the directors of the Mobile and Ohio Railroad Company applied to and requested your orator, notwithstanding, and in defiance of the aforesaid provision of the mortgage, to sign, execute, and deliver deeds of the lands conveyed by

said mortgage, in trust as aforesaid, for the benefit of the bondholders, without tendering or in any way offering to your orator any consideration or equivalent for such proposed deeds; and the said directors furthermore requested your orator to permit the said directors to have and to exercise complete power and control over the said bonds, in contravention of the terms of the mortgage conveying the title and
1197 possession thereof, for the benefit of the first-mortgage bondholders of the Mobile and Ohio Railroad Company to your orator and his co-trustees.

That your orator refused to execute or deliver the proposed deeds unless he received proportionate amounts of bonds or money in consideration therefor, according to the tenor of the mortgage above set forth, or to confer upon the directors of the Mobile and Ohio Railroad Company any power over said lands which was by the said mortgage devolved upon him in trust for the equitable mortgagees.

And your orator further shows and avers that his co trustees, John J. Palmer and William R. Hallett, both deceased on or about the first day of January, 1861, and left your orator, Morris Ketchum, the sole surviving trustee of the first mortgage of the Mobile and Ohio Railroad above described. That it is provided as follows by the mortgage to your orator above described:

"And it is further covenanted and agreed between the said parties that if either of them, the said Ketchum, Palmer, and Hallett, shall at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company and the said Ketchum, Palmer, and Hallett, or either of them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver all and singular such
1198 other and further instruments or assurances as may be necessary to enable such person or persons so selected to act in the execution of these presents. But until such selection of some person or persons to fill such vacancy or vacancies, and the execution of the papers requisite to enable him or them to act, the act or acts of the other shall, notwithstanding such vacancy, be in all respects legal and valid."

That to your orator's best remembrance and belief, after the death of his co-trustees aforesaid, your orator offered the directors of the Mobile and Ohio Railroad Company to comply with the terms of the mortgage aforesaid, in reference to the appointment of new trustees, and made every effort on his own behalf, and with the said directors, to prevail upon them to conform to the requirements of the mortgage, and to fill the vacancies in the board of trustees thereof.

That your orator submitted to said directors the forms used in like circumstances by your orator and the other trustees of the Illinois Central Railroad Company, both in reference to the release of lands, in the mortgage hereinbefore referred to, as well as to the appointment of trustees, and the proceedings under which had been highly advantageous to the bondholders of said Illinois Central Railroad Company, who had been paid off in full, and urged that the spirit and letter
1199 of the mortgage should be complied with by appointing a resident of New York and a resident of Mobile to the vacancies in the said trust, according to the residencies of the original trustees, then deceased.

That the board of directors of the Mobile and Ohio Railroad Company persistently refused to execute the said trust in reference to the appointment of successors to the two original trustees aforesaid, unless your orator would surrender the rights of his cestui que trust in the lands belonging to them, as aforesaid, or would appoint new trustees, who would so violate their trusts. That your orator declined to accede to the above terms, or any of them, and the said vacancies in the said board of trustees have remained unfilled to the present day, and your orator still remained, and now remains, the sole surviving trustee of the mortgage aforesaid.

That your orator is informed that soon after the matters just above recited had transpired, and on or about the fifth day of December, 1861, and nearly nine months after the State of Alabama had adopted an ordinance of secession from the United States, and several months after the commencement and existence of armed hostilities between the so-called Confederate States, of which the State of Alabama formed a part, and the United States, and long after all intercourse with 1200 the said Confederate States and the said State of Alabama had been prohibited by law to the citizens of the United States and of the State of New York, where your orator then resided, and to the government of which he owed allegiance, the directors of the Mobile and Ohio Railroad Company applied to a court of chancery, then sitting in the said Confederate States, so called, and within the territory of the State of Alabama, for an order declaring the removal of your orator from the trusteeship of the first mortgage aforesaid.

That your orator is likewise informed that the proceeding in which his removal was sought averred as its foundation that your orator was "a citizen of New York, and an alien enemy to the Confederate States" aforesaid.

And your orator further shows to your honors that he never heard of or in any way had any knowledge of the said pretended proceeding to divest him of his property, as trustee as aforesaid, until after the termination of armed hostilities between the said Confederate States, and State of Alabama, and the United States, in the year 1865.

That notwithstanding your orator was in entire ignorance of the said pretended proceeding, and was prevented by force, and prohib- 1201 ited by law, from appearing and responding thereto, and on the above account could not and did not appear or respond thereto, a certain order or decree was obtained therein on or about the seventh day of April, 1864, as your orator is informed, purporting to remove your orator from the said trust, and deprived him of the estate aforesaid in his absence, both in person and by attorney, and while he was ignorant that any such proceedings were instituted or pending, and on the sole ground that he was "a citizen of New York, and an alien enemy to the Confederate States."

And your orator charges that the said proceedings of said court of chancery were and are entirely null and void, and without jurisdiction to divert the title of a citizen of the United States, residing in the State of New York during the pendency of hostilities between said State of New York and the political authorities of the territory where such court was sitting, and no notice of which was brought to the knowledge of your orator, and the ground of which was loyalty of your orator to the lawful authority and government of the territory where the said court was sitting.

That on or about the first day of April, 1875, certain William B. Duncan and Andrew F. Elliott were engaged in conducting the 1202 business of Duncan, Sherman & Co., which firm had conducted and were then engaged in conducting certain financial transactions with the Mobile and Ohio Railroad Company. That the said Duncan and Elliott were directors of the Mobile and Ohio Railroad Company in the month of April, 1875, and the said Duncan represented the stockholders, as the president of said company. That the said Duncan procured a certain Charles Walsh, who had been named a trustee under the pretended decree aforesaid, to present a form of resignation. That said Duncan soon thereafter procured said Walsh to withdraw said resignation, and the same was never accepted.

That notwithstanding the said resignation had no validity, the said Duncan procured the said letter of resignation of Walsh to be exhibited to G. H. Young and A. Jackson, who had also been named trustees under the invalid decree above mentioned, with a request that they would likewise resign, and thereupon the said Young & Jackson did formally resign. That immediately thereafter, and notwithstanding the pretence to said Young and Jackson that said Walsh had resigned, whereby their resignations had been procured, the said Duncan procured the said Walsh to act as a trustee, and to appoint himself, the said Duncan, and his associate in business, the said Elliott, trustees, in place and stead of said Walsh, Young, & Jackson.

That the Mobile & Ohio Railroad Company claimed to exercise the joint power of appointment with said Walsh, and said Elliott 1203 being then a director of said company, and the said Duncan its president, and a large stockholder thereof, and the said Duncan representing the unsecured and floating claims of Alexander Duncan, his father, which claims are in direct hostility to the rights of the first-mortgage bondholders, as hereinafter set forth, they, the said Elliott and Duncan, pretending to represent the Mobile and Ohio Railroad Company, promptly concurred in the said pretended appointment of themselves as such pretended trustees.

That your orator has entirely disregarded and ignored the aforesaid pretended, invalid, and void proceedings of said tribunal sitting under the authority of the Confederate States, whereby the property of your orator, as a loyal citizen of the United States, was attempted to be taken from him without notice or jurisdiction, and on the specific ground that he was performing his duty as a loyal citizen of the United States, and an alien enemy of the Confederate States. And your orator has likewise disregarded and ignored all the subsequent proceedings of the parties aforesaid, pretending to act under said void and unlawful decree, as well the proceedings of said Walsh, Jackson, and Young, as of their pretended successors, the said Duncan and Elliott.

1204 That your orator has always and continually, from the time of his appointment as an original trustee under said mortgage, down to the present time, continued to act as such trustee, and perform the duties of the said office, and has acted with and connected with his cestui que trust, during all said time, for the protection of the rights of the bondholders. That he has not in the slightest manner abandoned his trust, if such abandonment there could be, but, on the contrary, the directors of said Mobile and Ohio Railroad Company have unlawfully and persistently endeavored to abandon the trusteeship of your orator, for the purpose of carrying out the fraudulent and improper designs upon the trust property, as hereinbefore and hereinafter set forth.

That after the said William B. Duncan and Andrew F. Elliott had intruded themselves into the trusteeship as aforesaid, and under color of the void and fraudulent proceedings above recited had filed a bill of complaint in this court, and been appointed and taken possession as receivers of the Mobile and Ohio Railroad Company, though representing the fraudulent claims of Alexander Duncan and others, as hereinafter set forth, your orator deemed it prudent and advisable to await

the expiration of the three months limitation provided in the mortgage
and then and thereafter has been diligently engaged in consult-
1205 ing with his cestuis que trust, the bondholders, and with his
counsel, and in preparing his proceedings for the protection of the
property of the bondholders and the execution of the trusts devolved
upon him.

And your orator further shows and avers that the said Mobile and Ohio Railroad Company has failed to pay the interest on any of the said first-mortgage bonds which fell due on the first day of May, 1875, and the interest on any of said bonds which has fallen due since the date last mentioned, and all of said interest so due and in default still remain wholly due and unpaid, though the same has been duly demanded, and has remained so due and unpaid for more than three months after it became due and payable, and that the amount now overdue and payable for interest on the first mortgage bonds exceeds the sum of $338,000.

That the holders of the bonds secured to be paid by the mortgage
above referred to are very numerous, and are in great part unknown to
your orator, and your orator avers that the number of said holders is so
great that it is impracticable to make them parties to this suit. That
your orator has been requested by a number of the holders of said
bonds, owning bonds to a large aggregate amount, to institute these
proceedings upon the default in the payment of interest aforesaid.

1206 And your orator further shows that the said railroad company,
by the terms of its charter and the laws of the States of Alabama,
Mississippi, Tennessee, and Kentucky, before and at the time of the execution and delivery of said conveyance to your orator and his co trustees as aforesaid, was authorized abd had full and competent power and authority to construct, maintain, and operate a railroad from the city of Mobile, in the State of Alabama, through the several counties in the States of Alabama, Mississippi, Tennessee, and Kentucky mentioned in the mortgage herein, to the Ohio River, in the State of Kentucky; and that, at the time said conveyance was made and delivered to your orator and the co-trustees aforesaid, said company was actively engaged in the business of building said railroad, so far as the same had not been previously constructed, and in operating the same so far as then completed; and that said company now has in operation its said railroad from Mobile, in the State of Alabama, to Columbus, in the State of Kentucky, with certain branches and leased lines, and with a large amount of rolling-stock necessarily used in said business, and supplies and tools and implements of all descriptions.

And your orator further avers that the said Mobile and Ohio
1207 Railroad Company likewise executed a second mortgage of the
premises and property secured by the first mortgage aforesaid, of
which William D. Dunn, Geo. H. Young, and William Dickson, hereinbefore named, are trustees for the holders of certain bonds, which have been issued and are now outstanding in whole or in part; and that the said mortgage created a second and subordinate lien upon the property mortgaged to secure the bonds represented by your orator.

And your orator also avers that the said Mobile and Ohio Railroad Company also executed several other mortgages, some of which are valid and some invalid, and all of which are subordinate and inferior liens to your orator's mortgage, and purports to be such inferior liens, and none of the trustees of said mortgages can be herein joined without ousting the jurisdiction of this court.

And your orator alleges that the said Mobile and Ohio Railroad Com-

pany is largely indebted otherwise than is hereinbefore stated to a large number of persons, and is greatly embarrassed in its business and affairs, and is in fact utterly insolvent and unable to pay its debts and meet its engagements.

1208 And your orator is likewise informed and verily believes, and therefore avers, that, notwithstanding the payment of the coupons of the first-mortgage bonds, which fell due on the first day of November, 1874, and the first day of May, 1874, and the first day of November, 1873, by the Mobile and Ohio Railroad Company, in the ordinary and accustomed manner, in which said coupons had been theretofore paid, it is claimed and was set up by the directors of the Mobile and Ohio Railroad Company, on the first day of January, 1875, that there remained outstanding coupons matured and unpaid, to the amount of $\$735,415\frac{32}{100}$.

And your orator is informed and believes, that the said coupons so claimed to be matured and outstanding are the same coupons which were presented by the holders thereof to the Mobile & Ohio Railroad Company, and by it received and paid, and presumably cancelled.

That the said coupons were not cancelled, as of right they should have been, but were, by the then president of the company, and by William B. Duncan, and the directors thereof, delivered to Alexander Duncan, the father of said William B. Duncan, and other persons, as pretended security for certain claims of said Alexander Duncan and others, upon said Mobile and Ohio Railroad Company.

1209 That the said coupons are still in the possession of said Alexander Duncan and other persons, and are claimed by them to constitute a subsisting first, prior, and paramount lien upon the property, conveyed to your orator in trust as aforesaid.

And your orator is informed and believes, that the said Alexander Duncan and others claim and pretend, and will endeavor to use said coupons which have been paid, and should be of right cancelled, to bid for, and obtain control of and title to, said Mobile and Ohio Railroad Company, upon the sale thereof by foreclosure under your orator's mortgage.

And your orator further shows, that in and by the mortgage hereinbefore described, and in addition to the other property therein conveyed to secure the holders of the first-mortgage bonds aforesaid, all the tolls, rents, income, issues, and profits of said property, and of the railroad last hereinbefore described, were mortgaged to your orator in trust for the bondholders aforesaid, to secure the payment of the interest and principal of their bonds. That the net income of the mortgaged estate is represented by Duncan and Elliott aforesaid to be only about thirty-eight thousand dollars for the past six months preceding Dec. 1st, 1875, while the annual interest payable on the bonds of which your orator is trustee is $360,000 per annum.

1210, 1211, 1212 That ever since the failure to pay the interest on the said bonds, the tolls and income of the said company have exceeded the expenses of operating the same, and large sums of money have properly accrued, as your orator is informed and believes, as net profits from the income and tolls of said railroad; but even the said tolls and income, such as they are, have not been applied to the payment of the interest, or any part thereof upon the said bonds, and will not be so applied unless this honorable court intervenes in the premises, for the protection of the holders of said bonds, by the appointment of proper persons as receivers of said property and its tolls and incomes.

And your orator further shows unto your honors, that all the property so conveyed to him as aforesaid, as surviving trustee, in trust for the

holders of the bonds hereinbefore described, as well as that which was subsequently acquired by said company, together with all the corporate rights, privileges, and franchises of said company, and the tolls, rents, incomes, issues, and profits of the railroad above described, and the lands, claims, and demands of the said company, are held and bound by said first mortgage first above set forth, for the payment of the bonds and the coupons lawfully remaining upaid as aforesaid, and they
1213 have priority over every other demand and claim whatsoever in the premises.

And your orator likewise shows that he is totally remediless to enforce the said claims and liens at law and without the intervention of and process of a court of equity.

In consideration of all the foregoing matters your orator prays process of subpœna against the said Mobile and Ohio Railroad Company and against the said William D. Dunn George H. Young, and W'm Dickson, and against W. B. Duncan and A. F. Elliott, as receivers, commanding them and each of them to appear and answer this your orator's bill of complaint.

And to the end that the said defendant the Mobile and Ohio Railroad Company may, if it can, show why your orator should not have the relief hereby prayed, and may, upon its knowledge and remembrance, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth under its corporate seal, to wit:

I. Whether it did not, as hereinbefore charged, make, execute, and deliver to your orator, and John J. Palmer, and William R.
1213 Hallett, the mortgage with the conditions and power hereinbefore mentioned.

II. Whether it did not make and negotiate its bonds and secure the payment thereof, as hereinbefore set forth, by said mortgage?

III. Whether the said bonds are not outstanding and unpaid, and the interest which became due thereon, as hereinbefore alleged, does not remain unpaid or otherwise?

IV. Whether the said John J. Palmer and William R. Hallett are not deceased?

V. Whether it did not make application to a court sitting in Alabama, during the existence of armed hostilities between the governments then styled the Confederate States and the State of Alabama & the United States, and while your orator was residing in the State of New York, for the removal of your orator from the trusteeship of the first mortgage of the Mobile and Ohio Railroad Company, upon the ground that your orator was a citizen of New York and an alien enemy of the Confederate States, and did not thereupon obtain some order of such court
1215 purporting to remove your orator from the office of trustee aforesaid, upon the sole ground of his being an alien enemy to the Confederate States?

VI. Whether the interest coupons of its first-mortgage bonds, which became due before the first day of May, 1875, were not paid by it, and the said coupons surrendered to it? And whether said coupons paid by it before the first day of May, 1875, were not afterwards delivered by it to Alexander Duncan and other parties, or to William B. Duncan for Alexander Duncan and such other parties, or to some other person for them? And whether said coupons are not now out of the possession and control of it, the said Mobile and Ohio Railroad Company, to the amount of $700,000 or thereabouts?

VII. Whether it is not destitute of the means of paying the overdue interest on the coupons of its first-mortgage bonds which fell due on the first day of May, 1875, and thereafter, and its affairs embarrassed as stated? And wh'ther its property is not inadequate to pay its debts and liabilities?

1216 **And as to such of the defendants who may be out of the jurisdiction of this court, your orator prays that process may be issued to make them parties, and compel them to appear and answer this bill of complaint, if they should come within such jurisdiction, and if not, such proceeding may be had in regard to such defendants by publication or otherwise as may be according to the forms of the statute in such case made and provided.**

And your orator prays your honors to make such interlocutory and final orders, and orders of injunction and decrees, and restraining orders as may be necessary to keep and sustain said railroad and its appurtenances in proper repairs, order, and condition for use, and to have the same used and operated until it can be sold and disposed of for the benefit of the bondholders; and in the mean time the incomes and profits thereof paid, appropriated, and applied, according to the true meaning, purpose, and intent of the mortgage hereinbefore described.

And until the final hearing of this cause can be had, and said mortgaged premises may be sold and disposed of for the benefit of the bondholders, and in the mean time be preserved and taken care of, and said railroad of said company operated, and the business of said company
1217 prosecuted and carried on to the best advantage of the holders of the bonds secured by the mortgage above described, and the incomes and tolls of the said railroad applied according to the tenor of the said mortgage and the rules of a court of equity.

Your orator prays that your honorable court appoint a receiver or receivers of all the property hereinbefore described, with such powers as may be adequate for such purposes, or may place your orator in possession of said mortgaged estate, under the terms of the conveyance to him

And to ascertain, fix, and determine what amount is due and owing by said railroad company for principal and interest upon its bonds issued by said railroad company, and secured by the first mortgage herein mentioned, and what is otherwise due and owing by said company, that an account may be made, taken, and stated, before a master to be appointed by this court, of all the debts of said company, with power to report on the priorities of liens on said property, according to the course and practice of a court of equity.

And to the end that the said property may be applied to the satisfaction of said liens and debts according to their lawful claims, that
1218 it may be ordered, adjudged, and decreed that the said railroad, its appurtenances, rolling stock, lands, franchises, rights, credits, and effects, and all the lands of said Mobile and Ohio Railroad Company conveyed by said mortgage, be sold and the proceeds of said sale distributed among the holders of the said bonds, according to their respective rights, and as shall be found to be proper in a due and lawful execution of the trust so to be executed by your orator.

And on the final hearing and pendente lite may it please your honors to grant your orator such other, and further, and different relief as may be equitable in the premises.

And your orator also prays this honorable court of equity, that it may instruct and direct your orator in the execution of his trust hereinbefore set forth, and for said purpose your orator herewith submits his said trust to this court.

And your orator will ever pray, &c.

(Signed) MORRIS KETCHUM.

EDWARD L. ANDREWS.
Solicitor for Complainant, and of Counsel.
LABATT, ARVIN & CLINTON,
B. F. JONAS, *of Counsel.*

1219 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Morris Ketchum, being duly sworn, deposes and says that he is the complainant named in the foregoing bill of complaint, and is the surviving trustee of the first mortgage of the Mobile and Ohio Railroad Company; that he has read the aforesaid bill of complaint, and knows the contents thereof; that the said bill of complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) MORRIS KETCHUM.

Sworn to before me this 1st day of March, 1876.

(Signed) EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

Filed March 14th, 1876.

(Signed) N. W. TRIMBLE, *Clerk.*

1220 *Order on bill of complaint.*

United States circuit court in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS TRUSTEE, &c.,
vs.
MOBILE & OHIO RAILROAD COMPANY, William B. Duncan and Andrew F. Elliott, as receivers of the Mobile & Ohio Railroad Company, et al.

Upon the bill of complaint herein verified, and on motion of E. L. Andrews, esq., and B. F. Jones, esq., counsel for complainant, for leave thereon to sue and implead William B. Duncan and Andrew F. Elliott, as receivers of the Mobile and Ohio Railroad Company, under the orders of this court, it is hereby ordered that the complainant in said bill, Morris Ketchum, have leave to implead and sue herein the receivers of the Mobile & Ohio Railroad Company as such receivers, and to file amended and supplemental bills herein against such receivers, and take any other proceedings against such receivers herein.

(Signed) W. B. WOODS, *Judge.*

MARCH 11*th*, 1876.

1221 (Endorsed:) Notice acknowledged. (Signed) J. A. Campbell, for Duncan & Elliott. Filed March 14th, 1876. (Signed) N. W. Trimble, clerk.

I, Nathaniel W. Trimble, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, hereby certify the foregoing to be a full, true, and correct copy of the bill of complaint (without exhibit) of Morris Ketchum, as surviving trustee, &c., against Mobile and Ohio Railroad Company, W'm B. Duncan and A. F. Elliott as receivers, &c., together with the order of leave to implead receivers, as the same now appear on file in my office.

In witness whereof I hereunto subscribe my name and cause the seal of the said circuit court to be affixed this 18th day of March. A. D. 1876.

[SEAL.] (Signed) NATHANIEL W. TRIMBLE,
Clerk, &c.

1222 EXHIBIT A.

(Copy of bond.)

No.] UNITED STATES OF AMERICA. [No.

First mortgage bond of the Mobile & Ohio Railroad Company.

£225 st'g.] Six per cent. bond of £225 sterling for superstructure and equipment of their railroad from Mobile to the Ohio River. [£225 st'g.

This certifies that the Mobile and Ohio Railroad Company is indebted to or bearer, in the sum of two hundred and twenty-five pounds sterling, for value received. In consideration whereof, the said Mobile and Ohio Railroad Company do hereby promise and agree to pay to or bearer, the said sum of two hundred and twenty-five pounds sterling on the presentation of this bond at the counting-house of Geo. Peabody & Co., London, on the 1st of November, A. D. 1883. And the said Mobile and Ohio Railroad Company do hereby promise and agree to pay interest thereon at the rate of six per centum per annum, semi-annually, on the first days of May and November, in each and every year ensuing the date hereof, until said principal sum shall be paid, upon the presentation and delivery of the coupons hereto annexed, at the counting-house aforesaid, as they severally become due and payable.

This bond is one of six thousand, of like tenor and date, issued by authority of the board of directors of the said Mobile and Ohio 1223 Railroad Company, and in accordance with its charter, for a loan of thirteen hundred and fifty thousand pounds sterling, for the superstructure and equipment only of said road. And the holder is entitled to the security to be derived from a deed of trust, bearing even date herewith, on the said railroad, its rights and franchises of every description, on the real estate of said company, and on the lands donated by act of Congress, of date 20th of September, 1850, to the States of Illinois, Mississippi, and Alabama, to aid in the construction of a railroad from Chicago, State of Illinois, to Mobile, State of Alabama. Said lands have been selected and located to the extent of 1,156,658 acres, as described in the certificate of the General Land Office, approved and certified by the honorable Secretary of the Department of the Interior, at Washington, 4th February, 1853. The fee of said lands has been transferred by the legislatures of Alabama and Mississippi to this company, with full power and authority to dispose of them, as shall secure the construction of said railroad, as will more fully appear in said deed of trust, executed and delivered to John J. Palmer and Morris Ketchum, of New York, and William R. Hallett, of Mobile.

The said Mobile and Ohio Railroad Company further agree that this bond and all rights and benefits arising therefrom may be transferred by general or special endorsement or by delivery.

In witness whereof the said railroad company have caused this bond to be signed by their president and treasurer and the corporate seal to be affixed, at their office, in the city of Mobile, this first day of November, A. D. 1853.

[SEAL.] (Signed) SIDNEY SMITH,
President.
(Signed) A. F. IRWIN,
Treasurer.

1224 (Copy of endorsement on the bond.)

£225 sterling.

UNITED STATES OF AMERICA.

Mobile and Ohio Railroad Company bonds for superstructure and equipment.

Six per cent. interest, payable semi-annually. Coupons each £6 15*s.*, payable at the counting-house of George Peabody & Co., London, £6 15*s.* on 1st of May, and £6 15*s.* on 1st of November.

The principal secured by a first and only mortgage of railroad, equipments, and chartered rights, and by a deed of trust upon, viz:

100,000 acres town sites and 1st quality land, worth 42 shillings per acre	£210,000
1,056,658 acres of other lands, various qualities, and heavily timbered, worth 10 shillings per acre	528,329
Subscriptions partly paid and all payable by 1st January, 1855, in cash and completed contracts	924,264
Total value of lands and cost of railroad, exclusive of Tennessee loan of £196,000, is	2,990,000
Total issue of bonds is	1,350,000

Countersigned:
MORRIS KETCHUM,
J. J. PALMER,
W. R. HALLETT,
Trustees.

Each bond may be used in the purchase of any of the company's land designated for sale, and at the selling price. The proceeds of all lands sold, except for bonds, to be invested by the trustees as a sinking fund for the redemption of the bonds.

INTEREST SECURED

By a pledge of the surplus income from the earnings of the completed portions of the road, and the other property of the company.

Trust deed recorded in the office of records of Mobile County, State of Alabama, an authenticated copy of the same in the hands of George Peabody & Co., London.

1225

EXHIBIT B.

(Copy of deed of trust.)

Deed of trust.

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and fifty-three, between the Mobile and Ohio Railroad Company of the first part, and Morris Ketchum and John J. Palmer of the city of New York, and State of New York, and William R. Hallett of the city of Mobile, and State of Alabama, of the second part,

Witnesseth, whereas, the legislature of the State of Alabama passed an act of incorporation, approved the third day of February, 1848, creating certain associates therein named, and their survivors, a body politic and corporate, by the name of the Mobile and Ohio Railroad Company, and by that name to sue and be sued, plead and be impleaded, to make and have a common seal, and the same break, alter, and renew at pleasure—vested with all powers, privileges, and immunities, which are or may be necessary to carry into effect its purposes and objects—authorized and empowered to locate, construct, and finally complete, a single, double, or treble railroad or way from some suitable point in the city of Mobile, in a western or northwesterly direction to the mouth of the Ohio River, in such route as shall be deemed most expedient, and to transport, take and carry property and persons upon said railroad or way, by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them which said company may choose to apply; and, for the purpose of constructing said railroad or way, the said company is authorized to lay out the road not exceeding one hundred feet wide, through the whole length; and for the purposes of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation, in relation to the business of said company, and also to make joint stock with any other railroad corporation. Further, the State of Mississippi incorporated the said Mobile and Ohio Railroad Company, by act of its legislature, approved the seventeenth day of February, 1848; the State of Tennessee did also incorporate said Mobile and Ohio Railroad Company by act of the legislature, approved the twentieth day of February, 1848; and also the State of Kentucky invested said Mobile and Ohio Railroad Company with corporate rights by an act of its legislature, approved the twenty-sixth day of February, 1848, constituting the Mobile and Ohio Railroad Company a full and complete corporation through the said State, authorized to purchase, hold, and dispose of real and personal estate; to borrow money; to make contracts for the loan of money; and to give evidence of debt, and securities for the payment of the same by pledge, mortgage, or otherwise, as it shall deem necessary and proper. And whereas said Mobile and Ohio Railroad Company, in pursuance of the authorities vested by said charters, have surveyed and located the line of said road from the city of Mobile to or near the junction of the Mississippi and Ohio Rivers, secured the rights of way, obtained depot grounds and valuable assets, all of which are of record in the records of said company, and of record in the counties intersected. And whereas the said roadway is under contract for the complete work of the road-bed

from its respective termini, and in progress of construction, the said Mobile and Ohio Railroad Company, parties of the first part, resolved by vote of the board of directors, and in pursuance of the power and authority
1226 in said company vested, to raise a sum of money not exceeding six millions of dollars, for the purpose of completing said road, viz: the purchase of the iron and laying the same, the necessary turnouts, depots, and equipments; and for the purpose to execute, issue, sell and transfer the bonds of said company, in sums of two hundred and twenty-five pounds sterling each, of even date with these presents, payable in thirty years from date, each with coupons attached for interest, payable semi-annually; each coupon being for £6 15s. sterling; both the principal and coupons, and interest on said bonds, until paid, payable at the counting-house of George Peabody & Co., bankers, in London, England, each of said sterling bonds being the same as one thousand dollars, money of the United States of America, and not exceeding six thousand bonds, each to be numbered respectively from number one to six thousand inclusive, and for security for the payment of said bonds, to transfer to the said parties of the second part, all and singular, all the rights and franchises of said company, together with all its personal property of a fixed character, real estate, including its depots, warehouses, lots in town and country, and especially all lands donated by act of Congress, under date of the twentieth day of September, one thousand eight hundred and fifty, transferred in fee-simple to the said company, party of the first part, by act of the legislature of the State of Alabama, approved December first, one thousand eight hundred and fifty-one; by act of the legislature of the State of Mississippi, approved January twenty-eight, one thousand eight hundred and fifty-two; said lands having been duly selected, set apart and confirmed to said railroad company, party of the first part, and designated by described tracts, as will appear by the act of the Commissioner of the General Land-Office at Washington, certified, affirmed, and ratified by the act of the honorable the Secretary of the Department of the Interior, one of the executive departments of the governments of the United States of America, dated Washington, D. C., February the fourth, A. D. one thousand eight hundred and fifty-three.

Now, therefore, this indenture further witnesseth, that the said Mobile and Ohio Railroad Company, the better to secure the payment of said bonds, and every part thereof, with interest according to the tenor thereof, and in consideration of the sum of five dollars unto the said company, well and truly paid by the said Ketchum, Palmer and Hallett, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, transferred, set
1227 over and conveyed, and by these presents do grant, transfer, set over and convey unto the said Ketchum, Palmer and Hallett, the survivors or successors of them, in fee-simple, all and singular of the rights and privileges of every name and kind, as hereinafter set forth, being the first and only conveyance of title, grant, or mortgage, hereby guaranteeing and warranting the described items, assets and real estate, free from all liens or incumbrances, done or suffered to be done by the said party of the first part.

The said items, as set forth, are as follows: All the said Mobile and Ohio Railroad lying between its respective termini, constructed and to be constructed, together with all and singular, the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned, and which may hereafter be owned, by said company, including the said lands donated by act of Congress herein-

before referred to, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting, as by the certificate of the Department of the Interior, to 419,528.56-100 acres in the State of Alabama; to 737,130.36-100 acres in the State of Mississippi—total, 1,156,658.92-100 acres; saving and excepting therefrom so much as lies in township four south, range one west, of lands subject to entry in the S't Stephens land-office, Alabama, being 692.78-100 acres, more or less; saving and excepting also the lots and tracts in the county of Mobile, State of Alabama, outside of the line of the railway, outside of its depots, and outside of the corporate limits of the city of Mobile, being lots and lands derived by private purchase, not yet fully paid for, and not included in the list of lands in Mobile County derived under and by the act of Congress; and saving and reserving the rights and liens that may attach to the roadway and construction thereon, in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that said State, in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz, one hundred and eighteen miles, which aid is provided for by law of that State, and, if used by said Mobile and Ohio Railroad, the said prior lien in favor of said State will be to the extent of said State aid, not exceeding ten thousand dollars per mile. To have and to hold the said premises, hereinbefore set forth, to the said Ketchum, Palmer and Hallett, their survivors or successors, for the benefit, security, and advantage of the person or persons, or corporations, or any other party who shall
1228 or may be holders of the before-described bonds, or any of them, conditioned as follows:

The said Ketchum, Palmer, and Hallett shall at once have possession and control of the lands donated by act of Congress, and set forth in the before-mentioned certificate of the Secretary of the Interior, of February fourth, one thousand eight hundred and fifty-three, for 1,156,658-100 acres, and any other lands that may be obtained for the said company by the present or by future acts of Congress, with authority to devise and determine rules of management, of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds; said Ketchum, Palmer, and Hallett rendering an exhibit and account of their doings on or before the first days of January of each and every year during the period of the trust herein made, to the said parties of the first part.

The said Ketchum, Palmer, and Hallett shall have full authority to appoint an agent or agents to attend to said land business, who shall account for his or their doings to them, paying over to them all the proceeds of sales or rents, or profits derived from said lands. It is provided, however, that unless the said railroad company should be in default, on any obligations connected with said bonds, no sale of said lands shall be made, except by and with the advice and consent of said company.

The said party of the second part, themselves, or regularly constituted attorney, are hereby vested with authority to issue proper and sufficient deeds of muniments of title.

As to other items of assets of real estate, tolls, or income of said company, they are to remain in the possession or under the control of the said company, except the said company become in default for the payment of said bonds or interest, or any portion thereof; in such case the said party of the second part is hereby vested with full authority to take possession and control of all and singular the entire estate and properties of whatsoever name or kind, and hold the same for the benefit of any and all creditors, with such other action and disposition as shall be equitable to all concerned, provided the said party of the second part shall not claim to take such possession and control, unless said company remains in default of payment of the said bonds or interest for the space of three months after being due and payable.

The Mobile and Ohio Railroad Company further covenant and agree to make to said party of the second part their survivors or successors, any further assurance or instrument as may be necessary, at any future time, to carry out the equitable intentions of this deed; and the
1229 said company, for themselves, their successors and assigns, do hereby covenant and agree with the said Ketchum, Palmer, and Hallett, or their successors, in behalf of the bondholders, that the money received on the said bonds shall be applied in good faith on the construction and completion of said road, and putting the same into operation.

And, on the failure of said company to do and perform any and all the covenants herein agreed, the said Ketchum, Palmer, and Hallett, or survivors or successors, upon the request in writing of any one or more of the bondholders, may and shall take actual possession of all said railroad and the other property and effects of said company hereby conveyed, transferred, and assigned, or so intended to be, and through the agency of such person or persons as they may from time to time appoint, may receive and collect the tolls, incomes, and profits of the same for the purpose of the security hereinbefore declared, and may sell and dispose of the said road and other property hereby mortgaged, conveyed, or assigned, or so intended to be, and all benefit and equity of redemption of the said company therein, always with the benefit of franchise, and subject to the conditions thereof, at public auction, giving reasonable public notice of the time and place of sale, and as the attorney or attorneys of the said company for that purpose, by these presents duly constituted to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance for the real estate in fee simple or otherwise, according to the title of said company therein, and good and proper transfer and assignments of the personal property; and out of the money arising either from the income or profits of the said road and other mortgaged, conveyed, or assigned property, or the effects of the sale thereof, after deducting the expenses incurred in carrying on the business of the road and in keeping the same in repair, together with the costs, charges, and counsel-fees incurred in their proceedings, and a reasonable compensation to themselves for their services, in case of such sale, to apply so much of the residue as may be necessary to pay the principal and interest which may be due on said bonds issued as aforesaid, rendering the balance of such moneys, if any shall remain, to said company.

And the sale so made shall be a perpetual bar against the said parties of the first part and the persons claiming by, from, or under them. Provided, however, and it is hereby expressly understood and agreed that neither of them, the said Ketchum, Palmer, and Hallett, or their successors or assigns, shall in no manner be liable or responsible for any act of the other to which he does not expressly assent; and
1230 that they shall be accountable only for the exercise of reasonable care and dilligence in their management in the premises.

And it is further covenanted and agreed between the said parties, that if either of them, the said Ketchum, Palmer, or Hallett, shall at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company and the said Ketchum, Palmer, and Hallett, or either of them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver all and singular such other and further instruments or assurances as may be necessary to enable such person or persons so selected to act in the execution of these presents. But until such selection of some person or persons to fill such vacancy or vacancies, and the execution of the papers requisite to enable him or them to act, the act or acts of the other shall, notwithstanding such vacancy, be in all respects legal and valid. And it is expressly understood that the conveyance made by this indenture is only on and for the present rights, interest, and property, and in the future to be acquired rights, interest, and property, and appurtenances of the parties of the first part as do or may exist on the line of said railroad, from the city of Mobile to the mouth of the Ohio River. And it is hereby further provided, and these presents are upon the express condition, that upon the payment or satisfaction of the principal and interest of the aforesaid bonds, the estate hereby granted and conveyed to Ketchum, Palmer, and Hallett, their survivors or successors, and the property and effects mortgaged, conveyed, or transferred to them shall cease and become void; and the said company shall thereupon be fully and immediately reinvested with the same, both in law and equity and in fact, without any entry or other act whatever.

In witness whereof, the parties of the first part have caused these presents to be acknowledged by their president, and attested to in their behalf by their president and secretary, and their common seal 1231 thereunto affixed; and the said parties of the second part hereunto set their hands and seals the day and year first above written.

[SEAL.] SIDNEY SMITH,
President Mobile and Ohio Railroad Company.

(Signed) A. F. IRWIN,
Secretary M. & O. R. R. Co.

We accept the above trust.

MORRIS KETCHUM,
JOHN J. PALMER,
W. R. HALLETT,
Trustees.

Filed March 14th, 1876.

N. W. TRIMBLE, *Clerk.*

1232 In the United States circuit court in and for the fifth judicial circuit and southern district of Alabama. In equity.

MORRIS KETCHUM, AS SOLE SURVIVING TRUSTEE, &c.,
vs.
THE MOBILE AND OHIO RAILROAD COMPANY et als.
} On bill, &c.

The petition of the Rogers Locomotive and Machine Works, of Patterson, New Jersey, a corporation of the State of New Jersey, respectfully shows that it is the holder of a large number of bonds, issued by the said defendant corporation, under and by virtue of a mortgage executed by the same, commonly called the second mortgage. That the said bonds, so held by the petitioner, amount in the aggregate to about the sum of $100,000$\frac{00}{100}$.

Petitioner, under advice of counsel, states that the plaintiff in the above-entitled cause, as this court has solemnly adjudged, is
1233 the lawful trustee and owner of the *of the* legal estate of the said The Mobile and Ohio Railroad Company, in all its railroad appurtenances, land granted by the United States Government in aid of the construction of the said railroad, and all other property whatsoever that is included in and covered by the first mortgage, referred to in the bill of complaint in this cause, and made a part thereof, and is in equity the *the* representative of the holders of bonds issued under the said first mortgage, who are the real owner' of said property in the first instance; but petitioner shows that if the value of said property is more than sufficient to satisfy the said first mortgage, petitioner and others in similar right, holders of the bonds issued under the second mortgage, are entitled to be satisfied out of the proceeds of the property aforementioned.

Petitioner desires to be heard in the above-entitled suit in order that its rights may be duly respected and enforced, and that the rights
1234 of all other holders of bonds issued under the said second mortgage who shall or may come in and pray to be heard may have their rights respected and enforced.

Petitioner prays that this honorable court will be pleased to admit petitioner as a party defendant to the said bill of complaint, and that petitioner may have leave to answer the same.

And petitioner further prays that this petition, in so far as it answers the allegations of said bill of complaint, may be taken and considered as an answer to said bill, and petitioner hereby expressly admits all the allegations of said bill.

And petitioner prays for such other and further relief in the premises as may be agreeable to equity and good conscience.

Petitioner joins in the prayer of said bill of complaint for the appointment of a receiver or receivers of said railroad and other property mentioned therein.

E. H. GRANDIN,
Sol. for Petitioner.

1235 UNITED STATES OF AMERICA,
Southern District of Alabama, ss:

Egbert H. Grandin, agent and solicitor of the above-named petitioner, being duly sworn, saith that the contents of the said petition, so far as stated on knowledge are true, and so far as stated on information and belief he believes that to be true.

E. H. GRANDIN,
Sol. of Petitioner.

Subscribed and sworn to before me this seventh day of February, A. D. 1877.

JOHN H. WALLACE,
U. S. Commissioner, So. Dist. of Ala.

Filed in open court February 7th, A. D. 1877.

N. W. TRIMBLE, *Clerk.*

1236 Circuit court of the United States in and for the fifth judicial circuit and southern district of Alabama. In equity.

MORRIS KETCHUM, AS SOLE SURVIVING trustee, *vs.* THE MOBILE AND OHIO RAILROAD COMpany et als.	On bill, &c.

The court having read and duly considered the petition of the Rogers Locomotive and Machine Work' of Patterson, New Jersey, a corporation created by the laws of said State, and having heard argument thereon, and the said complainant, by his solicitor, in open court having consented to the granting of the prayer of the said petition, the court doth order, adjudge, and decree that the prayer of the same be granted, and that the said corporation petitioner be admitted a party defend-
1237 ant in the said entitled cause; and it appearing to the court that the said petition admits all the allegations of said bill, it is further ordered, adjudged, and decreed that as to said petitioner a decree be entered in favor of the said complainant, surviving trustee, &c.

The court doth further order that the said petitioner have leave to move the court for the appointment of a fit and suitable person or suitable persons to be receivers of the said railroad and other property pending the said cause.

Filed in open court February 7th, 1877.

N. W. TRIMBLE, *Clerk.*

1238 *Petition.*

Circuit court of the United States in and for the fifth judicial circuit and southern district of Alabama. In equity.

MORRIS KETCHUM, AS SURVIVING TRUStee, &c., *vs.* THE MOBILE AND OHIO RAILROAD COMpany et als.	No. 97. On bill, &c.

The petition of the Rogers Locomotive and Machine Works, of Patterson, New Jersey, a corporation created by the laws of said State, on behalf of itself and all others in like interest who may come into this petition, respectfully shows that it is necessary, pending the said entitled cause, that a fit and suitable person or fit and suitable persons should be appointed receiver or receivers of the said railroad, lands, and other property mentioned and referred to in the said bill of complaint.

Petitioner further states that the annexed is a true copy of a cir-
1239 cular from bondholders representing, as *as* firms and individuals, at the time of the issuance of said circular, and without including proxies received since the date thereof, five hundred and eighty-eight thousand dollars of first-mortgage sterling bonds of the corporation defendant.

The said paper annexed is marked "Exhibit A," and the statements therein contained petitioner believes to be true.

Petitioner states that other holders of bonds issued under the said second mortgage of the said defendant corporation, who are represented by a committee, are in accord with your petitioner in this its petition. The said committee represents bonds issued under the said second mortgage to the amount of about three hundred thousand dollars.

Petitioner respectfully refers this honorable court to a true copy of the unanimous opinion of the court of appeals of the State of New York, which is annexed hereto, marked "Exhibit B," and which exhibit 1240 petitioner states, under the advice of counsel, conclusively shows the unfitness of W. B. Duncan, one of the present receivers, to be in charge of said property as an officer of this court.

In regard to the other receiver, A. F. Elliott, petitioner states that he has made an assignment in insolvency as a member of the firm of Duncan, Sherman & Co.; that he is at present engaged in the business of an insurance-agent in the city of New Orleans, and therefore is entirely unfit for the functions of receiver of said railroad and property.

Petitioner further states that the said W. B. Duncan has been adjudicated a bankrupt by the United States district court for the southern district of New York on the petition of his creditors under the provisions of the law of the United States commonly called the bankrupt law, and the bankruptcy proceedings are now pending.

Petitioner therefore prays, the premises considered,

First. That this honorable court will be pleased to appoint receivers in this suit under the title of the complainant herein for the purpose 1241 of executing the trusts of the mortgage to him, and with all the powers of receivers according to the practice of the court of chancery.

Second. That all other persons whomsoever now in possession of said railroad and other property under any claim of title whatsoever, be ordered and directed by this court to surrender and deliver up the said possession to the receivers who shall be appointed by the court in the said entitled cause, and further that the persons at present in possession of the said railroad and property do account to the court for all their actings and doings, under any previous orders of the court, and that petitioner may have such other and further relief as may seem meet to the court, and petitioner will ever pray.

E. H. GRANDIN,
Sol's for Petitioner.

1242 UNITED STATES OF AMERICA,
Southern District of Alabama, ss:

Egbert H. Grandin, of Mobile, being duly sworn, doth depose and say that the facts stated in the foregoing petition, so far as stated on knowledge, are true, and so far as stated on information and belief, he believes them to be true; and further, that he is the duly authorized agent and attorney of said petitioners.

E. H. GRANDIN.

Sworn to and subscribed before me this 7th Feb'y, 1877.

JOHN H. WALLACE,
U. S. Commissioner.

1243 Circuit court of the United States in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &C.,
vs. } On bill, &c.
THE MOBILE AND OHIO RAILROAD COMPANY ET ALS.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles Moran, Daniel C. Moran, Amedie D. Moran, Henry Amy, and Gustave L. Hoppenstett, being duly and severally sworn, deposes and

says each for himself that he and the firms of Moran Bro's and H. Amy & Co. are the owners and representatives, as individuals and firms, of five hundred and sixty-seven thousand dollars of bonds, secured by the first sterling mortgage of the Mobile and Ohio Railroad Company, of which forty thousand dollars thereof are interest bonds. That *it* the bondholders whom they represent are in great part aliens and
1244 residents of various States of the Union far distant from the line of said railroad, and their constituents rely entirely upon them for the protection of their interests, as they are unable, on account of their scattered condition, to act each in his own behalf.

Most of these bondholders purchased these securities for legitimate investment, and the strictest application of the property and of its resources to the payment of their interest is a matter of the utmost necessity to them. They advanced their money on the faith of the first lien upon the greater part of the property and its resources, and they are unwilling that any portion of the estate or its income should be diverted to any other purpose than the prior satisfaction of the debts justly due them. They are also unwilling that the credit and character of the estate, which is their security, should suffer from the fact that its custody, as well as its administration, is in the hands of W'm B. Duncan and Andrew F. Elliott.

They present to this honorable court the *the* statements contained
1245 in the following sworn papers, and in the documents hereinafter referred to, and all of which statements are true, as they are informed and believe. They exhibit the affairs of the property since it has been under the control of said Duncan and Elliott, and likewise the facts showing the personal unfitness of said parties to occupy positions of great trust and power in connection with the management and resuscitation of a railroad property reduced to insolvency and requiring the highest character, credit, and competency for its redemption.

And your petitioners likewise show that both Duncan & Elliott are wholly irresponsible in a pecuniary point of view, and their bondsmen are two attorneys at law, S. L. M. Barlow and W. W. McFarland, who are likewise on the bond of W. D. Shipman, the assignee in insolvency of Duncan and Elliott, to the amount of six hundred and fifty thousand dollars; and the total amount of said bonds deponents verily be-
1246 lieve is in excess of their ability to respond over and above their other liabilities.

Sworn to and subscribed before me on this day of , A. D. 18 .

Filed February 7, 1877.

N. W. TRIMBLE, *Clerk*.

1247 EXHIBIT A.

OFFICE OF MORTGAGE BONDHOLDERS OF THE
MOBILE AND OHIO RAILROAD COMPANY,
November 24th, 1876.

To the creditors of the Mobile and Ohio Railroad Company:

The undersigned, owners of first mortgage sterling bonds of the Mobile and Ohio Railroad Company, have duly considered a circular signed by Messrs. William H. Hays, William S. Pierson, and T. Haskins Dupuy, accompanying a plan of reorganization of said company, which has been submitted to us for our signatures.

The object of this plan can only be, it appears to us, to further the interests of the inferior securities of the Mobile and Ohio Railroad, at the expense of the first and other mortgage bondholders. After a careful examination we believe it to be most unjust to our interests as holders of those bonds, and we respectfully call the attention of all the parties in interest to the following simple statement of facts, and the conclusions drawn from them by us. The facts are mostly taken from the records of the courts having the present custody of the property of the Mobile and Ohio Railroad Company, and hence cannot be denied.

Messrs. William B. Duncan and A. F. Elliott have been for several years directors of the Mobile and Ohio Railroad Company. The former was the head of the banking-house of Duncan, Sherman & Co., of this city, and the latter the New Orleans agent of that house. For about a year before the default of the Mobile and Ohio Railroad Company on the interest of the first mortgage bonds, Mr. Duncan had been president of the company, and still acts as such president.

In April, 1875, shortly before the default in the payment of interest, Messrs. Duncan and Elliott claimed to become trustees of the first sterling mortgage, Mr. Duncan, at the time, being a trustee for the so-called Tennessee substitution bonds, and likewise for the consolidated mortgage bonds. Immediately upon the default, which transpired in May, 1875, the directors surrendered possession of the entire property 1248 of the Mobile and Ohio Railroad Company to Duncan and Elliott, as trustees for the first mortgage bondholders. A few days afterwards, Duncan and Elliott filed a bill in the United States circuit court for Alabama, and were invested by said court with the powers of receivers of the property. Since that time Duncan and Elliott have administered the property, through the agency of T. Haskins Dupuy.

THE FLOATING DEBT CLAIMS.

On or about the 9th day of April, 1876, the floating debt creditors of the company applied to the United States court for the sale of $550,000 (five hundred and fifty thousand dollars) of securities, belonging to the first mortgage, and the application of the proceeds in liquidation of their claims.

W. B. Duncan and A. F. Elliott claiming to represent the first mortgage bondholders offered absolutely no opposition to this demand.

The sole defense of the interests of the first mortgage bondholders was made on behalf of Mr. Morris Ketchum, as surviving trustee of their mortgage, aided by some of the bondholders. Without this timely action on the part of Mr. Ketchum, it is clear that the court would have been led to grant the order in favor of the floating debt claimants, which would, in effect, have appropriated our property for the benefit of other persons. Indeed, the lack of all opposition on the part of the first mortgage bondholders, other than as above stated, was urged on the court as an acquiescence by the bondholders generally in this appropriation of their property. Fortunately, however, the scheme was entirely defeated, and the United States circuit judge sustained Mr. Ketchum in his opposition on our behalf.

The assets, amounting to more than half a million dollars, of securities, thus saved for our benefit, we should seek to have applied to the payment of our over-due coupons. This strange proceeding of the floating-debt holders, and the absence of all defense on our behalf by W. B. Duncan and A. F. Elliott, warn us of the necessity of a proper representation of the first mortgage bondholders.

1249 ALEXANDER DUNCAN'S CLAIMS.

In their proceedings by bill filed in the United States circuit court, Messrs. Duncan and Elliott declare that the coupons of the first mortgage bonds which fell due in May and November of 1874, which had been paid to the bondholders, were still outstanding and subsisting first mortgage liens on our property. These coupons were presented and were paid in the same manner in which all previous coupons had been presented and paid. It was generally supposed, and every one had a right to suppose, when they were paid and surrendered, that they ceased to be a part of the first mortgage. Nevertheless, it was claimed about the time of the default in 1875, that these coupons were outstanding liens on the property, and they now appear mainly in the hands of Mr. Alexander Duncan, father of William B. Duncan, who claims them by assignment from Duncan, Sherman & Co., to the amount of nearly ($736,000) seven hundred and thirty-six thousand dollars. It is claimed that these coupons should participate in our mortgage, and, to the same extent, reduce the value of our bonds. These coupons were paid in the regular and usual way, and they should not be paid again, at least with our consent. Dead and paid coupons cannot be revived in this way to eat up mortgaged property. If this should be submitted to, the payment of mortgage interest can always be turned into a loan to the bondholder, to be deducted from the amount of his mortgage. We cannot consent to any plan of reorganization which proposes to take three-quarters of a million dollars from the mortgage estate, as does the plan offered under date of October 12th, 1876, which purposes to include all coupons "whose original due date named therein shall not be later than November 1, 1877."

THE TENNESSEE CLAIMS.

In the various proceedings before the United States circuit courts, W. B. Duncan and A. F. Elliott admit that certain claims called Tennessee substitution bonds, hold a priority over the first mortgage sterling bonds, on the 118 miles of the main line running through the State of Tennessee. In addition, a distinct suit in the United States
1250 circuit court of Tennessee was instituted in the name of William B. Duncan, Adrian Iselin, and R. T. Wilson, as trustees for these Tennessee substitution bonds, to enforce in their favor a priority over the first-mortgage bonds. The sole representatives of the first-mortgage bonds served with notice of these legal proceedings in Tennessee were Duncan and Elliott, who claim to represent the first-mortgage bonds as trustees. No defense whatever was made by them in this action, and the consequence was that a decree was obtained, by default, against the first mortgage, and an order of sale of the Tennessee section of the road was entered for the benefit of the Tennessee substitution bonds, leaving the first mortgage bonds only such balance, if any, as might remain. The excuses offered by W. B. Duncan to palliate his conduct in this matter, and his efforts to avoid the effect of his laches, cannot countervail his express admissions in favor of these subordinate claims and against the first mortgage.

Now, in fact, the first mortgage is a first lien on the entire line, the lien formerly created to protect the advances made by the State of Tennessee to the company having long since been satisfied by a return to the State of its bonds to the full amount of the advances made by the State. It is true, there was an attempt to assign the State's lien, after its liquidation, to the holders of the Tennessee substitution bonds; but, as these bonds were created long after the first-mortgage bonds, and were issued only after the full liquidation of the advances of the State, and as they are entirely different in nature from the cancelled State bonds, these new substitution bonds cannot obtain a priority over the first-mortgage bonds by any arrangement between the company and its subsequent creditors.

But, even assuming that the substitution bonds are entitled to the
benefit of the satisfied and extinct lien of the State of Tennessee, the
proposed plan of reorganization gives them an advantage over the first-
mortgage bonds entirely unwarranted and unjust. These bonds are for
£225 sterling each, payable in London, equal to $1,100 gold or $1,200
in currency. These bonds are proposed to be admitted into the
1251 reorganization only for the sum of $1,000, and they are allotted
only $440 in the new first-mortgage bonds for each sterling bond;
whilst the Tennessee substitution bonds, which cannot claim more than
$1,000 currency under the State lien, are allotted $625 for each $1,000
bond; and the past-due coupons of these bonds are admitted into the
proposed reorganization at $36 each, although only entitled to claim
under the State lien $30 in currency.

In fact, these various proceedings are simply attempts to give an unjust priority over the paramount rights of the first mortgage bonds to the following claims:

Floating claims	$536,000
Alexander Duncan's claims	736,000
Tennessee claims	2,018,028
Total loss to mortgage bondholders	3,290,028

Those who favor or passively submit to the priority of these various claims over the first mortgage bonds, appeal to the current, well-founded objection against litigation in the courts. But, if litigation continues, on whom shall the blame fall—on those who defend their just rights, or on those who attempt to secure an undue and unjust advantage over prior liens? In all events, we shall henceforward take good care that the property and assets are fairly managed and applied for the benefit of the parties entitled to them.

In our judgment the property should be taken out of the courts and placed under the direct administration of the mortgage bondholders and their representatives; and we sincerely believe that an effort of the bondholders to protect themselves against the foregoing claims, and to reorganize the property in their own interest, while treating all the various other interests with the utmost liberality, will meet the same success that attended the resistance to the priority over the mortgage bonds sought to be obtained by the floating creditors.

In case of the sale of the road on foreclosure, it would probably not
bring the amount of the first mortgage. It therefore rests entirely with
the first mortgage bondholders to determine the conditions on which
they will admit the junior securities to participate in the purchase.

1252 We suggest and recommend to our fellow-bondholders and to all
other parties in interest to unite with us in order to effect

THE REORGANIZATION OF THE M. & O. R. R. CO.

on the following terms, which appear to us equally just to all the various parties in interest:

I. Obtain from the court an order for the application to the payment of our overdue coupons of the assets which it was lately attempted to apply to the payment of the floating-debt creditors.

II. Release the property from the hands of the court, by the sale of the entire line, from Mobile, Alabama, to Columbus, Kentucky; at such sale the property to be purchased for the benefit of all the securities ot the present company, and the purchasers to reorganize the company in accordance with this plan.

III. The reorganized company to create and issue new securities, as follows:

(*a.*) Six per cent. bonds, payable, principal and interest, in gold, secured by a first mortgage on the entire line from Columbus, Kentucky, to Mobile, Alabama, and on all the property, rights, franchises and lands acquired by the purchase for account of the reorganized company; said bonds to be issued in exchange for the first-mortgage sterling bonds, and for the interest-bonds, and for the unpaid coupons on those bonds, which matured on and after the first of May, 1875. We propose to admit the interest-bonds on the same basis with the first-mortgage bonds, because the old first-mortgage coupons are held in trust for the benefit of the holders of the present interest-bonds.

(*b.*) First-preferred income-bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the present second-mortgage bonds, and for unpaid coupons to March 1, 1878.

(*c.*) Second-preferred income-bonds, bearing 7 per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the present convertible bonds and unpaid coupons to March 1, 1878.

1253 (*d.*) Third preferred income-bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the Tennessee substitution bonds and unpaid coupons, to January 1, 1878.

(*e.*) Fourth preferred income bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the consolidated bonds.

(*f.*) Surplus income bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in settlement of floating debt.

COMMON STOCK.

To be issued to the amount of the present common stock, but to be held and voted on by the trustees of the new first mortgage until interest on all the above bonds has been paid out of nett earnings for three successive years. Thereupon, the certificates to be assigned to the present stockholders or their representatives.

We are satisfied that the property is amply able to meet the amount of first mortgage interest called for by the above plan, and that the charter rights will be unimpaired by a sale for our benefit.

The holders of all the securities, other than the first mortgage, who do not accede to this plan within a time to be limited by the purchasing committee, will be debarred from participating in the purchase and reorganization.

In order to consummate the above plan of reorganization without unnecessary delay, we request all the creditors of the Mobile and Ohio Railroad Company to return, signed, the accompanying power, addressed to

Committee of Mobile & Ohio Railroad Bondholders, 68 William street, New York.

MORAN BROTHERS.
H. AMY & CO.
ARENTS & YOUNG.
LOUIS J. BELLONI.

POWER OF ATTORNEY.

The undersigned, holders of securities of the Mobile and Ohio Railroad Company, now revoking all other powers, do hereby request and authorize to act in our behalf in the election of a 1254 purchasing committee, to be composed of two first mortgage bondholders and one second mortgage bondholder, who shall have the preceding plan carried into execution, by final decrees of the circuit courts of the United States, and by purchase and reorganization thereunder; and who shall take any and all proceedings deemed by them advisable in furtherance of said plan, which shall not be effectual until approved by a majority of the first mortgage bondholders. After the reorganization on the foregoing basis, the possession of the road to be delivered to the directors who may be selected by a vote of the first mortgage bondholders, controlling the stock of the company under the foregoing plan.

NAMES AND ADDRESS.	CLASSES OF CLAIMS.	AMOUNT.

N. B.—The bondholders and other parties in interest may send this power to the signers of the above plan or to any other person they may desire to entrust with their interests.

EXHIBIT B.

Court of appeals, State of New York.

WASHINGTON A. ROEBLING ET ALS., RESPONDENTS,
against
WILLIAM BUTLER DUNCAN ET ALS., APPELLANTS.

S. Hand for appellants; H. H. Morange for respondents.

EARL, J.:

The order of arrest against the defendants was based upon the provisions of the code, which authorizes such an order "when the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought," (Code, sec. 179, sub. 4,) and the sole question for us to determine is, whether the facts of the case, as disclosed in the affidavits, authorized the order.

1255 The defendants had for several years been bankers in the city of New York, doing an extensive business. They lived in princely style, had an elegant banking-house, with a large retinue of cashiers and clerks, and were reported to be very wealthy. The plaintiffs had done business with them for many years, and believed them to be perfectly responsible.

On the 21st day of July, 1875, the plaintiffs purchased of the defendants, in the ordinary way, at their banking house, a sight draft on the Union Bank, London, which was presented for payment early in August, and payment was refused. On the 27th day of July the defendants publicly failed, and made a general assignment for the benefit of their creditors. They then owed to creditors, in all parts of the world,

$5,000,000, mostly due, and had less than $2,000,000 of assets; and their financial condition must have been substantially the same when they sold the draft. They admit that they had learned of their embarrassed condition prior to the 21st day of July, and that they were then negotiating with European parties for help. They claim that they kept books in their business in which the entries were honest and real. It is incredible, then, that they did not know substantially their true condition. Although they had ample opportunity to do so, they did not show how much, if any, capital they at any time had in their business; they did not explain when, nor how, nor by what disaster they came to be thus largely insolvent; they did not disclose what they had discovered in the examination of their books, nor what their negotiations for help were, nor what reasons they had to hope that they could go on in their business. They were doing business based on a net indebtedness of $3,000,000, due to a set of duped and confiding creditors scattered through Europe and America. They must have known that they were utterly and hopelessly insolvent; that their condition was such that no change of fortune or friendly aid could relieve them; that their banking house might any day be closed, and that they would soon have either to go into bankruptcy or make an assignment. From the facts disclosed in the affidavits, they had no reason to hope that they would
tide over their financial difficulties. Yet they kept on their busi-
1256 ness, holding out to their customers the same delusive appear-
ances of solvency, and inviting the same confidence. After they were in this condition they could not, honestly, continue their business and receive the money of their customers. It is true that they had no particular intent to cheat and defraud the plaintiffs, but they must be held to have intended what was the inevitable consequences of their conduct, to cheat and defraud all persons whose money they received and whom they failed to pay before the final catastrophe happened.

The circumstance that when they sold this draft they had, as shown by their own books, a large amount of money on deposit in the Union Bank, is of no importance. None of that money was specifically appropriated to the payment of this draft, and, before the draft reached London, it had been wholly exhausted by prior drafts and letters of credit, and the defendant had become largely indebted to the drawee.

This is not like the case of an insolvent merchant buying goods for his store. In such a case the buyer and seller are on a footing of equality. The seller can enquire as to the solvency of the buyer, and thus, if honestly informed, judge for himself. But here the plaintiffs would not be expected to enquire of the solvency of the defendants, or to have any dealings directly with the defendants, but in the ordinary course of business they would buy their bills, as they did, like other customers, over the counter of the bank, of a clerk, asking no questions as to the solvency of the bankers. Hence, in the case of bankers, where greater confidence is asked and reposed, and where dishonest dealing, such as is disclosed in this case, may cause widespread disaster, a more rigid responsibility for good faith and honest dealing must be enforced.

This not like the case of a trader who has become embarrassed and insolvent, and yet has reasonable hopes that by continuing in business he may retrieve his fortune. In such a case he may buy goods on credit, making no false representations, without the necessary imputation of dishonesty. (Nichols vs. Pinner, 18 N. Y., 295; Brown vs. Montgomery, 20 N. Y., 287; Johnson vs. Monell, 2 Keys, 655; Chaffee vs.
Fort, 81.)

1257 But it is believed that no case can be found in the books hold-

ing that a trader who was hopelessly insolvent, knew that he could not pay his debts, and that he must fail in business and thus disappoint his creditors, could honestly take advantage of a credit induced by his apparent prosperity, and thus obtain property which he had every reason to believe he could not pay for. In such a case, he does an act the necessary result of which will be to cheat and defraud another, and the intention to cheat will be inferred.

It follows from these views that the order must be affirmed.

All concur, Allen, Folger, and Rapallo, J.J., in result.

A copy.

H. E. SICKLES,
Reporter for C.

Filed February 7th, 1877.

N. W. TRIMBLE, *Clerk.*

1258 *Petition.*

Circuit court of the United States in and for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &c., *vs.* THE MOBILE AND OHIO RAILROAD COMPANY et als.	No. 97. On bill, &c.

Upon the bill of complaint in this cause, and the exhibits attached thereto, and upon the decree of the circuit court of the United States for the southern district of Alabama, overruling the demurrer of defendant Duncan, and the plea in bar of the corporation defendant of the 3rd of February, A. D. 1877, and upon the request of a committee of the cestuis que trust of complainant holding bonds under the first mortgage aforesaid to a very considerable amount.

Now on motion of Edward L. Andrews, solicitor for the trustee complainant herein, it is hereby ordered that the defendants in this 1259 suit show cause before the circuit court of the United States above named, on the 15th day of February, 1877, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, that being a day of the regular term of this court, which commences on the fourth Monday of December, A. D. 1876, at the custom-house in the city of Mobile, why an order and decree should not be entered in this cause, constituting and appointing two fit and discreet persons receivers of the railroad and other property of the defendant, the Mobile and Ohio Railroad Company, to take possession of said railroad and property under the first mortgage thereof, and in pursuance of the provisions of the deed of trust executed to complainant, and others, on the first day of November, 1853, and under which the complainant is sole surviving trustee, has filed his bill in this court; and also that the said receivers may have and maintain the possession and administration of said property under the orders of this court.

1260 And that the said receivers may have the aid and protection of this court in the execution of the trusts of the said deed, and may have leave to apply to this court from time to time for its instructions in the premises.

And that the app'opriate orders and decrees may be had to carry into execution the above prayed relief for the advancement of the interests of the beneficiaries of said trust.

And it is also ordered that the filing of this order shall be notice of the contents thereof to all the defendants in this cause who have been served with process herein, or who have appeared herein. Then said defendants are ordered to file in the clerk's office of this court all the opposing papers intended to be read upon the hearing of this motion one full day before the return of this order.

And upon the petition of the Rogers Locomotive and Machine Works, and the affidavits of Charles Moran, Henry Amey, and others, on behalf of first and second mortgage bondholders of the Mobile and 1261 Ohio Railroad Company, for the appointment of receivers in this cause; and on motion of E. H. Grandin, of counsel of said parties, it is ordered that the directions for the hearing above prescribed and the filing of opposing papers be applied to them, save and except that the filing of copies of the papers on both sides before the hearing shall be equivalent to the filing of the original thereof.

Filed *filed* February 7, 1877.

N. W. TRIMBLE, *Clerk.*

Notice.

United States circuit court southern district of Alabama. In equity.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &C., *vs.* THE MOBILE AND OHIO RAILROAD COMPANY et als.	No. 97.

To Peter Hamilton and George N. Stewart, esqrs.:

Take notice that we have this day filed a petition for the appointment of trustees of the first mortgage of the corporation defendant, and have entered a motion on the motion docket of this court for the hearing of this our petition on Monday, February 19th, 1877.

E. L. ANDREWS.
1262 E. H. GRANDIN,
Sol's for Complainant.

Filed February 17, 1877.

N. W. TRIMBLE, *Clerk.*

F. Y. Anderson, being duly sworn, deposes and says that upon the 17th day of February, A. D. 1877, at 10.55 a. m. o'clock, he personally served a copy of the within notice upon George N. Stewart, attorney-at-law.

F. Y. ANDERSON.

Sworn and subscribed to before me this the 17th day of February, 1877.

J. J. OSBORNE,
U. S. Commissioner.

Notice.

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &c., *vs.* THE MOBILE AND OHIO RAILROAD COMPANY et als.	No. 97.

Take notice that we will move the circuit court of the United States on the 19th day of February, 1877, at 10 o'clock a. m., or as soon there-

**after as counsel can be heard, for an order and decree appointing George
S. Coe, president of the American Exchange National Bank of
1263 the city of New York, and Phil. C. Calhoun, president of the
Fourth National Bank of the city of New York, as trustees to
fill the vacancies in the board of trustees of the trust-mortgage of the
Mobile and Ohio Railroad Company, caused by the death of John J.
Palmer and William R. Hallett.**

EDWARD L. ANDREWS,
Solicitor for Complainant.
E. H. GRANDIN,
Of Counsel.

To Messrs. HAMILTONS & GEORGE N. STEWART,
Sol's, &c.

Petition for appointment of new trustees.

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE of the first mortgage of the Mobile & Ohio Railroad Company,
vs.
MOBILE & OHIO RAILROAD COMPANY ET ALS.
No. 97. In equity.

1264 2nd. Morris Ketchum, the complainant in the above entitled
cause, now comes and petitions your honorable court and avers:

First. That heretofore John G. Palmer and William R. Hallett, who were co-trustees with your petitioner in the mortgage deed of trust in your petitioner's bill of complaint, heretofore filed in this court, & which deed of trust or mortgage was attached to said bill of complaint as an exhibit, have died, and their places as such trustees are vacant.

Second. That a large amount of the holder of the bonds secured by the deed of trust and mortgage above mentioned have asked your petitioner to apply to your honorable court for the assignment of George S. Coe, the president of the American Exchange National Bank, in the city of New York, and Philo C. Calhoun, likewise of the city of New York, as co-trustees with your petitioner in the place and stead of said John G. Palmer and William R. Hallett, deceased.

Third. That said George S. Coe and Philo C. Calhoun are gen-
1265 tlemen of high integrity and responsibility, and eminently well
fitted to discharge the duties of trustees under the said deed of
trust or mortgage, and besides have been the trustees of many railroad
mortgages, and understand thoroughly the duties *of* pertaining to such
trustees.

Fourth. That your petitioner request, your honorable court to appoint the said George S. Coe and Philo C. Calhoun trustees in the place and stead of said John G. Palmer and William R. Hallett, and will ever pray, &c.

MORRIS KETCHUM,
Trustee.

E. L. ANDREWS, *Sol'r.*
E. H. GRANDIN, *Of Counsel.*

UNITED STATES OF AMERICA,
City, County, and State of New York:

Morris Ketchum, the above-named petitioner, being duly sworn, says that he has read the foregoing petition, & that the same is true to his own knowledge.

MORRIS KETCHUM.

Subscribed and sworn before me this 14th day of Feb'y, 1877.

JOSEPH GUTRA, Jr.,
U. S. Commissioner, Southern Dist. of New York.

1266 UNITED STATES OF AMERICA,
City, County, and State of New York, ss:

Charles Moran, being duly sworn, says that he has read the foregoing petition, and that the same is true to his own knowledge, and that he is well acquainted with George S. Coe and Phil. C. Calhoun, and that they both are men of integrity and responsibility and command the confidence of the community.

Subscribed and sworn before me this 14th day of February, 1877.

[SEAL] JOSEPH GUTMAN, Jr.,
United States Commissioner, Southern District of New York.

Filed February 17, 1877.

N. W. TRIMBLE, *Clerk.*

1267 *Petition for rehearing on demurrer & plea.*

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM
vs.
MOBILE AND OHIO RAILROAD COMPANY, W'm Butler Duncan, et als. } No. 97. In equity.

To the honorable the judges of the circuit court of the United States for the circuit and district aforesaid:

1. The petition of the Mobile and Ohio Railroad Company, a corporation of the State of Alabama, and of W'm Butler Duncan, respectfully shows that they are defendants in the above-entitled cause pending on the equity side of this honorable court; and

2. That said complainant filed his said bill alleging himself to be trustee of a certain deed of trust and mortgage executed by your
1268 petitioner, the said corporation, and dated 1st November, 1853,
and praying a decree of foreclosure and sale of the property in said deed described; and charging that his right and title as the sole surviving trustee of said deed was valid and unimpaired, by anything which had occurred after the execution of said deed, though his said bill admitted that he had knowledge in the year 1865 that a decree for his removal from said trust had before that time been made by the court of chancery of the State of Alabama, sitting at Mobile, in said State, and that other persons had by said court been appointed trustees under said deed in place of said complainant and of his co-trustees, Palmer and Hallett, who had before that time, when said decree was

rendered, departed this life, and did not show that he had at any
1269 time before the filing of his said bill in this honorable court
taken any steps to open said decree, or in any manner review or revise the same, or cause the same to be vacated, as was authorized by the laws of the said State of Alabama.

Said bill also showed that said deed of trust had been made and executed in the State of Alabama, and included in it property in the State of Alabama, and that said railroad company, which was the settler of said trust deed, had its home and chief place of business within the limits and territory of said State, and that your petitioner, W'm Butler Duncan, in connection with A. Foster Elliot, also a defendant to said bill, was, at the time of the filing of said bill by said complainant, in
actual possession of said trust property and claiming title thereto
1270 as trustees under said deed, and as one of the trustees so appointed by the said court of chancery of the State of Alabama, as aforesaid, and had also been, by the order of this honorable court, appointed receivers of said trust property upon a bill then pending in this court.

3. Your petitioner, the said Mobile and Ohio Railroad Company, further shows that, in defence of said bill of complaint by said Ketchum, it filed its plea in bar to said bill, and thereby pleaded that said Ketchum is not sole surviving trustee under said deed, and at the time of filing his said bill was not a trustee under the said deed of trust, and not entitled to possess the property in said deed described, because said Ketchum had been removed from said trusteeship by the decree of the court of chancery of the State of
1271 Alabama, sitting at Mobile, upon bill filed by this petitioner,
which was a court of competent jurisdiction of the subject and of the parties, and had taken jurisdiction thereof, and had proceeded upon good cause alleged in said bill, according to the laws of the State of Alabama, and the rules and practice of the court, and, by decree thereon rendered, had removed said Ketchum from the said office of trustee, and had appointed a successor to said Ketchum in said trust, who, from the time of said decree, had held and executed the duties of the said office of trustee, as the successor of said Ketchum and in his lieu and stead, until the time when said Duncan and Elliot were appointed such trustees; that said decree is still of record, and of
1272 full force and effect, not in any manner impaired, revised, reversed,
or in any particular set aside; that no new trial or rehearing had been applied for, nor any appeal taken by said Ketchum; but said decree had been fully executed; and that said Ketchum, well knowing he had been so removed and discharged, had, from the rendition of said decree, acquiesced in the same, and had not thereafter done or performed any act or thing as such trustee, and had done nothing whatsoever in the execution of said trust duties.

4. Your petitioner, W'm Butler Duncan, shews to your honors that, in defence of said bill of said Ketchum, he demurred thereto, and thereby insisted that said complainant did not, by his said bill,
1273 shew he was entitled to the relief he prayed, because, while he
admitted that said decree of removal had been rendered by said court of chancery of the State of Alabama, and that he knew of the same in the year 1865, he did not shew that he had applied, as he was authorized by the laws of the State of Alabama to do, at any time prior to 26th June, 1869, to have the same reheard, retried, opened, or set aside by the said court by which said decree had been rendered; and did not, by his said bill, shew that he had taken any steps of any kind,

as he had full opportunity, and as it was his duty to do, if he was not
content with said decree of removal, to have the same revised and reviewed
by appeal, or opened, reheard, or re-examined by the
1274 court which had rendered said decree, and, therefore, by the
laws of the land, said decree, by the acquiesence of said Ketchum
had, before the date of the filing of his said bill of complaint, become
final and conclusive upon him, and he was not then trustee, as alleged
by him, and not entitled to the relief by him prayed.

5. Your petitioners shew that, by order of this honorable court, said
cause was set down for argument upon said demurrer and plea, and the
same being afterwards argued before Honorable John Bruce, one of the
judges of this court, it was by him adjudged and decreed on the 3rd
day of February, 1877, a day of the term of 4th Monday of December,
1876, that said plea and demurrer be overruled, which plea, demurrer,
1275 and judgment of the court are of record in this honorable
court.

6. Your petitioners respectfully shew to your honors that they are advised, and therefore respectfully so represent, that said judgment and decree upon said plea and demurrer are erroneous, and greatly to the injury of your petitioners; that said demurrer should have been sustained, and thereupon said bill of complaint dismissed, and that said plea in bar should have been held to be a good and valid defence to said bill, and complainant ordered to take issue thereon or his bill be dismissed, and that in not so ordering and decreeing your petitioners have been and are greatly aggrieved.

7. Your petitioners further show, that in substance, the same defence is
presented by both plea and demurrer, though in different form;
1276 that at a former day in the progress of the cause, to wit, in April,
1876, the said plea in bar of your petitioner, the Mobile and Ohio
Railroad Company, was brought to the attention of his honor W'm B.
Woods, one of the judges of this court, then presiding, upon a motion
of said complainant for the appointment of a receiver in the cause, and
as an answer to said motion; and the same was considered by his honor,
who thereupon refused said motion, and in his opinion declared that
"Ketchum is not a trustee in the deed of trust, as claimed by him in
his bill," and therefore his motion was without grounds to support it.

Your petitioners pray that said demurrer of petitioner Duncan, and
the sufficiency of the plea of petitioner, the said Mobile and Ohio
1277 Railroad Company, may be reheard, and that said judgment and
decree so made as aforesaid on the 3rd day of February, whereby
said demurrer and said plea in bar were overruled, may be reversed,
your petitioners submitting to pay such costs as the court shall award,
in case their said complaint shall be found to be groundless.

(Signed) GEORGE N. STEWART,
Sol'r for M. & O. R. R. Co.
P. & T. HAMILTON,
JOHN A. CAMPBELL,
Per P. HAMILTON,
Counsel for W. B. Duncan.

The filing of this petition is granted, and the question of the rehearing is continued.

(S'g'd) JOHN BRUCE, *Judge.*

Filed in open court February 20th, 1877.

(S'g'd) N. W. TRIMBLE, *Clerk.*

1278 Circuit court of the United States for the fifth judicial circuit and southern district of Alabama. December term, 1876.

TUESDAY MORNING, *February 20th, A. D.* 1877.

Court met pursuant to adjournment. Present, the Hon. John Bruce, judge of the district courts of the United States for the State of Alabama, sitting as circuit judge.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY
et als.

In this cause a petition for rehearing the decretal order heretofore at this term made upon the demurrer of defendant, W'm B. Duncan, and the plea of the Mobile and Ohio Railroad Company being presented to the court, it is ordered that said petition be filed, and the question of the rehearing is continued.

1279 *Exceptions to answer of A. F. Elliott.*

United States circuit court, southern district of Alabama.

MORRIS KETCHUM, AS SURVIVING TRUSTEE,
versus
THE MOBILE AND OHIO RAILROAD COMPANY ET AL.
No. 97.

An exception taken by the said complainant to the answer of A. F. Elliott, herein, for scandal and impertinence; for that the portion of the answer of said Elliott on the eight' page of the plea, answer, and demurrer on the thirty-second line of said page, commencing with the words "on the contrary," and down to the end of the same paragraph, being three lines at the end of the 32nd page, and eight lines at the commencement of the thirty-third page;

And also the portion of the thirty-third page commencing with the first separate paragraph thereof on the ninth line, with the words "the personalities," down to and including the words "the client and his attorney," on the 22nd line of the same page; are scandalous
1280 and impertinent and should be expunged from said answer.

R. M. REYNOLDS,
E. H. GRANDIN,
By R. M. REYNOLDS,
of Counsel.

Filed February 23d, 1877.

N. W. TRIMBLE, *Clerk.*

1281 *Claims of Elliott & Barlow.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM
vs.
MOBILE AND OHIO RAILROAD COMPANY, W'M B. Duncan, et als.
In equity.

In this cause the defendants, A. Foster Elliott and S. L. M. Barlow, each for himself, claims an order of dismissal of the bill of complaint in this cause filed, under Rule 66 of equity practice, because the complainant has not filed replication to the answers of them heretofore respectively filed to his said bill, though the time for filing such replication, as required by the said rule of equity practice, has long since elapsed.

M'ch 26, 1877.

P. & T. A. HAMILTON &
J. A. CAMPBELL,
Sol's said Def'ts.

1282 *Claim of W. B. Duncan.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY,
W. Butler Duncan, et als.
No. 97.

Comes the defendant, W. Butler Duncan, and the complainants having omitted or refused to file replication to the answer of said defendant heretofore filed according to the rule of practice in equity, in such case made and provided, the defendant claims the dismissal of said bill as provided by said rule.

May 8, 1877.

P. & T. A. HAMILTON,
For D'f't Duncan.

1283 *Claim of M. & O. R. R.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY,
Duncan, Elliott, et al.
No. 97.

The Mobile and Ohio Railroad Company, defendants in said cause, having filed its answer to the bill of the complainant in this cause, at the April rule day of the court, as required by law, to the bill, and no exceptions having been filed thereto, and no replication to said answer, the same stands upon the record and, according to the rules of the court, confessed as of course. The said corporation defendant therefore prays that an order be entered that the said bill as to this defendant be dismissed, and that this defendant recover its costs and charges in this cause.

May 8th, 1877.

GEORGE N. STEWART,
Solicitor for M. & O. R. R. Co., defendant.

1284 *Motion to strike out portions of answer, &c.*

MORRIS KETCHUM, AS SURVIVING TRUSTEE,
&c.,
vs.
THE MOBILE & OHIO R. R. CO. & ALS.
In equity on bill, &c.

Take notice that we will, on first Monday of June next, or as soon thereafter as counsel can be heard, move the court for an order striking

out all portions of the alleged answer of the Mobile and Ohio Railroad Company, and of W'm Butler Duncan, defendants herein, which are in abatement of this suit, or relate to the character in which the complainant herein sues, or which are to the same purport and effect as the plea and demurrer herein heretofore overruled by the court; and also all matters therein contained which are not proper in form to be pleaded as an answer to the bill herein. And for a decree and an order of reference to a special master to be appointed in this cause to take and state all the accounts and proofs proper to prepare this cause
1285 for a full hearing on the merits and for the determination of the equities and priorities of liens on this trust estate; and this complainant, as surviving trustee, will also move the court at said time for its instructions in reference to stipulating without prejudice to the title to the property for admission in this suit of certain testimony taken in a litigation in this court between strangers to the trust estate and the said the Mobile and Ohio Railroad Company sued by certain W. B. Duncan and A. F. Elliot.

May 25th, 1877.

(S'gn'd) GEORGE HOADLEY,
Of Counsel for Complainant.

To HAMILTONS, MCKINSTRY & STEWART,
Sol'rs, &c.

1286 *Motion for appointment of receiver, &c.*

MORRIS KETCHUM, AS SURVIVING TRUSTEE, &c.,
vs.
THE MOBILE & OHIO R. R. CO. & ALS.
} In equity on bill, &c.

Take notice that we will, on the first Monday of June next, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, move the court for an order placing the trustee, complainant herein, in possession of the trust-estate, according to the terms of the mortgage, or for an order appointing some impartial and proper person receiver of the Mobile and Ohio Railroad Company and all the property covered by the first mortgage, with the usual powers of receivers, and enjoining all persons whomsover from interfering with said receiver in his possession and administration of the property. And for an order of injunction restraining the defendants herein, Duncan and Elliot, from proceeding with or bringing any suits as trustees of the Mobile and Ohio Railroad
1287 Company. Also, why Pluto C. Calhoun and George Coe should not be appointed co-trustees with this complainant. And for such other further and different relief as may be just.

May 25th, 1877.

(S'gn'd) GEORGE HOADLEY,
Of Counsel for Complainant.

To Messrs. MCKINSTRY & HAMILTONS,
Sol'rs Duncan & Elliot.

GEORGE N. STEWART,
Sol'r M. & O. R. R. Co.

1288 *Claim of Dunn & Dickson.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

MORRIS KETCHUM,
vs.
MOBILE AND OHIO RAILROAD COMPANY, W'M Butler Duncan, W'm D. Dunn and others. } No. 97. In equity.

In this cause the defendants, William D. Dunn and William Dickson, each for himself, claims an order of dismissal of the bill of complaint in this cause filed, under Rule 66 of equity practice, because the complainant has not filed replication to the answer of them heretofore respectively filed to his said bill, though the time for filing such replication as required by the said rule of equity practice has long since elapsed.

May 29th, 1877.

(Signed) W'M G. JONES,
Sol'r for Def'ts.

1289 *Affidavit of W. H. Hays, &c., filed in the case of Morris Ketchum vs. Mobile & Ohio Railroad Co. et als.*

List of the holders of the securities of the Mobile and Ohio Railroad Company who have transferred, assigned to, and deposited with W. H. Hays, W. S. Pierson, and T. Haskins DuPuy, the committee of reorganization under the agreement, &c., dated October 1, 1876, the several bonds and securities set opposite their names respectively.

N. B.—Bonds of £225, £205, and £200 are estimated as $1,000 each. The principal only is included in this statement; the bonds have attached to them the coupons past due from and including the coupons which matured May 1st, 1875, on the sterling and interest arrearage bonds, July 1st, 1875, on the Tennessee substitution bonds, March 1st, 1875, on the 2nd mortgage and convertible bonds. In addition thereto, all past due and unpaid coupons on the total amount of the above issues detached therefrom, and which matured May and November, 1874, and July, 1874, and January, 1875, have been transferred, assigned to, and deposited with the committee.

Total principal, amount outstanding	$5, 609, 000	$769, 920	$1, 518, 000	$1, 668, 000	$1, 451, 207	$476, 000
Assignor.	**Sterling.**	**Sterling interest.**	**Arrearage interest.**	**Tenn. sub.**	**Second mortgage.**	**Convertible.**
1290 Allen, Mrs. A. K	$2, 000		$2, 000		$425	
Acker, Joel M			3, 000		1, 500	$650
Billups, J. M	32, 000		11, 600			
Duncan, Alexander	75, 000					
Frankfurter Bankverien	82, 000		1, 800	$196, 000	28, 800	
Hays, Wm. H	72, 000		28, 900		132, 068	78, 000
Pluck & Co	172, 000		11, 400	40, 000	166, 100	7, 525
Plant, H. B., trustee	155, 000		110, 200			
Rositer, A., trustee			21, 200		45, 800	
Sistare, Geo. K			13, 600		4, 200	1, 175
Utley, David	33, 000		79, 000		20, 000	21, 175
Wilson & Co., R. T	33, 000		3, 000		41, 300	
Wilson, R. T	24, 000					
Shipman, W. D., assignee	6, 000		1, 000		53, 300	78, 925
Mason, Alfred	5, 000		5, 900		6, 000	
Iselin & Co., A	51, 000		17, 900	52, 000	50, 000	30, 000
Lombard, Odier & Co	32, 000			1, 145, 000	5, 000	

Total principal, amount outstanding	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. sub.	Second mortgage.	Convertible.
Baldwin, T. B., trustee	10,000		10,000			
Bond, Geo. W	1,000					750
Birkner, H'y	17,000		8,800			
Birkner, J	8,000				6,000	
Bartlett, Jno. E	23,000	11,040				
Chouteau, Chas. P	6,000		3,000		12,025	
Cropsey, H. E	18,000		1,000			625
Crawshay, Robert T	635,000	260,640				
Cartwright, Benj			5,000		5,000	
City National Bank, Cairo, Ill			5,000			25,000
Clarke, Wm. M					7,000	24,450
Cox, E. A	1,000		8,000			
Campbell, Duncan G	2,000				200	
Cromwell, Caroline L	4,000		2,500			
1291 Dorrance, D. G	2,000					1,250
Dixon, Joshua	15,000	4,800				
Dudley, J. A	3,000		3,500			1,250
Dickerman, M. E			3,000			275
Denio, Israel			2,500			250
Deaton, Jas. C	5,000		2,300			
Morgan, J. S	24,000	13,920				
Drexel, Morgan & Co., for J. S. M			200		3,650	
Crisman, Geo					1,100	
Dow, R. K					4,841	8,000
Field, Margaret	3,000		2,000			1,900
Frazer, Hesse	1,000		4,200			
Frabur, Geo. W	10,000		3,000		3,260	2,500
Gallatin National Bank	31,000		40,000		42,000	
Griffith, Jno. R	2,000		5,700			
Gannett, Alfred			11,500		1,000	
Garnett, E. S			5,500		7,000	250
Hunziker & Co	4,000					
Harbeck, Wm. H	67,000		31,000			
Henderson, S. E	2,000		1,000			
Hardy, H. C	11,000		8,000			
Hamilton, Thos. A	4,000		1,100		1,200	
Hamilton, Mrs. Peter	3,000		2,000			
Hamilton, Miss A. H	1,000		1,000			
Hays, Jacob					750	10,000
Hildreth, D. M					3,100	
Hildreth, D. M., trustee						
Hopkins, E. W	10,000		1,400			
Isbell, S. A	3,000		500		2,000	
Irwin, L. F	2,000		400			
Jenkins, Mrs. S. M	4,000		1,000			
1292 Jenkins, M'r's S. M., ex'rx	92,000		4,000			
Kinney, G. W. G	2,000		200		700	500
Kettlewell, Rev. Sam'l	9,000		5,500			
Krouse, T. J	3,000		1,000			
Ketchum, W'm H	3,000					250
Little, John James	5,000		4,000			
Lynch, George H	7,000		3,000			
Lay, M'r's H. C	11,000		1,000			
Lull, M'r's F. V. A	9,000		3,300			
Lake Bro's	2,000		4,000			
Levy, M'r's B. E	3,600		2,000			
Levy, M'r's Sarah	13,000		4,600			
Lyons, Jabob C	24,000		8,500			
Marsh, Hester	18,000		2,500			1,875
Marsh Hester, ex'r'x	2,000					
Mather, F. E	4,000		2,000			
Maynard, Joseph	17,000	19,200				
Mason, Jac., Betsy & Mary C	2,000		1,300			
Maffit, Julia	6,000		2,500		12,100	
Moon, Edward	15,000	4,800				
Merrill, D. F	6,000		4,200		2,000	1,375
Murray, Est. Donald	8,000		5,300			
Marie, P			25,000		5,000	
McDearman, J. C			500		9,950	
Murdock, A., trustee					3,013	
Merian, A., in trust					4,100	
Morse, D. F	11,000		18,000			
Moore, M'r's L. D			5,000			
Murdock, M'r's Grace A	7,000		4,100		800	125
Nock, Thomas G	2,000		14,000			900
Oelrichs & Co	11,000		6,000			

Total principal, amount outstanding	$5, 609, 000	$769, 920	$1, 518, 000	$1, 688, 000	$1, 451, 207	$476, 000
Assignor.	**Sterling.**	**Sterling interest.**	**Arrearage interest.**	**Tenn. sub.**	**Second mortgage.**	**Convertible.**
1293 Peabody, est. of Geo	49, 000	18, 470				
Phelps, S. F	6, 000		3, 000		15, 000	3, 875
Phelps, S. F., jr	1, 000		1, 000		2, 000	
Phelps, S. F., in trust M'r's Lyman.						
Pidgeon, Miss H	2, 000	960				
Peterson, M'r's Janet	9, 000		3, 900			
Prior, M'r's Sarah	2, 000		400			
Petrie, C			1, 500			
Powers, L. H			1, 500			
Phipps, P					900	700
Phillippe, A	9, 000		2, 500			
Parker, Mary A	1, 000		500			
Reid, C. C	1, 000		1, 000			
Reynolds, Jno	6, 000					
Robinson, Tho's	110, 000	15, 840				
Richardson, L. M			5, 000		5, 500	
Randall, F			4, 000		3, 200	
Rogers, Tho's					2, 000	
Rosengarten, Geo. D	12, 000		6, 500			
Soule, L. H	3, 000		2, 000			
Shepard, S	51, 000		88, 100			
Sprague, D. J	3, 000		3, 000			
Stutzer, F						5, 250
Stutzer, Herman	15, 000				5, 000	
Stables, James	21, 000		13, 000			
Sims, W. H	2, 000				1, 000	
Smith, Caroline T			3, 500			
Terrill, Geo	7, 000		4, 300			
Scott, M'r's Ann G	3, 000		500			
Sewall, M'r's J. W			19, 000		1, 000	
Sherman, M'r's S. M. G					4, 800	
1294 Searls, R. R					1, 000	1, 250
Murdock, A., trustee	2, 000		3, 100		200	
Tilney & Co., Jno. S					3, 425	2, 500
Uttley, H. G	13, 000		6, 300		1, 250	
Van Dreasar, Francis	1, 000					875
Van Dreasar, Steward	1, 000				300	250
Van Dreasar, Ezekiel	7, 000		7, 000			1, 250
Van Vrauken, M. F	6, 000		3, 000			
Vedder, est. of N. F			5, 000		7, 516	
Von Hoffman & Co., L	10, 000			2, 000	3, 300	12, 500
Van Dreaser, Ezra					2, 500	
Wardwell, A. M	10, 000		2, 000		1, 000	3, 000
West, M. C	2, 000				1, 000	500
Westfeldt, Mary E., ex'r'x	2, 000		700			
Westfeldt, Mary E	2, 000		700			
Wardwell, Cha's H			2, 000			625
Wardwell, Samuel			2, 000			625
Wardwell, W. W			1, 000			1, 250
Weiler, Haas & Kraus					691	250
Walker, H. H	2, 000		4, 000		5, 000	
Wesson, S. L	1, 000		1, 000			
Carter, Jessie	1, 000		500			
Howland, M'rs A. W	4, 000		1, 000			
Samuel, John	5, 000		400			
Holmes, L. W	8, 000		3, 000			150
Winston, A. A	6, 000		400			
Martin, G. W					2, 200	
Bartlett, Levi			3, 000			
Judd, H			1, 100		1, 000	
Hayes, F. T			500		500	
Whitfield, Gaius			7, 000			125
1295 Lyall, Cha's	3, 000	4, 800				
Citizens' Insurance Co			500		4, 082	
Crawford, A. G			700		1, 865	
Crawford, J. L			2, 400			
Crawford, Est. Jane			3, 500			
Monroe, Hugh	19, 000		6, 500		3 100	
Merrill, D. L	4, 000		1, 400			
Clemens, Cha's H	4, 000		1, 000			
Healy, E. W., ex'r'x	8, 000		5, 500			
Railway Debenture Trust Co	24, 000	48, 000				
Sheldon, Israel			8, 000			
Rossiter, A			900		4, 600	
Barton, J. B			14, 000			
Southwick, A. B			9, 500			
Hayes, M. V. E	4, 000		7, 000			

Total principal, amount outstanding	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. sub.	Second mortgage.	Convertible.
Tompkins, Mary C	17,000		5,000		26,000	
Brokaw, J. E. K					1,000	
Rawson, H'y	51,000					
Lampson, Sir C. M	75,000	184,320				
Lampson, by C. H. Clark, ag't		28,800				
Lampson & Co., by C. H. Clark, ag't	5,000	62,400				
Lampson & Co		11,040				
Adrian, Mrs. Eliza	1,000					
Anderson, Miss Kate	1,000					
Allen, West & Co					1,000	
Bisschoffscheim, F. R				50,000		
Bisschoffschiem, Fred				25,000		
Bingaman, Levi					500	
Brooks, Leslie E						2,500
Bligh, Millan D	6,000					
Brainard, Mrs. M. J	20,000					
1296 Brown, James			6,000			
Boynton, Edw'd C			5,000			
Birdseye, J			4,000			
Boyd, A. M					1,025	
Brown, W'm Smith					900	
Bronson, Henry	1,000					
Bartlett, H. E			1,000			
Cropsey, James, trustee	2,000					
Cochrane & Co	3,000					
Cochrane, Hellen	1,000					
Calvert, W'm W. (N)	1,000					
Campbell, Ella C	1,000					
Closson & Hays						2,500
Closson & Hays, att'ys						2,500
Corish, Ellen					400	
Drummond, D. G	2,000					
Dwight, Mrs. C. S	3,000					
Dillaway, Geo. W	4,000					
Duncan, W. B. D., in trust	10,000					
Day, Addison			4,000			
Donnell, Lawson & Co			1,000			
De Rham & Co				1,000		
Davis, Ja's M	1,000					12,500
Eads, Creswell	6,000					
Ellis, A. G						50
Gillespie, A. J						1,250
Gamble, Miss Mary	5,000					
Goodwin, Miss Caroline	6,000					
Gage, A. S			1,000			
Gurlick, Alexander	1,000					
Havens, E. B	5,000					
1297 Hale, W. B., ex. pres'd't	4,000					
Harris, M'r's Mary	5,000					
Hunt, Jacob			1,000			
Howe, W. E			500			
Horton, T. S						550
Henshaw, Jane			8,000			
Hays, Miss Ella			1,000			
Hays, E. St. John					100	
Hays, W'm H. & Jacob						5,000
Huntington, R. H						875
Hildreth, D. M., trustee	5,000					
Judkins, Cha's E. H	8,000					
Irwin, Mary E	1,000					
Jansen, Gersh					7,000	
Jacob, Angel H	15,000					
Kerr, J. Hutcheson	13,000					
Keegan, Peter	17,000					
Keegan, James	4,000					
King, W. D	5,000					
Kissam, Isabella C			2,000			
Lemon, Archibald D	10,000					
Lee, M'r's S. L	1,000					
Lucas, Sarah A			600			
Lombord, Rev. J. K					1,000	
Mitchell, C. Le Roy			1,000			
Marsh, Hester, ex'r'x						1,875
Moulton, Stephen	5,000					
Marie, P., & Jno. Stewart, trustees	11,000					
Meeker, Benjamin	5,000					

Total principal, amount outstanding	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. sub.	Second mortgage.	Convertible.
Milford, Henry	7,000					
Murray, Mary E	2,000					
1298 Maxwell, D'r P. J	4,000					
Merritt, Ja's B			200			
Waring, Moses			1,000			
Mack, Jacob W				3,000		
Mason, H. W				2,000		
Marshall, Mrs. Ann					2,000	
Murdock, W'm, ex't'r					1,675	
Mobile Savings Bank					4,000	
McChesney, E. M						775
Merrill, Elizabeth J						250
Mauran, P. B	3,000					
Marmaduke, Leslie	22,000					
Marwin, S. J. M						
Marshall, O. H	12,000					
Nicholson, William			2,000			
Noble, Mrs. L. S			500			
Ogden, Hannah M					600	
Overall, G. Y	1,000					
Oliver, Elijah					200	
Oothout, William	10,000					
O'Connor, Charles	15,000					
Orr, James	7,000					
Powell, Alfred H., guardian	1,000					
Perry, Mary H	2,000					
Pfizer & Co., Charles	10,000					
Ravenstedt & Co., Charles	5,000					
Parnell, Delia T. S			3,000			
Pearl, E. G					100	
Phillippe, A., ext'r						600
Russell, W. T	1,000					
Rowland, Alice J	1,000					
1299 Rogers, P. V	2,000					
Robinson, Joseph	4,000					
Raymer, Henrietta			1,000			
Roberts, E. M			3,000			550
Reynolds, Mary E						
Richmond, Benj	1,000					
Foster, J. B., & D. Benson, trustees	7,000					
Whitehead, James	5,000					
Sotolongo, M. E. de	2,000					
Simpson, A			1,000			
Somarindyke, A			10,000			
Spencer, H. D			3,000			
Searles, James H						750
Smith, Sam'l, S. T						1,250
Smith, Chas. S						1,250
Saunders, C. A	20,000					
Sykes, A. J	1,000					
Smith, E. R	1,000					
Stein, Lewis	10,000					
Stauty Bros						250
Schuneman, Geo. F	1,000					
Shepherd, Geo. W	7,000					
Thomas, Geo			2,000			
Torry, Mrs. Lucy			1,000			
Terry, Curtis B						250
Utley, Squire	5,000					
Utley & Wardwell			1,000			
Wait, N. E						625
Williams, W. T			1,000			
White, Elizabeth H			2,000			
White, H. L., & Jas. Brown			2,000			
1300 Ware, Eliza					800	
Wood, Jas. D						2,500
Williams, Jas. F						250
Wetmore, Geo. Peabody						6,250
Willet, E. D	3,000					
Walker, Chas	2,000					
Winder, Jas. E	2,000					
Winthrop, John			2,000			
Quilter, Wm	5,000					
Herrick, J. H	1,000					
Herrick, J. H., trustee	1,000					
Hall, David F	5,000					

Total principal, amount outstanding	$5, 609, 000	$769, 920	$1, 5[illegible]8, 000	$1, 668, 000	$1, 451, 207	$476, 000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. sub.	Second mortgage.	Convertible.
King's Sons, Jas. G	10, 000					
Shipman, W. D., assignee W. W. S					300	
Scears, Jno	10, 000					
Cookson, Joseph	8, 000					
Clegg, Francis	3, 000					
Coleman, Wiley	10, 000					
Crawford, Andrew	2, 000					
Crawford, Mrs. G. B					1, 012	
Jones, Eliza	1, 000					
Hicks, Wm			3, 000			
Kellogg, Mary B			500			
Bienville Lodge, No. 348					310	
Garnett, Wm. A						775
McMillan, Thos						275
Perryman, E. S						350
Bromberg, F						250
Crawford, Sallie G			7, 600			
Crawford, Margaret L			800			
1301 Goodier, John	6, 000					
Gates, W'm						500
Solomonson, Ed	3, 000					
Lawson, John	1, 000					
Lever, Ja's	3, 000					
Roberts, Everett						225
Payne, W'm H	1, 000					
Whitaker, Robert	2, 000					
Bradshaw, Jonas J	1, 000					
Hoyle, W'm, executor	8, 000					
Fry, Anna S	1, 000					
Morton, Tho's H						300
Morrison, Cha's		72, 000				
Pease, E. R	5, 000					
Bickham, W'm	5, 000					
Scott, Gertrude			600			
Stein, Rob't					1, 800	
Phelps, S. F., in trust			3, 000			
Phelps, S. F., in trust Mrs. Lyman			5, 000			
Cooper, Adele S			5, 600			
Thomas, F. H						62
Green, Lewis, s'r						10
Bonner & Co., G. T	24, 000					39, 27
Bonner & Co., Geo. T						2, 500
Bonner & Co., G. W. S					300	
Bonner & Co., Geraldine M					100	
Bonner & Co., G. T., trustee M. J. Boyd					1, 500	
Boyd, Mary J			600		2, 700	
Le Cleve, L., by W. B. D., in trust			1, 000			
1302 Iselin & Co., for Banque Commerciale	3, 000			4, 000	20, 400	3, 625
" Lombard, O., & Co	90, 000			7, 000		
" Asso. Financiere	50, 000					
" Evesque & Co					10, 000	
" P. au Thalhof				1, 000	1, 000	
" Victor, Jacob, ex'r	12, 000		500			
" A. B. Heassler	6, 000					
" P. Massa	9, 000					
" M. Handschein	1, 000			1, 000		
" E. Saladin				8, 000		
" A. Rusch	2, 000		12, 500			
" A. Ricard			33, 300			
" Rob't Emsh				5, 000		
" Mrs. A. Iselin				6, 000		
" Rorl, M				1, 000		
" Bory & Holland	10, 000					
" B. La Roche	1, 000			3, 000	5, 000	
" Heirs Sig. Marcel	2, 000					
Kennedy & Co., J. S	219, 000					
Delafield, L. L., trustee	11, 000					
Cutting & Co., R. L., jr						12, 500
Campbell, Patrick	8, 000	4, 320				
Darling, A. B	6, 000		1, 500			
Evans, Mrs. Jno. W	1, 000		1, 000			
Allen, West & Co			1, 000			
Burt, A. P	11, 000					

Total principal, amount outstanding	$5,000,000	$769,920	$1,518,000	$1,668,000	$1,451,907	$476,000
Assignor.	Sterling.	Sterling interest.	Arrearage interest.	Tenn. sub.	Second mortgage.	Convertible.
Berry, W. W	12,000					
Barry, Mrs. A. R			1,000			
Baldwin, J. G	2,000					
Bestor, Daniel P	5,000					
Brown, John	10,000					
1303 Belmont, August	5,000					
Brown, James M., treasurer	1,000					
Brown, W. H	2,000		4,200			
Bowen, John	5,000					
Billington, John					200	
Brown, A. H	6,000					
Carrigan, James	6,000					
Cheaw, C. W					100	
Clarke, J. F	1,000					
Clarke, Freeman	9,000		500		2,200	
Curtis, Judson	1,000					
Camack, James	6,000		1,100			
English, J. G	1,000		500			
Elliot, George A			600			
Eldridge, Oliver					800	
Gibson, Antoinette J	17,000					
Holt, Mrs. J. A	3,000					
Hoard, C. B	5,000					
Harbeck, John H., jr	8,000					
Hall, Joshua G., adm'r	1,000					
Hays, W. H., for J. B. C. & Co						5,000
Hineman, M'r's M. F	20,000					
Hazard, J. B., trustee	2,000		800		200	
Hopkins, E. M						2,500
Humphries, W. D			14,500			
Jacquiemyus, G. Robin				6,000		
Knox, J. C	20,000		9,500		10,000	5,000
Lussier, Appaline	4,000					
McClellan, Geo. B	10,000					
March, P. S	30,000					
1304 McKay, C. F	2,000		4,300			
Mott, W. F	1,000					
Muldon, Miss Ellen	4,000		1,000		300	2,375
Muldon, Miss Rebecca A	4,000				1,300	2,375
McNeill, Daniel, ex't'r						25
Murdock, A., by Peoples' Saving Bank	1,000		2,200		1,500	
Myers, Rutherford & Co						5,000
Marks, A. B	5,000		5,000			
Marks, Henry			12,000			
Otto, W. T., examiner	10,000					
Owen, Miss Eliza	1,000					
Pratt, W. H						200
Quinn, Barney					2,576	550
Reese, M'r's Margaret	4,000		1,000			
Randall, J. K	1,000		200			
Setchwell, Jos					2,195	
Scudder, S. O	6,000		44,500			
Sinclair, T. M			1,000			
Southern Mutual Ins. Co	10,000		2,900			
Schraeder, H. A	6,000		1,000			
Seybert, Henry, by J. C. Knox						10,000
Sequin, M'r's Anne			6,100			
Thorne, Thos. W			1,000			
Webb, John	3,000					
Whittemore & Co	1,000					
Whitney & Sons					24,200	
Walsh, Miss Kate						250
Walsh, " Fannie M						250
McKenzie, A			2,500			
1305 A. Iselin & Co. for Ed. Koechlin	4,000					
	$3,816,000	$765,120	$1,181,600	$1,558,000	$919,690	$469,925
Charles L. Young	2,000					
A. Iselin & Co			3,000			
W. Greer	3,000					
I. & C. Gardner	5,000					
D. & W. Carmichaell	10,000				2,300	
Filson Carmichaell	1,000					
D. Carmichaell	1,000		200			

Total principal, amount outstanding	$5,609,000	$769,920	$1,518,000	$1,668,000	$1,451,207	$476,000
Assignor.	**Sterling.**	**Sterling interest.**	**Arrearage interest.**	**Tenn. sub.**	**Second mortgage.**	**Convertible.**
N. Oakman	7,000					
D. Cunningham	6,000					
G. Porteus	2,000					
J. J. Montgomery	4,000					
J. Monroe					10,000	
E. Gibbon	2,000					
F. Greer	6,000					
W. Aickin					14,000	
I. Lee					10,000	
H. Greer					6,000	
A. J. A. Lepper	5,000					
F. S. Heardman	5,000					
Rev. J. Lynch	4,000					
C. W. Lepper	20,000					5,000
W. Thompson	7,000					
J. S. Hazleton	2,000		8,000			
P. Anderson	5,000					
	$3,931,000	$765,120	$1,192,800	$1,558,000	$961,990	$474,925

1306 United States circuit court, southern district of Alabama.

MORRIS KETCHUM
vs.
MOBILE & OHIO RAILROAD COMPANY ET ALS.

UNITED STATES OF AMERICA,
Southern district of New York, to wit:

William H. Hays, William S. Pierson, and T. Haskins DaPuy, being severally sworn, do depose and say, and each for himself says, that the following schedule is a correct and accurate list of the securities issued by the Mobile and Ohio Railroad Company, transferred to these deponents as a committee of reorganization, under an agreement dated October 1st, 1876, a copy of which is hereto attached, said list containing the names of the assignors and the par value or amount of the several securities transferred to these deponents by said assignors respectively.

(S'gn'd) W. H. HAYS.
" W'M S. PIERSON.
" T. HASKINS DUPUY.

Subscribed and sworn to before me this 23 day of May, 1877.
(S'gn'd) JOSEPH GUTMAN,
United States Commissioner Southern Dist. New York.

1307 Memorandum of agreement and transfer, made the first day of October, 1876, by and between the Mobile and Ohio Railroad Company, a corporation by that name existing under the laws of Alabama, and operating also under the laws of the States of Mississippi, Tennessee and Kentucky respectively, party of the first part, and the various other parties whose names are subscribed hereto, being creditors of said company, some holding security as hereinafter specified, and others unsecured, each subscriber for himself and neither for the other, parties of the second part, and William H. Hays, of the city of New York, William S. Pierson, of Windsor, in the State of Connecticutt, and T. Haskins DuPuy, of Philadelphia, in the State of Pennsylvania, parties of the third part:

Whereas the said railroad company, originally incorporated by the State of Alabama, and operating under the laws of that State, has, by the legislation of the several States of Mississippi, Tennessee, and Kentucky respectively, obtained valuable corporate rights and privileges, as well as important exemptions, in those respective States;

And whereas, owing to a succession of misfortunes, the said corporation has fallen into arrear in the payment of its bonded and other indebtedness to such an extent that proceedings for the foreclosure of mortgages executed by it are now pending, which proceedings
1308 have gone to an advanced stage and are still being pushed, and,
in addition, the day of payment named in some of its mortgages is near at hand;

And whereas differences and disputes have arisen between the different classes of holders of the securities and evidences of debt issued by said company, which differences and disputes, if persisted in, are likely to lead to protracted litigation, and to the sacrifice or deterioration of the property of the said company, and to great delay in the resumption of regular and legitimate operations on its road, and it is therefore deemed expedient that a scheme should be devised, to be assented to by the various classes of claimants upon the said company, for the harmonizing and compromising their respective claims, without ending the corporate existence or corporate powers of said company, and without putting an end to or limit upon its corporate privileges;

And whereas the secured indebtedness of the said company now exists in the form of bonds and coupons secured by mortgage liens, as specified in the schedule hereto annexed, and as appears by the books of the company, exclusive of interest on said coupons;

And whereas, in addition to said mortgage indebtedness, judgments have been recovered against said company, which are claimed to constitute liens upon some of its property, subject to its mortgage
1309 indebtedness, but a large part of which judgment indebtedness
is presumed by lapse of time and otherwise to have been in fact satisfied, and in addition thereto the said company owes a considerable amount of floating or unsecured indebtedness, and the undersigned, holders of claims of the various classes against said company, as well those specified in the said schedule hereto annexed as judgment creditors and unsecured creditors, have agreed to compromise and compound with said company upon the said company's issuing new securities for all the said indebtedness in the manner hereinafter agreed upon, to the end that, if practicable, said foreclosure suits may be discontinued, and the property affected thereby restored to the custody and control of the said company under the conditions of this agreement and the stipulations accompanying the same;

But whereas it is understood by said creditors that if such scheme shall be found to be impracticable because not assented to by a sufficient number of creditors, or for other reasons, that then the said foreclosure proceedings shall be prosecuted to either a sale or a strict foreclosure, and a purchase or acquisition of the property of the said company consummated for the benefit of the subscribers hereto, who are such creditors as aforesaid, and that a new corporation or corporations shall be created and new securities issued for the benefit of such creditors:

1310 Now this memorandum witnesseth, that the said parties hereto
have covenanted, agreed, and transferred, and do hereby covenant, agree, and transfer, to and with each other, in manner and form following, that is to say:

First. The said William H. Hays, William S. Pierson, and T. Haskins DuPuy are hereby constituted assignees in trust, agents, managers, and attorneys of the said parties hereto who are creditors of the Mobile and Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing, and controlling the same, for the purposes, in the manner, and with the powers hereinafter specified.

Second. Each of the parties hereto, being a creditor of the said Mobile & Ohio Railroad Company at the time of the execution of this instrument, assigns, transfers, delivers, and makes over to the said William H. Hays, William S. Pierson, and T. Haskins DuPuy all the evidences of debt issued by said company, and claims against said company, now held by such subscriber hereto, whether in the shape of bond, coupon, note, judgment, open account, unliquidated demand, unpaid voucher, or otherwise, to be held by the said Hays, Pierson, and DuPuy, as such assignees, agents, managers, and attorneys, in the manner and for the purposes and upon the trusts so
1311 hereinafter declared concerning the same. Upon this instrument being subscribed by all the creditors of said corporation, holders of evidence of debt issued by said corporation, or of other claims against the same, the said assignees, agents, and attorneys shall have and hold the claims and evidences of debt of such creditors, with full power and authority to cançel, surrender, release, and discharge all such evidences of debt, claims, and demands so transferred to them, upon receiving from said Mobile & Ohio Railroad Company new evidences of debt and securities to the extent and in the manner hereinafter provided.

Third. Upon the request of the said Hays, Pierson, and Du Puy, or their successors, the said corporation hereby agrees to execute and deliver, or cause to be executed and delivered, to the said William H. Hays, William S. Pierson, and T. Haskins Du Puy, or their successors or appointees, new bonds and obligations, or acknowledgments of indebtedess secured respectively by a new mortgage and trust-deed to be made by said corporation, as hereinafter provided, and containing such stipulations and clauses for the security of the creditors of said company as the said assignees and attorneys shall advise and require, not in conflict with the provisions of this agreement.

Fourth. The said new mortgage shall be called the first mortgage, and shall constitute a first and primary lien on all of the main line of
1312 the said Mobile & Ohio Railroad, lying at and between the city of Mobile and the city of Columbus, in the State of Kentucky, (exclusive, however, of the several branches now possessed or to be acquired or constructed, those now possessed being known as Aberdeen branch, Starkville branch, and the Gainesville branch,) covering all and singular the chartered rights, railways, sidings, turnouts, and all connected therewith; bridges, fences, warehouses, depot and office buildings, machine shops, tools, iron, timber, and all materials necessary in the repair of the road, rolling-stock or machinery, and all wood and coal and other materials necessary in running said road, and all fixtures, privileges, rights, real estate, and all other property owned, and which may be hereafter owned by said company, and which shall be necessary to the business of said company, or for the purpose of carrying freight and passengers upon said main line; but not including any lands granted to said company by any State, or by the United States, nor lands which may be situated apart from the line of the road, and not actually required for the use or running of the road. The said trust deed shall be in the form, and shall have the effect and operation of a conveyance in trust to trustees, of the lands granted to said company by any State

or the United States, as well as all lands belonging to the company and not necessary for the operation of the railroad of said company,
1313 and also so much of the net income of said company as shall remain
after payment of current expenses, cost of maintenance, improvement and repairs, and interest on said new first mortgage, and on the debentures, as hereafter more particularly specified.

Fifth. The first mortgage mentioned in the last preceding paragraph shall be made for the security of the holders of the present outstanding issue of first mortgage bonds of said corporation, and of the coupons issued with said first mortgage bonds, whether such coupons are now detached from such bonds, or are now attached thereto, and for the benefit and security of the holders of the issues known as the sterling arrearage interest bonds, the funded arrearage interest bonds, and the coupons detached from or attached to such bonds, matured and unpaid, and also for the benefit and security of the holders of the issue known as the Tennessee substitution bonds, and coupons detached therefrom or attached thereto, matured and unpaid, all upon an equal footing as to grade of new security (provided such holders become parties to this agreement, and transfer the securities held by them respectively pursuant hereto), and for the purpose of providing funds for necessary expenses and outlay under this agreement. The total amount of principal money secured by bonds issued under the new first mortgage is
1314 to be seven millions of dollars, payable in the city of New York,
in gold coin of the United States, on the first day of December, in the year 1927, bearing interest payable in lawful money of the United States, in the following manner: Two per cent. on the first day of December, 1877; two per cent. on the first day of June, 1878; three per cent. on each first day of December and June thereafter; and the bonds to be issued under said first mortgage may be in sums of either $1,000, $500, $300, or $100 each, and shall have negotiable interest warrants or coupons attached thereto, payable in New York. But the holders of the present first mortgage securities are to be interested in the new securities issued under the new first mortgage, as next hereafter stated; that is to say:

Sixth. Each subscriber hereto who shall have transferred to the said assignees, agents, and attorneys a first mortgage bond of said company, shall be entitled to receive an amount equal to four hundred and forty dollars for each one thousand dollars, or each £225, of the principal sum payable upon such bond so transferred, in a bond or bonds, to be issued under the said new first mortgage hereinbefore provided for, to be taken at par; and every subscriber hereto, who shall have so transferred first mortgage coupons of said company heretofore issued, (provided the due date originally mentioned therein shall not have been later than the first day of November, 1877,) shall receive an amount
1315 equal to the value of such coupons, as below estimated, in a bond
or bonds, to be issued under said new first mortgage hereinabove provided for, each such coupon to be estimated for this purpose as being worth, and as securing the payment of, thirty-six dollars, except coupons maturing November 1st, 1877, which shall each be estimated as worth only six dollars; and each holder of sterling interest bonds who shall have become a subscriber to this agreement, and shall have transferred his bonds in pursuance hereof, shall be entitled in lieu of each bond so transferred, to a bond or bonds, for the principal sum of four hundred and forty dollars each, to be issued under said new first mortgage for each £200 of the principal amount of the bonds so transferred by him under this agreement; and each holder of coupons heretofore issued

with any such sterling interest bond (provided the original due date named in such coupon shall not be later than the first day of November, 1877), shall be entitled in lieu thereof to a bond or bonds to be issued under such new first mortgage for the amount of the coupons so transferred, valuing each such coupon at the sum of thirty-six dollars, except coupons maturing November 1st, 1877, which shall be valued at only six dollars; and each holder of bonds generally known as arrearage interest bonds, who shall have become a subscriber to this instra-
1316 ment, and who shall have transferred his bonds as aforesaid to
said asignees and attorneys, shall receive in lieu of the bonds so transferred a bond or bonds to be issued under said new first mortgage for the par amount of $626 for each bond so transferred, and each holder of coupons heretofore issued with any such Tennessee substitution bonds (provided the original due date of such coupons was not later than July 1st, 1877), who shall have become a subscriber to this agreement, and who shall have transferred his coupons to said assignees and attorneys, shall be entitled in lieu thereof to receive a new first mortgage bond or bonds for the amount of his coupons so transferred, estimating each such coupon at thirty-six dollars, except the coupons maturing July 1st, 1877, which shall be valued at only thirty dollars each.

Seventh. The trust-deed hereinabove provided for shall be in part for the security of the same class of present creditors who, as above agreed, are entitled to be secured by the said new first-mortgage, to the extent of the difference, as below stated, between the amount of new bonds to be issued to them or for their benefit, as above provided, and the principal amounts of the bonds now outstanding and transferred by them respectively, and also for the benefit of the remaining creditors of said company who shall become parties to this agreement and become entitled to the benefit thereof; & to that end it is now provided—

1317 Eighth. Each bond now held by any such present first-mortgage creditor as last aforesaid for the principal sum of one thousand dollars gold or lawful money, or for the principal sum of £225, £205, or £200, shall, for the purpose of ascertaining such difference, be estimated as worth one thousand dollars; and each bond payable in dollars, gold or lawful money, for a less sum than $1,000, shall be estimated at its face, without interest, and each bond payable in sterling money for less than £200 shall be estimated at the rate of five dollars for each pound sterling of principal money payable by the terms of such bond. And after charging to each subscriber hereto who shall have transferred bonds as above agreed, the principal amount of the bonds to be issued to him as above provided in the sixth paragraph, not taking into account any bonds issued in lieu of coupons transferred under said sixth paragraph, he shall be entitled to a preferred income and sinking-fund debenture or debentures, of the first series to be issued under said trust-deed, as hereinafter provided, for the difference between the principal sum of the new first-mortgage bonds so charged to him and the principal sum of the bonds so transferred, valued as above provided.

Ninth. The preferred income and sinking fund debentures issued under said trust deed may be in sums of $1,000, $500, $300, or
1318 $100 each, and shall not have any interest coupons attached
thereto and shall not be payable absolutely, but only out of the sinking fund hereinafter provided; and shall be registered and shall be transferable only on the books of the company, at the office of the company, in the city of New York, and shall not otherwise be transferable; and shall be issued in successive series, the first series to be known as

first preferred income and sinking-fund debentures; the second series to be known as second preferred income and sinking-fund debentures; the third series to be known as third preferred income and sinking-fund debentures, and the fourth series to be known as fourth preferred income and sinking-fund debentures, and such debentures shall be so expressed as that interest at a rate not exceeding seven per cent. per annum shall be payable thereon yearly, that is, on the first day of February in each year, after the year 1878, upon the conditions herein specified, that is, on or before the first day of December, in the year 1878; and each year thereafter, said company shall ascertain as closely as practicable the net earnings of such company remaining after paying the expenses of the corporation, cost of maintenance, and proper repair, and the interest on the new first-mortgage bonds up to the first day of September next preceding, that being the end of the fiscal year; and in case there shall remain on such first day of December a residue of earnings for the year ending on the 1319 first day of September next previous, and if it shall then be ascertained that up to the first day of September next preceding that first day of December the earnings of said company, after making provision for such expenses, interest, and the proper maintenance of the property in good order, leave any sum applicable to the payment of interest on such debentures, then such net earnings shall be applied to the payment of interest on said first preferred income and sinking fund debentures, not exceeding seven per cent. in lawful money of the United States; and such application and payment shall be made on or before the first day of February in the next succeeding year; and after payment of interest at the rate of seven per cent. per annum on said debentures of the first series, what remains of said net earnings shall be applied to the payment of interest on said debentures of the second series, at a rate not exceeding seven per cent. per annum; and after payment of interest at that rate on said debentures of the second series, what remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the third series; and what then remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the fourth 1320 series; but in case the earnings of any one of such years shall not be adequate to the payment of seven per cent. interest for that year on all or either series of said debentures, then the deficiency shall not have any claim upon the net earnings of any succeeding year. And the net earnings shall only be applicable to the payment of interest on either series of debentures in case such earnings shall amount to at least one per cent., or a multiple of one per cent., on the total amount of the debentures belonging to such series, so that fractions of net earnings exceeding such one per cent., or a multiple of one per cent., need not be included in the payment of interest for that year, but shall be carried to the credit of the earnings for the succeeding year.

Tenth. The aforesaid second preferred income and sinking-fund debentures shall be issued for the benefit and security of that class of the present creditors of said corporation who are known as second mortgage bondholders, all to be upon the same footing with each other as to security and priority. Each second mortgage bond of said company, and each coupon thereof now outstanding, shall be considered as of the par value represented on its face in currency, provided the the first day of March, 1878, except coupons maturing March 1st, due date originally specified therein shall not have been later than

1321 1878, which when for $80 on their face shall each be estimated as worth only twenty dollars, or in that proportion for any coupon of any smaller amount than $80. Each holder of a present outstanding second mortgage bond or coupon of said company, who shall have become a subscriber to this agreement, and shall have transferred his bond or coupon pursuant to the terms hereof, shall be entitled to receive dollar for dollar for the principal of his bond and coupon so transferred as aforesaid, in a second preferred income and sinking-fund debenture.

Eleventh. The said debentures of the third series shall be for the benefit and security of the holders of the present outstanding bonds of said corporation, known as convertible bonds, and shall be for an aggregate amount sufficient to represent the aggregate amount of now outstanding convertible bonds, and the interest thereon up to the first day of June, 1877. Each holder of a convertible bond who shall have become a subscriber to this agreement, and shall have transferred his bond as and in the manner aforesaid, shall be entitled in lieu thereof to a debenture of the third series, for the par amount of the bonds so transferred, estimating the same at its face value in currency, and the accrued interest on such convertible bond, to be computed up to the first day of June, 1877, shall be replaced by a debenture of the third series for the actual amount of such interest up to that date.

1322 Twelfth. The said debentures of the fourth series shall be for such amount as said assignees and attorneys shall determine to be necessary for the purpose of satisfying such judgment and unsecured indebtedness of the said company, as they shall deem to be morally obligatory in their discretion, so far as the same shall be held by subscribers to this instrument; who shall have transferred their claims to the said assignees and attorneys, subject to adjustment by said assignees and attorneys, but the same shall not exceed the sum of the face value of such judgments or indebtedness, and no unsecured or judgment creditor shall be admitted as a subscriber to this instrument, nor entitled to the benefit thereof, for any amount exceeding that which may be adjusted and allowed to him by said assignees and attorneys; and each such judgment and unsecured creditor who shall so become a party hereto, shall be entitled to a debenture of the fourth series for such sum as said assignees and attorneys may adjudge to be justly due to him.

Thirteenth. In case all the holders of the unsecured or judgment indebtedness of said corporation shall not have become parties hereto, or shall not have assented to the adjustment of their claims by the said assignees and attorneys, and the reduction thereof to the amount
1323 which said assignees and attorneys shall deem to be justly and equitably due thereon, then said assignees and attorneys, instead of cancelling and surrendering all of said mortgage bonds now outstanding, transferred to them under this agreement, shall hold said mortgage bonds or so much thereof as may in their discretion be necessary for the security of the new securities against said unsecured and judgment indebtedness, except that the new mortgage and trust deed issued by said corporation shall have priority over such old mortgage bonds; but such original mortgage bonds shall be held by the trustees in the new first mortgage, in trust for the benefit of the holders of the new securities of the said corporation, according to their order and priority, prior to and to the exclusion of the unsecured and judgment creditors, who shall not have assented to this agreement. And each of said present mortgage bonds transferred under this agreement, and held by said trustees as before stated, shall be stamped by the assignees

and attorneys with the following words: "In pursuance of the terms of agreement made between the Mobile and Ohio Railroad Company and its creditors, bearing date October 1st, 1876, this bond is not negotiable, being held subject to the provisions and for the purposes mentioned in said agreement."

Fourteenth. The said assignees and attorneys shall not be au-
1324 thorized to cancel or surrender any of the existing obligations or
evidences of debt of the said corporation, transferred to them
under this agreement, unless all the present holders of the mortgage securities of said company shall have become parties to this instrument and transferred the securities held by them on or before the first day of March, 1877, or at or before such time as the said assignees and attorneys shall have fixed, as in their discretion they may, by successive extensions of not more than sixty days each; nor until said corporation, or its stockholders, through legal and proper action of its stockholders, if such action be necessary, or otherwise, according to law, shall have entered into an adequate and sufficient arrangement or agreement with said assignees and attorneys, and with the holders of said debentures, enabling the holders of such debentures, or the trustees under said trust-deed, to vote at elections for directors of the said company, and irrevocably represent such stock, or a majority thereof, at all stockholders' meetings until such debentures shall be extinguished; and upon that privilege of representation being acquired by and vested in or secured to the trustees in said trust deed, or to the holders of the said debentures by the proper and legal action of such corporation or its stockholders, and upon all the new mortgages and securities above called for
being issued, then such cancellation and surrender may be fully
1325 completed and consummated (except in the contingency provided
in paragraph 13 of this agreement), and the property and management of the corporation may be restored to it, and said foreclosure suits may be discontinued.

Fifteenth. Any surplus of new securities created under this agreement not required for the satisfaction of the claims of existing creditors may be applied and appropriated by said assignees and attorneys to the payment of the expenses of making this agreement and carrying the same into effect, as well as the expenses of said foreclosure suits; and the said assignees and attorneys, as transferees and assignees of the subscribers to this instrument, shall have the same rights and relations to the foreclosure suits now pending, and to the complainants in said foreclosure suits, and to the receivers in said suits, and to the funds in their hands, which the subscribers to this agreement now have or would have if they continued to be holders of the bonds and claims subscribed hereto, and shall be entitled to the same share of the proceeds of the present management of the property of said company, and to the same share of the proceeds of the sale of such property, which their assignors would
have upon a discontinuance of said foreclosure suits, or upon an
1326 accounting, or upon a sale or distribution of the proceeds; their
several assignors to be considered, in relation to such proceeds,
as being upon the same grade of priority and security as between and among each other upon which the provisions of this agreement would place them in relation to the new securities to be issued by said company.

Sixteenth. In case a sufficient number of subscribers shall not be obtained to this agreement on or before the time prescribed herein, to put it within the power of said assignees and attorneys to carry into effect the foregoing clauses and stipulations of this agreement, then

this agreement shall be binding upon the subscribers thereto, provided it shall have been subscribed by holders of at least a majority in amount of the existing first mortgage indebtedness and Tennessee substitution bonds of said company, as recited in the schedules hereto annexed; and thereupon said assignees and attorneys shall have power and authority to appropriate the bonds, coupons, moneys (if any), and evidences of debt which shall have come into their possession, under the provision of this agreement, towards the purchase of the property of said railroad corporation, under such decree or decrees of foreclosure as shall be obtained in said pending suits, and shall have power and authority,
1327 and it shall be their duty, to aid the complainants in said suits in speeding said suits to their conclusion by decrees of foreclosure and sale, or of strict foreclosure, in the interest and for the benefit of the subscribers to this agreement, and they shall have power to turn the securities, received by them under this agreement, into court in payment for said property, upon the purchase thereof by them upon the foreclosure; and in the event of its becoming necessary for the protection of the interest of the parties subscribing thereto that any cash or other payment than the securities in their possession should be made into court, said assignees and attorneys shall have the power to make such payment for the account of and at the risk of the parties subscribing hereto, or by obtaining the amount thereof upon the security of the bonds and coupons in their hands; and shall likewise have power to apply for and receive dividends upon the bonds and coupons received by them under this agreement from the funds in court in the hands of the receivers, or of any master or marshal or clerk or otherwise to the same extent as the original holders of the bonds and coupons retained and held by them would have been; and while no authority is given to them to make any subscribers hereto personally responsible for the payment of any debt incurred by them, they are authorized with the assent of the trustees of the present first mortgages, or a majority of them, to pledge the
1328 bonds and coupons in their possession for the purpose, so far as necessary, of obtaining means to expedite and bring to a conclusion this compromise on said foreclosure suits.

Seventeenth. The parties subscribing hereto and transferring any evidence of debt or claim according to the terms of this instrument, shall be entitled to certificates, specifying their contributions respectively and their interests respectively to and in this agreement and the benefits hereof; and each certificate shall be transferable and deliverable to bearer without a transfer being required to be made in any book or in writing, and shall represent on its face the securities deposited therefor.

Eighteenth. Upon the purchase of the property of said company by said assignees and attorneys at any sale or sales under decree of sale or strict foreclosure, it shall be their duty to avail themselves of any existing law in either of the States of Alabama, Tennessee, Mississippi, or Kentucky, or to procure legislation, so far as may be necessary, for the purpose of creating a new corporation or new corporations, to which it shall be their duty to transfer the property so purchased by them as early as practicable upon receiving from such new corporation the new bonds, debentures, mortgage and trust deed, hereinabove specified, for the same amount which would be required to carry the above pro-
1329 posed compromise into effect, such mortgage and trust-deed to be made to one or more trustees, in each case to be selected by said assignees and attorneys, and to be properly framed for the security of the several classes of creditors to be benefitted thereby; and so far as

the evidences of debt to be issued under such new mortgage or trust-deed, whether by said Mobile & Ohio Railroad Company or by a new corporation, shall not be required to be issued or delivered in exchange for securities which shall have come into and remained in the hands of such assignees and attorneys under this agreement, such surplus securities shall be void, or so much thereof as in their judgment shall be necessary for the purposes hereinafter named; and the proceeds thereof, and also any sums received by them in cash from the receivers or from any officer of the court, shall be applied, in the first place, in repaying any sums advanced, or procured to be advanced, by said assignees and attorneys for the purpose of meeting the expenses of said foreclosure suits, and of carrying this agreement into effect, and the expense of making such purchase and reorganization; and then the surplus, if any, remaining from such disposition of such new securities, as well as any new securities which may remain unsold or undisposed of, and any sums realized by said assignees and attorneys from the receivers or managers of said property in said foreclosure suits, or from the management or running of the road, shall be accounted for 1330 by said assignees and attorneys to said new corporation, which said new corporation is to consist of and be created by the subscribers to this agreement, so far as they are entitled to the benefit of the same; and said new corporation, or said existing corporation, in case the compromise above specified shall be carried into effect, shall be considered as subrogated to all the rights of the subscribers to this agreement for the purpose of calling the said assignees and attorneys to account. The said assignees and attorneys shall be allowed out of the fund, for compensation for their services and responsibility, such amounts as shall be reasonably just according to the character of such services and responsibility; but there is no personal responsibility on the part of any subscriber hereto for any part of such compensation; and said assignees and attorneys, and their necessary clerks, bookkeepers, and their employees, of any grade or description, shall be entitled to a lien upon the new securities and upon the cash received by said assignees and attorneys, and the cash proceeds of such of the same as they are authorized to dispose of, for their compensation, liabilities, and disbursements, whether absolute or contingent, until their account shall have been duly and properly settled with such organization; and such existing corporation, or such new corporation or corporations, as the case may require, shall, before payment of interest on any of 1331 the new securities, assume and pay any excess of such compensation, liabilities, and disbursements above the amount realized by said assignees and attorneys from funds in their hands.

Nineteenth. The subscribers hereto, who shall respectively have transferred to said assignees and attorneys their several claims, provided such claims shall remain under the control of such assignees and attorneys, and available for the purpose of purchasing the property now mortgaged in said foreclosure suits, shall be interested in the property after such purchase and so long as the title thereto remains in said assignees and attorneys, as beneficiaries and cestui que trust, in the same proportions, and shall have the same relative rights and interests, as against each other, as in the new securities to be created under this agreement.

Twentieth. The trust-deed hereinabove provided for, whether executed in pursuance of the compromise agreed upon or by a new corporation or corporations to be created after a foreclosure, shall contain provision for the creation of a sinking-fund for the benefit of the holders of said debentures, in the order in which the interest on such debentures is, as above specified, payable.

Such sinking fund is to consist of the proceeds of all lands owned, and
which may hereafter be owned, by said company, with the excep-
1332 tion of such as are covered by the above-mentioned first mortgage,
and with the exception of the railway, rails, bridges, fences, ware-
house, and other fixtures, rights, privileges, and real estate belonging to the above-mentioned branches, but including all lands not so covered, but conveyed to the Mobile & Ohio Railroad Company by any State or by the United States.

The trustees under said trust-deed are to have power of sale over said lands from time to time; and such trust-deed shall contain clauses properly framed conveying to the trustees under such deed the same powers of sale in respect to the lands conveyed thereby as are possessed by the trustees under the now existing first mortgage; and the first mortgage to be created under this agreement is not to apply to or cover such lands; and the proceeds of sales of said lands are to be free from the lien of said new first mortgage, and are to constitute a fund for the exclusive benefit of the holders of said debentures.

But such new trust-deed shall also contain a provision by way of covenant, declaration, grant, or otherwise, as said assignees and attorneys may direct, in substance and effect that the amount of principal and interest payable upon said debentures shall constitute a lien upon the railway property of said existing corporation, or of said new corporation or corporations, as the case may require, to such an extent that in case
of a foreclosure of said new first mortgage and a sale thereunder,
1333 the trustees in said trust-deed, for the benefit of holders of said
debentures according to their order and priority, shall be entitled
to the surplus proceeds of such sale next after payment of said new first mortgage, to the amount of the aggregate principal sum due on such debentures, and so that in case any lien upon said railway property, or any part thereof, shall arise, subsequent to the making of said trust-deed by the act or sufferance of such existing or new corporation, and such subsequent lien shall be enforced to the extent of depriving said existing or new corporation of the possession of such railway property, or any part thereof, then the trustees in said trust-deed may enter into possession of such part of said railway property, and sell the same clear of all subsequent liens, for the benefit of holders of said debentures, according to their order and priority, or may exact redemption and payment in full of the principal amount of such debentures before surrendering such property to such subsequent lienors; and said trust-deed shall also contain proper covenants and securities for the ascertainment and application of the income of the property of said existing or new corporation and its successors, as the case may require, according to the provisions of this agreement; and there shall also be paid into the sinking-fund a further amount equal to the dividend which may
hereafter be declared upon the capital stock now existing or here-
1334 after to be created, of such company, which dividend shall not
be declared or paid except an amount equal thereto is also paid
in at the same time out of the net revenue into the sinking-fund.

The trustees making sales of said lands are to deposit the proceeds thereof in the Bank of the State of New York, in the city of New York, or such other depository as the trustees in said trust-deed may select in the said city of New York; and each six months—that is, on the first days of May and November—the trustees shall advertise in the cities of Mobile and New York, stating the amount so deposited and at the disposition of the sinking-fund, and asking for tenders thereof in the first series of said debentures then outstanding, awarding the amount so deposited to the holders of debentures tendered at the lowest grades of price in succession.

In default of any bids or tenders therefor at less than par the trustees shall thereupon draw by lot a sufficient number of debentures of the first series then outstanding to absorb such deposits, and shall apply such deposits to the purchase of the debentures so drawn by lot at par. After purchase of the said debentures of the first series the sinking-fund shall be applied in like manner and by the same means to the purchase of each other of the said several series of debentures in succession.

Twenty-first. In case a prosecution of said foreclosure-suits to a sale or to a strict foreclosure is found to be necessary, and it shall
1335 also be found necessary to create a new corporation or corporations, then the capital stock of such new corporation or corporations shall be fixed at not exceeding the sum of ten million dollars, to be divided into shares of one hundred dollars each, and shall be in the first instance issued to said assignees and attorneys as a part of the funds in their hands for the purposes of this agreement; and they shall so place a majority of such stock as to secure to the holders of said debentures, directly or through the trustees in said trust-deed, the control of the management of the corporation, and any surplus of such new stock remaining after that disposition of it, and after the trust under said trust-deed shall be fully executed, shall be treated in like manner with any surplus bonds or other securities to be issued by the Mobile & Ohio Railroad Company, or by a new corporation or corporations under the provisions of this agreement.

Twenty-second. Bonds, securities, claims, and evidences of debt transferred to said assignees and attorneys under the provisions of this agreement, shall be deposited at the option of the parties transferring the same, either in the Farmers' Loan and Trust Co., in the city of New York, or in the Bank of Mobile, at Mobile, in the State of Alabama, or with C. M. Lampson & Co., in the city of London, or at
1336 the Frankfurter Bank Verein, in the city of Frankfurt, or with Lombard, Odier & Co., in the city of Geneva, who shall respectively be authorized to give therefore the certificates above provided for, or their receipts exchangeable for said certificates; and the securities so deposited shall remain in the several depositories, subject to the order of said assignees and attorneys, until the same shall be required for cancellation, surrender, exchange, or delivery into court by said assignees and attorneys, or for other purposes of this agreement, in which case the same shall be transmitted from the depositories thereof to such attorneys and assignees, either at the Farmers' Loan and Trust Co., in the city of New York, or at the Bank of Mobile, in the city of Mobile, as said assignees and attorneys may direct; from which depositories the same may be taken by said assignees and attorneys when required for any or either of the purposes aforesaid; and securities and cash funds received by said assignees and attorneys, under the provisions of this agreement, shall be deposited by them, either in the Farmers' Loan & Trust Co., in the city of New York, or in the Bank of Mobile, in the city of Mobile.

Twenty-third. In case of vacancy in the office of assignee or attorney under this agreement, arising from the death or resignation of either of the parties, or from his incompetency to act, the vacancy may be
1337 filled by the unanimous agreement of the trustees acting under this agreement.

Twenty-fourth. The said assignees and attorneys shall have an office in the city of New York, and shall keep regular accounts and books of account, showing their transactions, which shall be open to the inspection of certificate holders at reasonable times during business hours, and a majority of said assignees and attorneys shall be competent to transact business at any meeting of which all three of the assignees and attorneys shall have been notified, and any substituted assignee or attorney, duly appointed pursuant to the provisions of this agreement, shall have the same power, authority, and control which his predecessor had; and all the provisions of this agreement, and all the powers conferred thereby, shall apply to and be vested in such assignee and attorney so far as his predecessor had such power, or was subject to such provisions; but so far as any discretionary power is conferred by this agreement, no such discretion shall be or can be used without the consent of all the attorneys and assignees acting at the time under this agreement, and each assignee and attorney shall be responsible only for his own acts and not for the acts of others; and neither assignee or attorney shall be responsible for any error of judgment nor for any error or negligence of any subordinate officer or agent, unless such officer 1338 or agent shall be employed or continued in employment negligently by such assignees and attorneys.

Twenty-fifth. The new securities to be issued by said Mobile & Ohio Railroad Company, or by a new corporation or corporations to be created under the terms of this agreement, shall be, in the first instance, delivered by the said company to said assignees and attorneys, or their successors, who shall deposit the same in the said The Farmers' Loan & Trust Co., or in the said Bank of Mobile, and no subscriber hereto or his successor in interest shall be entitled to any portion of such new securities except upon a return or surrender to said assignees and attorneys at one or other of the said places of deposit of the certificate or certificates held by such subscriber. In case, in the original distribution of the new securities to be issued in pursuance of this agreement, any party shall become entitled to a fractional part, less than $100, of a bond or debenture, a certificate therefor may be issued, which, when united with other fractional certificates so as to make an entire bond or debenture for either one of the even amounts in which said bonds or debentures are above authorized to be issued, may be funded in such bonds or debentures of even amounts as the case may require.

1339 Twenty-sixth. The assignees and attorneys acting under this instrument are hereby invested with full power and authority to execute the provisions of this plan; to supply any and every defect in any and every case which is unprovided for in its terms, and to do anything and everything that is proper in their judgment to carry out its provisions.

Twenty-seventh. The said assignees and attorneys may, in the transaction of business, call themselves "The Committee of Reorganization of the Mobile & Ohio Railroad Company," and, when acting in that name, shall be considered as acting as attorneys, agents, managers, and assignees under this agreement.

In the adjustment of their accounts they shall be allowed such payments and expenditures as shall have been made by them in good faith, in the belief of the necessity of making such payments and expenditures for the benefit of the subscribers hereto and for the purpose of carrying this agreement into effect.

Twenty-eighth. All bonds, securities, and evidences of debt, etc., transferred under this agreement, shall be in the first instance deposited

for the purposes of this agreement in one or the other of the depositories
herein named, or in others selected as authorized by this agreement;
and all new securities to be issued by the present corporation, or
1340 by a new corporation, shall, in like manner, be deposited with
one or the other of said depositories, to be by such depository
distributed to the parties entitled thereto, under the order and with the
assent and approval of the assignees and attorneys; and in the transmission of either the present or future securities in fulfillment of this agreement, the assignees, attorneys, and depositories, using due diligence, may, in their discretion, insure or otherwise protect such securities at the expense of the fund, and in case of loss shall be relieved from liability.

Twenty-ninth. Any duplicate or other copy of this agreement which shall be subscribed by any holder of the said bonds, securities, liens, claims, judgments, or stock, and delivered to and accepted by said assignees and attorneys, shall have like effect as if such signatures were herewith subscribed.

In witness whereof, the parties hereto have hereunto set their hands and seals, or otherwise attested the same as the case may require:

NAME & ADDRESS.	CLASS OF BOND.	AMOUNT.

1341 *Schedule annexed.*

FIRST MORTGAGE BONDS.

1. Sterling bonds, £225 each (by deed of trust stated as "each of said bonds being the same as $1,000"), issued 1853, due 1883.
2. Arrearage interest bonds, B. & C., £200 or £100 each, issued 1867, due 1883.
3. Interest bonds, O. P. Q, $1,000, $500, $200 each, issued in 1866, due 1876.
4. Arrearage interest bonds. F, F1, F2, F3, F4, $1,000, $500, $300, $100 each, issued 1868, due 1883.
5. Sinking fund gold bonds (Tennessee substitution), £205 or $1,000, issued 1871, due 1901.
6. The interest coupons on the above first mortgage issues appear by the books of the company to have been paid up to and including those which matured January 1, 1874, leaving outstanding and unpaid all the coupons on the above issues which matured on or after May 1st, 1874.

The foregoing principal and interest to be exchanged for first mortgage bonds, and first preferred income and sinking-fund debentures, as provided by the scheme of reorganization.

1342 SECOND MORTGAGE BONDS.

Several issues, L, R, S, T, Rr, Ss, Uu, $1,000, $500, $300, $100, and irregular amounts, issued in 1867, 1871, 1872, 1873.

The interest coupons on the above second mortgage bonds appear, by the books of the company, to have been paid up to and including those which matured March 1st, 1874, leaving outstanding coupons on above second mortgage bonds from and including those which matured March 1st, 1875; the principal and interest of these to be exchanged for 2nd preferred income and sinking fund debentures, as provided by the scheme of reorganization.

CONVERTIBLE BONDS.

Secured next after the above-mentioned first and second mortgages by a mortgage known as the consolidated mortgage; also, by a deposit of the stock of the M. & O. R. R., 4 shares for each $100, in trust. Of these bonds there were issued in irregular amounts $977,550, but of this issue there remain unused by the company $471,000. The interest upon these bonds appears by the books of the company to have been paid up to and including that which matured December 1st, 1874, leaving outstanding unpaid the interest from that date. The principal and interest of these convertible bonds to be exchanged for 3d preferred in-
1343 come and sinking fund debentures, as provided by the scheme of reorganization.

CONSOLIDATED MORTGAGE.

These bonds have been issued only to a very limited amount, as security to previously unsecured creditors, to give to them, as far as lay in the power of the company, a lien upon the property of the company, after the lien of the first mortgage, Tennessee substitution, second mortgage, and convertible bonds above enumerated. The original issue was contemplated to be $15,000,000, for the purpose of consolidating all the previous issues, but none were issued beyond the above amount, and the amount so issued was intended to cover all the floating and otherwise unsecured indebtedness, except judgments against the company. In the scheme of reorganization they are not recognized.

FLOATING DEBT AND JUDGMENTS.

The total amount of judgments outstanding appears by the records of the several counties through which the railroad runs to be about $170,000, but from various considerations it is inferred that many of them have been settled, or for other causes are no longer a claim against the company. The receivers are now engaged in examining into
1344 this matter. The total amount of floating debt outstanding, exclusive of interest, appears by the books of the company to amount to $538,702.78 (August 1st, 1876).

This may be increased by other unsettled claims, or reduced by realization of securities pledged. The principal and interest of judgments and floating debts is to be exchanged for fourth preferred income and sinking fund debentures, as provided by the scheme of reorganization.

Form of certificate.

MOBILE & OHIO RAILROAD.

Certificate of deposit under agreement dated Oct. 1st, 1876.

This certifies that   of   , has under and pursuant to the terms of agreement between the creditors of the Mobile & Ohio Railroad Company and said Company, bearing date the first day of October, 1876, deposited with   of   , and thereby transferred to Wm. H. Hays, Wm. S. Pierson, and T. Haskins Du Puy, as provided for by said agreement, the following claims against the Mobile & Ohio Railroad Company, viz.:

1345 *Description of claims, with coupons.*

Titile.	No.	Amount.	Each coupon.	Total No. of coupons.	No. of coupons to be funded under agreement.

Convertible bonds (registered), etc.	No.	Interest from—	Amount.

The said claims so deposited and transferred are held by said depository, subject to the order of said W'm H. Hays, W'm S. Pierson, and T Haskins Du Puy, and their successors under and subject to the terms and trusts and for the purposes and with the rights, powers, and duties expressed in said agreement, and upon the new securities specified in said agreement, being created for distribution in the proportions herein below stated, the bearer hereof, upon presentation and surrender hereof at the depository in Mobile or New York, as required by said agreement, will receive said new securities in exchange for those deposited and transferred hereby:

1346 1. For the principal amount of each sterling first-mortgage bond of £225 each	$440 in new first-mortgage bonds.
And for each coupon thereof, up to May 1st, 1877.	$36 “ “ “
And for coupons maturing November 1st, 1877..	6 “ “ “
And also	560 in first-preferred income and sinking-fund debentures.
2. For the principal amount of each sterling-interest arrearage-bond B. of £200 each	$440 in new first-mortgage bonds.
And for each coupon thereof, up to May 1st, 1877.	36 “ “ “
And for coupons maturing Nov. 1st, 1877	6 “ “ “
Also	560 in first-preferred income and sinking-fund debentures.
Sterling-interest arrearage-bonds C. of £100 each, and coupons thereof, will receive one-half the above, respectively.	
3. For each $1,000 of the principal amount of the interest-arrearage bonds of O. P. Q. F. to F 4..	$310 in new first mortgage bonds.
And for six months' interest coupons on each such principal amount of $1,000 up to May 1st, 1877.	$36 “ “ “
And for such coupons maturing Nov. 1, 1877....	$6 “ “ “
And also for each such principal of $1,000	$690 in first-preferred income & sinking-fund debentures.
1347 For smaller amounts in proportion.	
4. For the principal amount of each sinking-fund gold-bond (Tennessee substitution) of $1,000 or £205 each	$626 in new first-mortgage bonds.
And for coupons thereof, up to January 1, 1877..	$36 “ “ “
And for coupons maturing July 1st, 1877........	$30 “ “ “
And also	$374 in first-preferred income and sinking-fund debentures.

5. For the principal amount of each second-mortgage bond L. R. S. T. Rr. Ss. Uu. and the interest-coupons thereof up to the 1st day of June, 1877, dollar for dollar, in the second-preferred income and sinking-fund debentures.
6. For the principal amount of each convertible bond, and the interest thereon up to the 1st day of June, 1877, dollar for dollar, in the third-preferred income and sinking-fund debentures.
7. Judgments and floating debts will be settled, as per terms of the agreement, in fourth-preferred income and sinking-fund debentures.

This certificate is transferable from hand to hand, by delivery, without writing, at the option of the holder, but the holder may, by endorsement, limit the transferability thereof.

In witness whereof, have hereunto subscribed their names, this day of 187

1348 Filed June 5th, 1877.
(S'g'd) N. W. TRIMBLE, *Clerk.*

1349 *Exhibits A & B to bill of D'Orelli Ziegler vs. Mobile & Ohio Railroad Co. et als.*

(Copy of deed of trust.)

DEED OF TRUST.

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and fifty-three, between the Mobile and Ohio Railroad Company of the first part, and Morris Ketchum and John J. Palmer of the city of New York, and State of New York, and William R. Hallett of the city of Mobile, and State of Alabama, of the second part, witnesseth:

Whereas the legislature of the State of Alabama passed an act of incorporation, approved the third day of February, 1848, creating certain associates therein named, and their survivors, a body politic and corporate, by the name of the Mobile and Ohio Railroad Company, and by that name to sue and be sued, plead and be impleaded, to make and have a common seal, and the same break, alter, and renew at pleasure —vested with all powers, privileges, and immunities, which are or may be necessary to carry into effect its purposes and objects—authorized and empowered to locate, construct, and finally complete, a single, double, or treble railroad or way from some suitable point in the city of Mobile, in a western, or northwesterly direction to the mouth of the Ohio River, in such route as shall be deemed most expedient; and to transport, take, and carry property and persons upon said railroad or way, by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them which said company may choose to apply; and, for the purpose of constructing said railroad or way, the said company is authorized to lay out the road not exceeding one hundred feet wide, through the whole length; and for the purposes of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation, in relation to the business of said company, and also to make joint stock with any other railroad corporation.

Further, the State of Mississippi incorporated the said Mobile and Ohio Railroad Company, by act of its legislature, approved the seventeenth day of February, 1848; the State of Tennessee did also incorporate said Mobile and Ohio Railroad Company, by act of the legislature, approved the twentieth day of February, 1848; and also the State of Kentucky invested said Mobile and Ohio Railroad Company with corporate rights by an act of its legislature, approved the twenty-sixth day of February, 1848, constituting the Mobile and Ohio Railroad Company, a full and complete corporation through the said State, authorized to purchase, hold, and dispose of real and personal estate; to borrow money; to make contracts for the loan of money; and to give evidence of debt, and securities for the payment of the same by pledge, mortgage, or otherwise, as it shall deem necessary and proper.

And, whereas, said Mobile and Ohio Railroad Company, in pursuance of the authorities vested by said charters, have surveyed and located the line of said road from the city of Mobile to or near the junction of the Mississippi and Ohio rivers, secured the rights of way, obtained depot grounds and valuable assets, all of which are of record in the records of said company, and of record in the counties intersected. 1350

And whereas the said roadway is under contract for the complete work of the road-bed from its respective termini, and in progress of construction, the said Mobile and Ohio Railroad Company, parties of the first part, resolved by vote of the board of directors, and in pursuance of the power and authority in said company vested, to raise a sum of money not exceeding six millions of dollars, for the purpose of completing said road, viz.: the purchase of the iron and laying the same, the necessary turnouts, depots, and equipments; and for the purpose to execute, issue, sell and transfer the bonds of said company, in sums of two hundred and twenty-five pounds sterling each, of even date with these presents, payable in thirty years from date, each with coupons attached for interest, payable semiannually; each coupon being for £6 15s. sterling; both the principal and coupons, and interest on said bonds, until paid, payable at the counting-house of George Peabody & Co., bankers, in London, England, each of said sterling bonds being the same as one thousand dollars money of the United States of America, and not exceeding six thousand bonds, each to be numbered respectively from number one to six thousand, inclusive, and for security for the payment of said bonds, to transfer to said parties of the second part, all and singular, all the rights and franchises of said company, together with all its personal property of a fixed character, real estate, including its depots, warehouses, lots in town and country, and especially all lands donated by act of Congress, under date of the twentieth day of September, one thousand eight hundred and fifty, transferred in fee simple to the said company, party of the first part, by act of the legislature of the State of Alabama, approved December first, one thousand eight hundred and fifty-one; by act of the legislature of the State of Mississippi, approved January twenty-eighth, one thousand eight hundred and fifty-two; said lands having been duly selected, set apart and confirmed to said railroad company, party of the first part, and designated by described tracts, as will appear by the act of the Commissioner of
1351 the General Land Office at Washington, certified, affirmed and
titied by the act of the Honorable the Secretary of the Department of the Interior, one of the executive departments of the Government of the United States of America, dated Washington, D. C., February the fourth, A. D. one thousand eight hundred and fifty-three.

Now, therefore, this indenture further witnesseth, that the said Mobile and Ohio Railroad Company, the better to secure the payment of said bonds, and every part thereof, with interest according to the tenor thereof, and in consideration of the sum of five dollars unto the said company, well and truly paid by the said Ketchum, Palmer and Hallett, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, transferred, set over and conveyed, and by these presents do grant, transfer, set over and convey unto the said Ketchum, Palmèr and Hallett, the survivors or successors of them, in fee simple, all and singular of the rights and privileges of every name and kind, as hereinafter set forth, being the first and only conveyance of title, grant, or mortgage, hereby guaranteeing and warranting the described items, assets and real estate, free from all liens or incumbrances, done or suffered to be done by the said party of the first part.

The said items, as set forth, are as follows; All the said Mobile and Ohio Railroad, lying between its respective termini, constructed and to be constructed, together with all and singular, the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned, and which may hereafter be owned, by said company, including the said lands donated by act of Congress hereinbefore referred to, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting, as by the certificate of the Department of the Interior, to 419,528 56-100 acres in the State of Alabama; to 737,130 36-100 acres in the State of Mississippi—total 1,156,658 92-100 acres; saving and excepting therefrom so much as lies in township four south, range one west, of lands subject to entry in
the St. Stephens land office, Alabama, being 692 78-100 acres, more
1352 or less; saving and excepting also the lots and tracts in the county
of Mobile, State of Alabama, outside of the line of the railway, outside of its depots, and outside of the corporate limits of the city of Mobile, being lots and lands derived by private purchase, not yet fully paid for, and not included in the list of lands in Mobile County derived under and by the act of Congress; and saving and reserving the rights and liens that may attach to the roadway and construction thereon, in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that said State, in the event of said State aiding in the construction of so much of the roadway as lies in said State, viz, one hundred and eighteen miles, which aid is provided for by law of that State, and, if used by said Mobile and Ohio Railroad, the said prior lien in favor of said State will be to the extent of said State aid, not exceeding ten thousand dollars per mile. To have and to hold the said premises, hereinbefore set forth, to the said Ketchum, Palmer and Hallett, their survivors or successors, for the benefit security and advantage of the person or persons, or corporations, or any other party who shall or may be holders of the before-described bonds, or any of them, conditioned as follows: The said Ketchum, Palmer and Hallett shall at once have possession and control of the lands donated by act of Congress, and set forth in the before-mentioned certificate of the Secretary of the Interior, of February fourth, one thousand eight hundred and fifty-three, for 1,156,658 92-100 acres, and any other lands that may be obtained for the said company by the present or by future acts of Congress, with authority to devise and determine rules of management, of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds; said Ketchum, Palmer and Hallett rendering an exhibit and account of their doings on or before the first days of January of each and every year during the period of the trust herein made, to the said parties of the first part.

The said Ketchum, Palmer and Hallett shall have full authority to
appoint an agent or agents to attend to said land business, who
1353 shall account for his or their doings to them, paying over to them

all the proceeds of sales or rents, or profits derived from said lands. It is provided, however, that unless the said railroad company should be in default, on any obligations connected with said bonds, no sale of said lands shall be made, except by and with the advice and consent of said company.

The said party of the second part, themselves, or regularly constituted attorney, are hereby vested with authority to issue proper and sufficient deeds *of* muniments of title.

As to other items of assets of real estate, tolls, or income of said company, they are to remain in the possession or under the control of the said company, except the said company become in default for the payment of said bonds or interest, or any portion thereof; in such case the said party of the second part is hereby vested with full authority to take possession and control of all and singular the entire estate and properties of whatsoever name or kind; and hold the same for the benefit of any and all creditors, with such other action and disposition as shall be equitable to all concerned, provided the said party of the second part shall not claim to take such possession and control unless said company remains in default of payment of the said bonds or interest for the space of three months after being due and payable.

The Mobile and Ohio Railroad Company further covenant and agree to make to said party of the second part, their survivors or successors, any further assurance or instrument as may be necessary, at any future time, to carry out the equitable intentions of this deed; and the said company, for themselves, their successors and assigns, do hereby covenant and agree with the said Ketchum, Palmer and Hallett, or their successors, in behalf of the bondholders, that the money received on the said bonds shall be applied in good faith, on the construction and completion of said road, and putting the same into operation.

And, on the failure of said company to do and perform any and all the covenants herein agreed, the said Ketchum, Palmer and Hallett, or survivors or successors, upon the request in writing of any one or more of the bondholders, may and shall take
actual possession of all said railroad, and the other prop-
1354 erty and effects of said company hereby conveyed, transferred,
and assigned, or so intended to be, and through the agency of such person or persons as they may from time to time appoint, may receive and collect the tolls, incomes, and profits of the same, for the purpose of the security hereinbefore declared, and may sell and dispose of the said road and other property hereby mortgaged, conveyed, or assigned, or so intended to be, and all benefit and equity of redemption of the said company therein, always with the benefit of franchise and subject to the conditions thereof, at public auction, giving reasonable public notice of the time and place of sale, and as the attorney or attorneys of the said company for that purpose by these presents duly constituted, to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance for the real estate, in fee-simple or otherwise, according to the title of said company therein, and good and proper transfer and assignments of the personal property, and out of the money arising either from the income or profits of the said road and other mortgaged, conveyed, or assigned property, or effects of the sale thereof, after deducting the expenses incurred in carrying on the business of the road and in keeping the same in repair, together with the costs, charges, and counsel-fees incurred in their proceedings, and a reasonable compensation to themselves for their services in case of such sale, to apply so much of the residue as may be

necessary to pay the principal and interest which may be due on said bonds issued as aforesaid, rendering the balance of such moneys, if any shall remain, to said company.

And the sale so made shall be a perpetual bar against the said parties of the first part, and the persons claiming by, from, or under them. Provided, however, and it is hereby expressly understood and agreed, that neither of them, the said Ketchum, Palmer and Hallett, or their successors or assigns, shall in no manner be liable or responsible for any act of the other to which he does not expressly assent; and that they shall be accountable only for the exercise of reasonable care and diligence in their management in the premises.

1355 And it is further covenanted and agreed between the said parties that if either of them, the said Ketchum, Palmer, or Hallett, shall at any time or times hereafter die, or become from any cause incapable of acting in the premises, or resign his office under these presents, then the said company and the said Ketchum, Palmer, and Hallett, or either of them, may select some other person to fill the vacancy occurring, and shall thereupon make, execute, and deliver all and singular such other and further instruments or assurances as may be necessary to enable such person or persons so selected to act in the execution of these presents. But until such selection of some person or persons to fill such vacancy or vacancies, and the execution of the papers requisite to enable him or them to act, the act or acts of the other shall, notwithstanding such vacancy, be in all respects legal and valid. And it is expressly understood that the conveyance made by this indenture is only on and for the present rights, interest, and property, and in the future to be acquired rights, interest, and property, and appurtenances of the parties of the first part as do or may exist on the line of said railroad, from the city of Mobile to the mouth of the Ohio River. And it is hereby further provided, and these presents are upon the express condition, that upon the payment or satisfaction of the principal and interest of the aforesaid bonds, the estate hereby granted and conveyed to Ketchum, Palmer and Hallett, their survivors or successors, and the property and effects mortgaged, conveyed, or transferred to them shall cease and become void; and the said company shall thereupon be fully and immediately reinvested with the same, both in law and equity, and in fact, without any entry or other act whatever.

In witness whereof the parties of the first part have caused these presents to be acknowledged by their president and attested to in their behalf by their president and secretary, and their common seal thereunto affixed; and the said parties of the second part hereunto set
1356 their hands and seals the day and year first above written.

[SEAL.] (Signed) SIDNEY SMITH,
President Mobile and Ohio Railroad Company.

A. F. IRWIN,
Secretary M. & O. R. R. Co.

We accept the above trust.

MORRIS KETCHUM,
JOHN J. PALMER,
W. R. HALLETT,
Trustees.

A.

(Copy of bond.)

No. .] UNITED STATES OF AMERICA. [No.

First-mortgage bond of the Mobile & Ohio Railroad Company.

£225 st'g] Six per cent. bond of £225 sterling for superstructure and equipment of their railroad from Mobile to the Ohio River. [£225 st'g.

This certifies that the Mobile and Ohio Railroad Company is indebted to or bearer, in the sum of two hundred and twenty-five pounds sterling, for value received. In consideration whereof, the said Mobile and Ohio Railroad Company do hereby agree to pay to or bearer, the said sum of two hundred and twenty-five pounds
1357 sterling on the presentation of this bond at the counting-house of George Peabody & Co., London, on the 1st of November, A. D. 1883. And the said Mobile and Ohio Railroad Company do hereby promise and agree to pay interest thereon at the rate of six per centum per annum, semi-annually, on the first days of May and November, in each and every year ensuing the date hereof, until said principal sum shall be paid, upon the presentation and delivery of the coupons hereto annexed, at the counting-house aforesaid, as they severally become due and payable.

This bond is one of six thousand, of like tenor and date, issued by the authority of the board of directors of the said Mobile and Ohio Railroad Company and in accordance with its charter, for a loan of thirteen hundred and fifty thousand pounds sterling, for the superstructure and equipment only of said road. And the holder is entitled to the security to be derived from a deed of trust, bearing even date herewith, on the said railroad, its rights and franchises of every description, on the real estate of said company, and on the lands donated by act of Congress, of date 20th of September, 1850, to the States of Illinois, Mississippi, and Alabama, to aid in the construction of a railroad from Chicago, State of Illinois, to Mobile, State of Alabama. Said lands have been selected and located to the extent of 1,156,658 acres, as described in the certificate of the General Land Office, approved and certified by the honorable Secretary of the Department of the Interior, at Washington, 4th February, 1853. The fee of said lands has been transferred by the legislatures of Alabama and Mississippi to this company, with full power and authority to dispose of them, as shall secure the construction of said railroad, as will more fully appear in said deed of trust, executed and delivered to John J. Palmer and Morris Ketchum, of New York, and William R. Hallett, of Mobile.

The said Mobile and Ohio Railroad Company further agree that this bond, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery.

1358 In witness whereof the said railroad company have caused this bond to be signed by their president and treasurer, and the corporate seal to be affixed, at their office in the city of Mobile, this first day of November, A. D. 1853.

[SEAL.] (Signed:) SIDNEY SMITH, *Presid nt.*
(Signed:) A. F. IRWIN, *Treasurer.*

(Copy of endorsement on the bond.)

£225 sterling.

UNITED STATES OF AMERICA.

Mobile and Ohio Railroad Company bonds for superstructure and equipment.

Six per cent. interest, payable semi-annually. Coupons each £6 15s., payable at the counting-house of George Peabody & Co., London, £6 15s. on 1st of May, and £6 15s. on 1st of November.

The principal secured by a first and only mortgage of railroad equipments and chartered rights, and by a deed of trust upon, viz:

100,000 acres town sites and 1st quality land, worth 42 shillings per acre	£ 210,000
1,056,658 acres of other lands, various qualities, and heavily timbered, worth 10 shillings per acre	528,329
Subscriptions partly paid and all payable by 1st January, 1855, in cash and completed contracts	924,264
Total value of lands and cost of railroad, exclusive of Tennessee loan of £196,000, is	2,990,000
Total issue of bonds is	1,350,000

Countersigned:

Morris Ketchum,
J. J. Palmer,
W. R. Hallett,
Trustees.

Each bond may be used in the purchase of any of the company's land designated for sale, and at the selling price. The proceeds of all lands sold, except for bonds, to be invested by the trustees as a sinking-fund for the redemption of the bonds.

INTEREST SECURED.

By a pledge of the surplus income from the earnings of the completed portions of the road, and the other property of the company.

Trust deed recorded in the office of records of Mobile County, State of Alabama, an authenticated copy of the same in the hands of George Peabody & Co., London.

1359 *Second mortgage.*

This indenture, made this fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty, between the Mobile and Ohio Railroad Company, of the first part, and Robert A. Baker, of Alabama; George H. Young, of Mississippi; and Samuel Williams, of Tennessee, of the second part, witnesseth—

That whereas, by resolution of the board of directors of the Mobile and Ohio Railroad Company, passed the 8th day of June, 1857, an issue of not exceeding five hundred thousand dollars of eight per cent. income bonds was authorized for the purpose of completing and equipping the road north of the Mississppi line, the bonds to be payable in not less than eight years from the first day of July, 1857, with interest-coupons attached, payable semi-annually from the net income of the road in operation in Tennessee and Kentucky.

And whereas, by another resolution of said board, passed the twentieth day of January, 1859, the executive committee of the board was authorized to ascertain the correct amount of the floating debt of the company and offer to the creditors the obligations of the company for the amount of such debts, and providing that such obligations of the company shall operate as a lien on the income of the road not otherwise appropriated. Said obligations or bonds to bear interest at eight per cent., payable annually, according to the coupons attached.

And whereas, by another resolution of said board, passed the second day of February, 1860, the amount of said bonds to be issued under the resolution of twentieth of January, 1859, above referred to, was limited to an amount not exceeding one million of dollars, and to be payable at not less than ten years' time. And whereas it was further directed by said resolution of the second February, 1860, above referred to, that, to give more ample and certain security to said bonds, to wit, to the five hundred thousand dollars authorized by the resolution of the eighth of June, 1857, and the one million of dollars authorized by the resolution of the twentieth of January, 1859, the president of the company was directed and required to execute a deed or deeds of
1360 mortgage upon the property, effects, and income of the road. Said deed or deeds not to interfere with prior liens on the same.

Now, therefore, this indenture witnesseth that the said Mobile and Ohio Railroad Company, the better to secure the payment of said bonds authorized to be issued by said several resolutions above referred to, and every part thereof, with interest, according to the tenor thereof, and the coupons thereto attached, and in consideration of the benefit to accrue to the company from issuing and negotiating said bonds, and the sum of five dollars well and truly paid by the said Robert A. Baker, George H. Young, and Samuel Williams, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, transfer, set over, and convey unto said Robert A. Baker, George H. Young, and Samuel Williams, and to the survivors or successors of them, in fee simple, all and singular the rights and privileges of every name and kind, as hereinafter set forth. The said property and assets herein conveyed are as follows:

All the said Mobile and Ohio Railroad lying between its termini, constructed and to be constructed, including the Columbus, Mississippi, and Columbus, Kentucky, branches, together with all and singular the chartered rights, railways, rails, bridges, fences, warehouses, depot buildings, machine shops, tools, iron, timber, and all materials necessary in repair of road bed, rolling stock, or machinery, and all wood and coal, and other materials necessary in running said road, and the receipts and income of said road, and all fixtures, privileges, rights, real estate, and all other property owned, and which may be hereafter owned by said company, including the said lands donated by act of Congress, under date of the twentieth day of September, 1850, and reconfirmed by subsequent acts, and which reference is to be taken as a full and correct description of the lands derived from Congress, amounting, as by certificate of the Department of the Interior, to 419,528 56-100 acres in the State of Alabama, to 737,130 36-100 acres in the State of Mississippi—total, 1,156,658 92-100 acres; also, the right, title, and interest of the party of the first part, in and to the lands, property, and effects, particularly described in Schedule B, and made part of a mortgage by

said party of the first part, to secure a debt due the State of Alabama, dated third of April, 1858, deposited for record the sixth of April, 1858, and recorded in Book of Mortgages, No. 5, N. S., probate court, Mobile
County, pages 415 to 422, inclusive, reserving the prior lien
1361 of the said State of Alabama.* And all property, assets and effects,
real and personal, now owned, or which may hereafter be owned, by said party of the first part, in the progress of the road, and in conducting the affairs of the company; to have and to hold said property, real and personal, franchises, privileges, assets and effects of every kind, to the said Baker, Young and Williams, their survivors or successors, for the benefit and security of the person or persons, corporations or parties holding the before-described bonds, or any of them, including those negotiated, as well as those hereafter to be negotiated; provided, however, if any of the bonds above referred to should have been included in a lien or mortgage on the Columbus, Kentucky, branch, the holders thereof shall receive no benefit over others, but are to take the benefit of this conveyance, on condition of putting all bondholders, secured by this mortgage, on equal equities and advantages with themselves.

But this conveyance is in trust for the following purposes, viz: to secure the payment of the accruing interest on the bonds referred to, and the payment of the principal at the maturity of said bonds; and said Baker, Young and Williams, parties of the second part, as trustees, are hereby invested with full power and authority to hold and protect said property, assets and effects, rolling stock, income, and everything hereinbefore referred to, from misapplication by which the objects of this trust could or might be defeated. And should the coupons on said bonds, or any of them, remain unpaid for the space of six months after they mature, and are duly presented for payment, in either case the said trustees shall have the right by themselves, or regularly appointed agent or attorney, to take possession of said road, property and effects, and every part thereof, and hold the same for the benefit of the bondholders and creditors herein named; and to collect and receive the income and profits of said road, and, after paying all expenses, to apply the residue in carrying out the objects of this trust; but until default is made in the manner above stated, the party of the first part to remain in undisturbed possession and control of said property and everything pertaining thereto. And this conveyance is not to interfere with the lien of Tennessee for bonds issued, or to be hereafter issued by that State. Nor is it to interfere with the lien created and rights conferred by the first mortgage; nor
is it to interfere with and prevent the sale of lands heretofore
1362 ordered, or which may hereafter be ordered in accordance with
the trusts of said first mortgage, or with the assent of the trustees under the same.

Should said Baker, Young, and Williams die, or resign, or from any cause become unable to act, then the one or more remaining in office, and the company, may fill the vacancy or vacancies; but, until this is done, the acts of the one or more remaining in office shall be good and valid. In the event said trustees should be compelled to take possession of said road and property, by themselves or agents, to carry out this trust, they shall be allowed to pay the expenses out of the funds, and retain a reasonable compensation for their own supervision of the same. And should it become necessary to sell said road, property, and effects hereinbefore specially described, either to satisfy the lien of the State of Tennessee, or under the first mortgage, the residue, after satisfying the prior liens, according to their respective rights and equities, shall be applied in satisfaction of the bonds and interest thereon secured by this conveyance.

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*Note.—The said mortgage to the State of Alabama has been fully satisfied and extinguished.

In witness whereof the said parties of the first part have caused these presents to be acknowledged by their president, and attested in their behalf by the president and secretary, and their common seal thereunto affixed; and the said parties of the second part hereunto set their hands and seals this day and year first above written.

MOBILE AND OHIO RAILROAD COMPANY,
By MILTON BROWN, *President.*

J. C. COLSON,
Secretary Mobile and Ohio Railroad Company.

We accept the above trust.

R. A. BAKER, [L. S.]
S. WILLIAMS, [L. S.]
GEO. H. YOUNG, [L. S.]
Trustees.

STATE OF ALABAMA,
Mobile County:

I, Sidney T. Douglas, a notary public in and for the county of Mobile, State of Alabama, duly commissioned and qualified, hereby certify that the Mobile and Ohio Railroad Company, by Milton Brown, president of said company, whose name is signed to the foregoing deed of
1363 mortgage of said Mobile and Ohio Railroad Company to Robert R. Baker, George H. Young, and Samuel Williams, trustees, and who is known to me, acknowledged before me on this day, that being informed as to the contents of said deed of mortgage, he executed the same voluntarily as president aforesaid, and caused the corporate seal of said company to be thereto affixed, and attested by their secretary, on the day and year and for the uses and purposes therein mentioned.

Given under my hand and seal notarial, this eighteenth day of February, A. D. 1860.

SIDNEY T. DOUGLAS,
Notary Public.

STATE OF ALABAMA,
City and County of Mobile:

I, Sidney T. Douglas, a commissioner of deeds for the State of Kentucky, duly appointed and commissioned by the governor thereof, for the State of Alabama, and authorized to take the acknowledgment of deeds, or other writings, do certify that this deed of mortgage from the Mobile and Ohio Railroad Company to Robert A. Baker, George H. Young, and Samuel Williams, trustees, was this day produced to me, in my office, in the city aforesaid, by Milton Brown, president of said company, with whom I am personally acquainted, who then and there acknowledged before me that he executed the same voluntarily as president aforesaid, and caused the corporate seal of said company to be thereto affixed, and attested by their secretary, and that the same is the act and deed of said company, for the uses and purposes therein mentioned.

Given under my hand and seal of office this eighteenth day of February, A. D. 1860.

SIDNEY T. DOUGLAS,
Commissioner for Kentucky in Alabama.

UNITED STATES OF AMERICA,
The State of Alabama, City and County of Mobile:

Be it remembered that on this the twentieth day of February, A. D.
1860 before the undersigned, John R. Tompkins, a commis-
1364 sioner, resident in the city of Mobile, duly commissioned and
qualified by the executive authority, and under the laws of Mississippi, to take the acknowledgment of deeds, depositions, affidavits, oaths, etc., etc., to be used or recorded therein, and duly authorized to act as such by virtue of my commission and oath of office, do hereby certify that the deed of mortgage from the Mobile and Ohio Railroad Company to Robert A. Baker, George H. Young and Samuel Williams, trustees, was this day produced to me, in my office in the city aforesaid, by Milton Brown, president of said company, who is personally known to me, and who then and there acknowledged before me that he executed the same voluntarily as president aforesaid, and caused the corporate seal of said company to be thereto affixed and attested by their secretary, and that the same is the act and deed of said company for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my official seal as such commissioner, the day and year first above written.

[SEAL.] JOHN R. TOMPKINS,
Commissioner for State of Mississippi in State of Alabama.

NOTE.—Since the execution of said deed Robert A. Baker having died, William D. Dunn, of Mobile, Ala., was, under the terms of the deed, substituted as trustee in his place. And William Dixon has been appointed in the place of S. Williams.

1365 *Mortgage in Tennessee.*

RESOLUTIONS OF MOBILE AND OHIO RAILROAD COMPANY.

At a called meeting of the board of directors of the Mobile and Ohio Railroad Company, held 25th May, 1871, the following preamble and resolutions were unanimously adopted:

Whereas at sundry times heretofore, to enable this corporation to iron, equip, and complete its line of railway through the State of Tennessee, said State of Tennessee, under and by virtue of its general internal improvement laws, and of other acts amendatory and supplementary thereto, theretofore passed, and then in full force, loaned to this company, or has advanced for its benefits, bonds of the said State of Tennessee, to the aggregate sum of one million six hundred and eighty-four thousand eight hundred dollars ($1,684,800);

Whereof payment, both of principal and accruing interest, was to be made by this company as the same matured, and for the security of which payments of principal and interest, a lien was reserved to said State upon the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company, as incident to or necessary for its business; and all depots and depot stations, and all the property and assets attached thereto, or belonging to said company, lying within the limits of said State, with power to seize, and in default of payment of the principal, to sell in the nature of a mortgage lien, as appears by reference to the said statutes of the State of Tennessee:

And whereas, by act of the said State of Tennessee, chapter xxxviii, passed at the second session of the thirty-fifth general assem-

1366 bly of the State, entitled "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, it is, among other things, enacted that any person or corporation may, with the consent of the board of directors of any railroad company, so having received aid under said general internal improvement law, passed 11th February, 1852, and the amendments thereto, pay off the indebtedness of such railroad company to the said State, in the mode and manner therein provided, and with the consent of such railroad company upon such payment be subrogated to all the lien or liens which the State of Tennessee had or has upon said railroad, or its property, and have the same right to enforce the same which the State of Tennessee had;

And whereas this corporation is desirous to avail itself of the provisions of said law, and return to said State of Tennessee the like amount of bonds of said State, as have heretofore been loaned to it, or advanced for its benefits by an issue of its own bonds, to be exchanged for said State bonds, with the holders thereof, and at the same time to secure to the holders of said substituted bonds in good faith all the protection and security which the said State of Tennessee held for its protection and indemnity against loss and damage, by reason of its said loan to the said Mobile and Ohio Railroad Company, by virtue of the laws of the said State, were no change made in the form of security originally held by said State, according to the true intent and meaning of the act passed 25th February, 1869:

Therefore, be it resolved by the board of directors of the Mobile and Ohio Railroad Company as follows:

1st. The president of this company is hereby authorized and empowered to cause to be prepared and issued, under the seal of this company, to the amount of one million six hundred and eighty-five thousand dollars ($1,685,000), the same to be signed by the president, or in his absence by one of the vice-presidents, and countersigned by the secretary and treasurer, said bonds to be made payable in gold coin of the United States, in the city of New York, or in the city of London, at the option of the holder; to be each for the sum of one thousand dollars, or two hundred and five pounds sterling, and payable on the 1st day of July, A. D. 1901. Said bonds to bear interest at seven per centum per annum, payable semi-annually, or 1st January and July in each year, at New York or London, at the option of the holder, and for which interest coupons, or interest-warrants, are to be attached to said bonds.

1367 2d. That W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, are hereby declared the agents of this company, to effect the substitution of its said bonds, as above authorized, in place of the said bonds of the State of Tennessee, for the purposes and objects declared in the preamble to these resolutions; and upon and from and after such substitution, and as rapidly as the same is effected, the said W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, and their successors, are hereby declared to be trustees for the mutual benefit of this company, and of the holders of said bonds, and are hereby authorized to defend and protect the rights conferred on the holders of said acts and laws of the said State of Tennessee, and hereby acknowledged and recognized. In case of the death or resignation of any of said trustees, the vacancy shall be filled by the joint appointment of the remaining trustees or trustee, and the president of the Mobile and Ohio Railroad Company, with the approval of its board of directors; and if all become incapable of acting, new trustees are to be appointed by this company.

3d. This company does hereby declare that it does and will at all times acknowledge and recognize the bonds herein authorized to be issued, when so substituted in the room and place of the said bonds of the State of Tennessee in manner herein and by said act provided, as entitled to, and in fact being a lien, in the nature of a first mortgage, upon all the property of this company in the said State, the same precisely as is now declared to exist in favor of the said State of Tennessee, under and by virtue of the statutes thereof, in pursuance of which the said loan and advance of State bonds was made to the company.

And this company does hereby covenant to and with the said trustees, the'r survivors and survivor, and successors, that it will in good faith do and perform all things, acts, and deeds necessary and proper, and which it may be reasonably requested to do, for the protection of the rights of the holders of said substituted bonds, and of said trustees for their benefit, according to the true intent and meaning of the said acts and laws of the State of Tennessee, hereinbefore referred to, and of these resolutions; and, further, that this company shall and will, annually hereafter, from and after the first day of April, 1873, within three months thereafter, and during each year, while said bonds, herein authorized, are
running to maturity, provide and set apart from the earnings of
1368 the company a fund of at least one per centum of the amount of
said bonds, and will annually faithfully apply said sums of money so set apart as a sinking fund to the purchase and gradual retirement of said bonds; and on or by the 1st day of April, 1874, and every year thereafter, till said bonds are fully retired, will furnish to said trustees evidence of the performance of this stipulation as may be agreed on.

Resolved, That the president of this company be, and he is hereby, directed, under its corporate seal, to execute and deliver to said W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson, as trustees aforesaid, its deed, for the uses and purposes herein declared, and for the effectual protection and security of the holders of the bonds hereby authorized to be issued, according to the true intent and meaning of these resolutions.

I certify the foregoing to be a true copy from the minutes of the board of directors of the Mobile and Ohio Railroad Company.

{ SEAL OF THE COMP'Y. } (Signed) A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

Deed of trust of Mobile and Ohio Railroad Company.

This indenture, made this first day of July, A. D. 1871, between the Mobile and Ohio Railroad Company, of the first part, W'm Butler Duncan, Adrian Iselin, and Richard T. Wilson, of the city and State of New York, their survivors and survivor, and successors, of the second part, and the holders of the bonds issued by said party of the first part, and herein described, of the third part, witnesseth:

That whereas, under the general internal improvement laws of
1369 the State of Tennessee, passed 11th February, 1852, and the acts
amendatory thereto, the party of the first part has become liable to the State of Tennessee in the sum of one million six hundred and eighty-four thousand eight hundred dollars, being the amount of bonds of said State loaned to said party of the first part, and, moreover, is under obligation to pay to the State of Tennessee semi-annually an amount equal to the amount of the same annual interest upon the said bonds so loaned, as well as an amount of money equal to the principal of said bonds, so loaned to the party of the first part, when and as the

same become due and payable; and whereas, by act of the said State of Tennessee, entitled "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, the railroad companies so receiving aid from the State, of which the party of the first part was one, are authorized to issue their own are authorized so to use said bonds as to retire and return to said State bonds to an amount equal to the bonds so received aid from said State, and bonds of said State of Tennessee to an amount equal to that loaned to said company or advanced for its benefit; for the security of which new issue of bonds, the holders thereof, it is by said act declared, shall, with the consent of such railroad company, be entitled to all the lien rights and privileges reserved to the said State for its own security and protection;

And whereas the party of the first part has accepted the terms and provisions of said act, and has for the purpose aforesaid caused to be issued its bonds, dated 1st July, 1871, to the extent of one million six hundred and eighty-five thousand dollars, and numbered from one to sixteen hundred and eighty-five (1685), inclusive, each for one thousand dollars, payable in gold coin of the United States, at New York, or two hundred and five pounds sterling, payable in London, at the option of the holder, with interest at seven per centum per annum, payable semiannually, in gold coin at New York, or in sterling at London, as aforesaid, at the option of the holder, for which interest coupons or warrants, payable as aforesaid, are attached to said bonds; and has delivered said bonds with the said coupons attached to W'm Butler Duncan, and Adrian Iselin, and Richard T. Wilson, as agents of the party of the first part, to be substituted in place of the claim and demand and liability now held against the party of the first part by the said State of Tennessee, for which purpose of substitution the said W'm Butler Duncan, Adrian Ieslin, and Richard T. Wilson are hereby made and appointed
the agents of the said party of the first part, and which substi-
1370 tution under said agency said parties of the second part are pro-
ceeding to make and perfect;

And whereas, under the laws of the said State of Tennessee, the said State has a lien upon the following named property of this company, to wit, the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business, and all depot stations, and all the property and assets attached thereto, or belonging to said company, within the State of Tennessee, which under the said act of 1869 upon the return of said State bonds to the said State of Tennessee by any person or corporation, with the consent of such indebted railroad corporation, shall enure to the benefit and for the security of the person or corporation so paying off the said indebtedness, or liability, of such corporation to the State, or returning to it its said bonds:

Now then, know all men by these presents, that in consideration of the premises, and of the sum of five dollars to said party of the first part paid by the said parties of the second part, and to make good and secure the rights of the holders of the said bonds herein described, and now issued by the party of the first part, and who are in fact the payers of the said indebtedness of the said party of the first part to the State of Tennessee, within the meaning of said act of February 25th, 1869, and to the extent thereby authorized, the said party of the first part doth hereby consent that the said parties of the second part shall pay and satisfy to the said State of Tennessee the debt and liability due by the said party of the first part to the said State, and doth hereby approve such payment, and doth also hereby consent that upon the payment aforesaid being made, or to the extent that it shall be made, and as it is, or may be, from time to time made, said parties of the second part shall, in pursuance of the terms and provisions of the act last above herein referred to, be vested with, and shall have and hold all the lien or liens which the State of Tennessee had or has upon the property of the said party of the first part, hereinbefore described, in the State of Tennessee, and shall have the same right to enforce the same which the State of Tennessee had, and that said parties of the second part shall be, and are hereby, placed in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same:

To have and to hold the rights, powers, and privileges hereby
1371 consented to, and which arise under the said act of the State of
Tennessee with the consent and approval of the said Mobile and Ohio Railroad Company to them, the said parties of the second part, their survivors and survivor, and their successors, upon trust, however, for the use, benefit, advantage and security of the holders of the bonds herein described, issued by the said Mobile and Ohio Railroad Company, parties of the third part, to these presents, and their assigns, and it is hereby declared, that in case of the death or resignation of the said parties of the second part, the said party of the first part shall appoint new trustees in their place and stead; and in case any one or two of said trustees die or resign, such vacancy shall be filled by the joint appointments of the remaining trustee or trustees, and the president of the Mobile and Ohio Railroad Company, with the approval of the board of directors thereof.

And the said party of the first part doth agree and covenant to and with the said parties of the second part, their survivors and survivor, and their successors, that it, the said party of the first part, will in good faith and at all times hereafter do and perform all things necessary and proper for the protection and security of the said parties of the third part, and of the said parties of the second part, and their assigns, as the same may be reasonably required of it, to make good and effectual this lien and security of said parties, about the payment of their said debts and demands, and to secure the enforcement of their remedies for the payment of said bonds and the interest accruing thereon, in case default be made in the payment of said bonds and coupons, or any part or portion thereof, or default be made in the performance of the covenant herein contained, providing for the creation and application of a sinking fund for the gradual retirement of the bonds herein described, according to true intent and meaning of these presents, and of the said acts hereinbefore referred to, of the general assembly of the State of Tennessee. And the said party of the first part doth further covenant to and with the said parties of the second part, and of the third part hereto, and their assigns, that on the first day of April, 1873, and on the first day of April of each year thereafter, said party of the first part will from the nett earnings of said road set aside an amount equal to one per centum of the amount of bonds issued and outstanding under the provisions hereof, as a sinking fund for the redemption of the bonds secured by these presents, and that it will invest said sinking fund, and
the interest accruing thereon, in the purchase of the bonds herein
1372 secured, at a rate not exceeding ten per centum above par, and
accrued interest; the bonds so purchased shall be immediately

registered, stamped, and endorsed, as irrevocably belonging to said sinking fund, and not farther transferable, and said bonds and coupons so purchased and assigned to the sinking fund by such registration, stamping, and endorsement, shall be forever void and cancelled for all other purposes.

In case bonds hereby secured cannot be purchased at or under the rate above named within three months after the setting apart of such money for account of said sinking-fund, then such other good securities as may be agreed on by the parties of the first and second part shall be purchased and assigned to said sinking-fund, and all such securities shall be placed with such depository and in such manner as said parties of the first and second part may from time to time agree upon; and the interest accruing upon said sinking-fund shall be collected by the party of the first part, and invested as herein provided; and all securities assigned to or purchased for said sinking-fund shall be, and hereby are, irrevocably pledged for the security and ultimate redemption of the principal and interest of the bonds hereinbefore described and issued by the said party of the first part for the uses and purposes herein declared. And the said parties of the second part are hereby released from executing the bond required of trustees under section 1974 of the code of Tennessee. And the said parties of the second part do hereby accept the agency and trusts herein and hereby imposed upon them, and do promise and agree faithfully and to the best of their ability to perform the duties hereby provided to be done and performed by them.

It is understood that the acts of any two of the said trustees hereunder shall be valid and effectual in the performance of the duties hereby declared the same as if all had joined therein; that said trustees may in all cases act by an agent duly appointed over their hand and seal, except in such matters as are by law required to be performed in their proper person; that they shall be fully indemnified and repaid by the said party of the first part, including a reasonable compensation, or out of the trust-funds which may come into their hands, for their reasonable cash fees and expenses by them incurred about the performance of the acts and things herein and hereby required of them, and shall not be required to act in the execution of the trust herein declared, except at their own option, unless the party or parties requesting them so to proceed shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing.

1373 In testimony whereof the said party of the first part has hereto set its corporate seal and the hand of its president, by authority of a resolution of its board of directors duly given. And the said parties of the second part have hereunto set their hands and seals.

[SEAL OF THE COMP'Y.] (Signed) ABRAHAM MURDOCK,
President Mobile and Ohio Railroad Co.

W. BUTLER DUNCAN. [L. S.]
ADRIAN ISELIN. [L. S.]
R. T. WILSON. [L. S.]

Attest:

A. L. WILLOUGHBY,
Secretary and Treasurer, M. & O. R. R. Co.

STATE OF NEW YORK,
City and County of New York, ss:

On this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-one, in the city of New York and State of New York, personally appeared before me, the undersigned, George W.

Colles, a commissioner of deeds for the State of Tennessee, resident in New York City, the within-named Abraham Murdock, president of the Mobile and Ohio Railroad Company, one of the within-named bargainers, with whom I am personally acquainted, and who, being first duly sworn, deposes and says that he is president of the Mobile and Ohio Railroad Company, and is acquainted with its corporate seal; that the seal purporting to be such, above affixed, is such corporate seal, and was duly affixed to the within instrument by him, the said president; and, also, he, the said president, set his hand thereto, both by authority of a resolution of the board of directors of said company, duly given. And, also, then and there, personally appeared William Butler Duncan, Adrian Iselin, and Richard T. Wilson, others of the within-named bargainers, before me, with each of whom I am personally acquainted, and who each acknowledged that he had executed the within instrument for the purposes therein contained.

Witness my hand and seal, the day and year first above written.

[COMMISSIONER'S SEAL.] (Signed) GEORGE W. COLLES,
Commissioner for Tennessee, in New York.

1374 *Mortgage on the Gainesville branch.*

STATE OF ALABAMA, *Mobile County, ss:*

This indenture, made and entered into this the twenty-fourth day of March, in the year of our Lord eighteen hundred and seventy-one, by and between the Mobile and Ohio Railroad Company, of the first part, William D. Dunn, John Reid, jr., and Robert C. Crawford, of the city of Mobile, as trustees, of the second part, and James Crawford, of the said city, of the third part, witnesseth:

That whereas, under and in pursuance of the provisions of an act of the general assembly of the State of Alabama, entitled "An act to authorize the Mobile and Ohio Railroad Company to purchase the railroad constructed by the Mississippi, Gainesville and Tuscaloosa Railroad Company," approved March 3d, 1871, the said Mobile and Ohio Railroad Company has purchased from the said James Crawford, and the said James Crawford, by deed bearing even date herewith, has conveyed to the said Mobile and Ohio Railroad Company, the property hereinafter mentioned and described, for the sum of fifty-three thousand six hundred and one 97-100 dollars, whereof the sum of fifty-three thousand dollars is payable on the first day of November, A. D. 1880, with interest thereon, at the rate of eight per cent. per annum, from the first day of November, A. D. 1870, payable semi-annually on the first days of May and November of each year from the first day of November, A. D. 1870; and the said Mobile and Ohio Railroad Company has agreed and is willing and desirous to secure the payment of the said sum of fifty-three thousand dollars, and the interest thereon as aforesaid, by a lien on the property purchased as aforesaid:

1375 Now therefore this indenture further witnesseth that the said Mobile and Ohio Railroad Company, for and in consideration of the premises, and for the further consideration of five dollars to it paid by the said William D. Dunn, John Reid, j'r, and Robert C. Crawford, at and before the sealing and delivery of this indenture, the receipt whereof is hereby acknowledged, hath conveyed, assigned, remised, released, and forever quit-claimed, and doth hereby convey, assign, remise, release, and forever quit-claim unto the said William D. Dunn, John Reid, j'r, and Robert C. Crawford, and to the survivors or survivor of them, and the heirs of such survivor forever, all the right, title, interest, and estate conveyed to it by the said James Crawford, as aforesaid, or which it now has, in or to the railroad extending from a point on the Mobile and Ohio Railroad, in the State of Mississippi, commonly called the Gainesville Junction, to the town of Gainesville, in the State of Alabama; and also in or to all the property along the track of the said railroad hereby conveyed, lately belonging to the Mississippi, Gainesville and Tuscaloosa Railroad Company; and also in or to the franchises of the said last-mentioned railroad company, together with all the rights and appurtenances thereto belonging;

To have and to hold the said premises and appurtenances to the use of them, the said William D. Dunn, John Reid, j'r, and Robert C. Crawford, and the survivors or survivor of them and the heirs of such survivor forever,

Upon condition and trust, nevertheless, that whereas the said Mobile and Ohio Railroad Company, for the payment of the said sum of fifty-three thousand dollars and the interest thereon as aforesaid, has made and delivered to the said James Crawford its fifty-three several bonds, numbered respectively and successively from one to fifty three (both inclusive), each of said bonds bearing even date herewith, and each being for the sum of one thousand dollars, payable to the said James Crawford, or bearer, on the first day of November, A. D. 1880, at the office of the said company, in the city of Mobile, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first days of May and November of each year, from the first day of November, 1870, at the office of said company, in the city of Mobile, for the payment of which interest-coupons are attached to each of said bonds, payable as aforesaid.

Now, if the said Mobile and Ohio Railroad Company shall well and truly pay to the said James Crawford, or to such person or persons as shall be the holder or holders of said several bonds and coupons, or of any or either of them, the said several sums of money specified in said several bonds and coupons respectively, when the 1376 same shall be respectively due and payable, upon the presentation and demand of payment thereof at the office of said company in the city of Mobile, or within three months after such presentation and demand of payment, then this indenture shall be void and of no effect; and unless and until the said railroad company shall make default of payment as aforesaid, it shall be entitled to have possession, use and control of all of the said property.

But if the said Mobile and Ohio Railroad Company shall fail to pay the said several sums of money, or any or either of them in said several bonds and coupons respectively specified, to the said James Crawford, or such person or persons as may be the holder or holders thereof or of any of them when the same shall be due according to the tenor and effect thereof, upon presentation and demand of payment thereof at the office of said company in the city of Mobile, and shall continue such default of payment for three months after such presentment and demand of payment, then upon and by such default, and such continuance in default, the principal sum of money in each of said bonds respectively specified shall become and be then presently due and payable; and after such default and continuance in default as aforesaid, the said William D. Dunn, John Reid, jr., and Robert C. Crawford, or any or either one of them, upon the written request of said James Crawford or any other person or persons holding said bonds or coupons, or either of them, shall and may sell the said property hereby conveyed to them, or any part thereof, at public auction, in the city of Mobile, to the highest bidder

for cash, after first giving at least three months' previous notice of the time, place and terms of any such sale, by advertisement in some newspaper published in the city of Mobile, and also in some newspaper published in the city of Jackson, Mississippi; and full power and authority are hereby given to the said William D. Dunn, John Reid, jr., and Robert C. Crawford, and to either one or more of them, to make any such sale, and to execute a proper deed or deeds to the purchaser or purchasers at such sale, on the payment by such purchaser or purchasers of the purchase money for such property, and the said William D. Dunn, John Reid, jr., and Robert C. Crawford, or such of them as shall act under the power hereby conferred, shall use and apply the monies arising from any such sale, after the first paying therefrom the reasonable expenses of such sale and of the execution of this trust to and for the payment of the money due on said bonds and coupons, with interest
1377 thereon ratably and equally, to such person or persons as may
then be the holders of such bonds and coupons or any of them; and the surplus of such monies (if any there be) shall be paid to the said Mobile and Ohio Railroad Company or its assigns.

In testimony of all of which the said party of the first part has caused this indenture to be signed by its president, and its corporate seal to be set hereto, and the parties of the second and third parts have hereto set their hands and seals, this the day and year herein first written.

[SEAL OF THE COM'Y.]
(Signed) ABRAHAM MURDOCK. [SEAL.]
W'M D. DUNN. [SEAL.]
JOHN REID, J'R. [SEAL.]
ROB'T C. CRAWFORD. [SEAL.]
JAMES CRAWFORD. [SEAL.]

Attest:
A. L. WILLOUGHBY,
Secretary and Treasurer M. & O. R. R. Co.

STATE OF ALABAMA,
Mobile County:

Before me, O. S. Beers, a notary public in and for the State and county aforesaid, personally came James Crawford, and also Abraham Murdock, president of the Mobile and Ohio Railroad Company, who severally acknowledged that they signed, sealed, and delivered the within deed of trust as the act of the said James Crawford and of the Mobile and Ohio Railroad Company, by Abraham Murdock, president, on the day and year the same bears date, and for the purposes therein contained.

Witness my hand and seal this the 25th of March, A. D. 1871.
[SEAL.] (Signed) OLIVER S. BEERS,
Notary Public.

1378 STATE OF ALABAMA,
Mobile County:

Personally appeared before me, O. S. Beers, a commissioner for the State of Mississippi, residing in the city and county of Mobile and State of Alabama, and duly authorized by the laws of the State of Mississippi, Abraham Murdock, president of the Mobile and Ohio Railroad Company, also James Crawford, both named in the foregoing deed of trust, who severally acknowledged that they signed, sealed, and delivered the foregoing deed of trust on the day and year therein mentioned as their act and deed, and for the purposes therein named.

Given under my hand and seal as commissioner aforesaid this the 25th day of March, A. D. 1871.

[SEAL.] (Signed) OLIVER S. BEERS,
Commissioner.

THE STATE OF MISSISSIPPI,
Kemper County:

I, F. M. Poole, clerk of the chancery court of said county, do hereby certify that the foregoing deed was filed March 30th, 1874, and recorded March 31st, 1874, in deed book P, pages 225, 6, 7, 8, and 9.

Given under my hand and seal of office, at De Kalb, this the day and date last above written.

[SEAL.] (Signed) F. M. POOLE, *Clerk.*

Received in office and recorded March 24th, 1874, in record of deeds, book W, pages 287, 288, 289, and 290.

Attest:

JAMES A. ABRAHAMS,
Judge of Probate, Sumter Co., Ala.

1379 *Deed of trust and mortgage to secure consolidated mortgage bonds.*

This indenture, made this first day of January, in the year one thousand eight hundred and seventy-four, between the Mobile and Ohio Railroad Company, a corporation created, organized, and established by and under the laws of the States of Alabama, Tennessee, Mississippi, and Kentucky, party of the first part, and William Butler Duncan, of the city of New York, banker, and Samuel L. M. Barlow, of the same city, counsellor at law, parties of the second part, witnesseth:

That whereas the said party of the first part is the owner of a continuous line of railway from Mobile, in the State of Alabama, to Columbus, on the Mississippi River, in the State of Kentucky, a distance of four hundred and seventy-two miles, in addition to certain branch lines, to wit: Columbus, fourteen miles; Oktibbeha, eleven miles; Gainesville, twenty-one miles; amounting in all to five hundred and eighteen miles, and of the franchises necessary to operate the same and all the properties appertaining thereto; and also certain lands donated by acts of Congress to said company; saving and excepting therefrom such portions of said lands as may heretofore have been sold or conveyed by the said party of the first part; and also all other lands and real estate owned by the said party of the first part in all the States aforesaid;

And whereas the said party of the first part is authorized to execute a mortgage upon its said road, its property and franchises, and in conformity with such authority it now proposes to borrow money for the purpose of discharging all existing liens upon its property, and for the purpose of completing and equipping its lines, and for the general improvement of its roads, and to these ends it proposes to execute, issue, and negotiate its bonds of the general tenor hereinafter set forth, for an aggregate amount of fifteen millions of dollars, viz: Fifteen thousand bonds of one thousand dollars, or two hundred and five pounds sterling, each, dated of even date with these presents, and payable in gold coin of the United States at the maturity thereof, to wit, on the first day of January, one thousand nine hundred and four, with inter-

1380 est coupons thereto attached, conditioned for the payment of interest thereon semi-annually, at the rate of seven per centum per annum in gold coin of the United States, or in sterling, at the option of the holder, which said bonds and coupons will be in substance and effect as follows, and numbered from one to fifteen thousand, inclusive:

(Form of bond.)

$1,000.] UNITED STATES OF AMERICA. $1,000.]

No. .] CONSOLIDATED MORTGAGE BOND. [No. .

The Mobile and Ohio Railroad Company promises to pay to the bearer of this bond, at its agency in the city of New York, on the first day of January, 1904, for value received, one thousand dollars in United States gold coin, with interest thereon, at the rate of seven per centum per annum, in gold, payable semi-annually, according to the tenor of the coupons annexed, free of all United States Government tax; the true performance of all which is secured by a mortgage upon all the lands, railways, equipments, fixtures, and franchises of the company bearing even date herewith, made to William Butler Duncan and Samuel L. M. Barlow, as trustees, and this bond shall not be valid until said trustees sign the certificate endorsed hereon. This bond is also secured by a sinking-fund, and is redeemable by lot, as in the said mortgage is provided.

In witness whereof the said The Mobile and Ohio Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by its president and secretary, this first day of January, 1874.

AB'M MURDOCK,
President.

A. L. WILLOUGHBY,
Secretary.

$35.] COUPON. [£7 3s. 6d.

The Mobile and Ohio Railroad Company will pay bearer, on the first day of , 18 , as he may elect, thirty-five dollars in United States gold coin, in the city of New York, or seven pounds three shillings and sixpence, sterling, in the city of London, for six months' interest on bond No. .

A. L. WILLOUGHBY,
Secretary.

1381 *Trustees' certificate.*

The undersigned certify that this bond is one of a series of fifteen thousand, issued and to be issued for the like amount, and of the same tenor and date, to secure which the mortgage herein described was executed to us, and which mortgage has been duly recorded.

This bond may be registered in the owner's name on the company's books, such registry being noted on the bond by the company's transfer agent, after which no transfer shall be valid unless made on the company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which it shall be transferrable by delivery, but it may be again registered as before.

(Endorsement:) No. Consolidated first mortgage seven per cent. sinking-fund gold bond. Mobile and Ohio Railroad Company. $1,000. Principal due 1st January, 1904. Interest payable 1st January and 1st July.

And whereas it is the intention of the party of the first part hereby
1382 to secure the punctual payment of the said bonds and coupons,
proposed to be issued; and also, and until the same shall be discharged by payment, in like manner to further secure all the existing indebtedness of the said company hereinafter set forth, by the execution and delivery of this indenture to the parties of the second part as trustees, as aforesaid; which last mentioned indebtedness now existing, to discharge which the bonds to be issued under this mortgage are in part to be applied, and as a further security for which this indenture is made, is as follows:

A series of first mortgage bonds, amounting in the aggregate to the sum of	$5,720,000 00
(Secured by a deed of mortgage dated November 1, 1853.)	
A series of bonds, called interest bonds, amounting in the aggregate to	844,000 00
A series of bonds, called interest-arrear bonds, amounting in the aggregate to	35,000 00
A series of bonds, called funded-interest bonds, amounting in the aggregate to	652,500 00
A series of sterling-interest bonds, amounting in the aggregate to	769,920 00
(Which last four items are for interest on the said first-mortgage debt.)	
A series of bonds, called Tennessee-substitution bonds, amounting in the aggregate to	1,685,000 00
(Upon which a lien exists upon the company's road in that State.)	
A series of matured income-bonds, so called, amounting in the aggregate to	9,900 00
A series of second-mortgage bonds, amounting in the aggregate to	1,455,858 40
(Secured by a mortgage dated February 15, 1860.)	
A series of bonds issued upon the Gainesville branch, amounting in the aggregate to	53,000 70
(And secured by a mortgage upon said Gainesville branch.)	
A series of bonds called convertible bonds, issued under an authority of the board of directors, under date of November 10, 1873, amounting in the aggregate to the sum of	1,000,000 00

It being hereby distinctly covenanted and agreed that all of said bonds above mentioned, amounting in the aggregate to not exceeding twelve million five hundred thousand dollars, issued and to be is'ued,
are, and are hereby declared to be secured as first or prior liens.
1383 By this mortgage, the new proposed bonds to be issued here-
under, for an equal amount, being reserved to retire or pay the same as hereinafter expressed.

Now, therefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises and of one dollar to it in hand paid, by the parties of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the faithful payment of all of said bonds, as well those already issued as above mentioned, as those now proposed to be issued as herein set forth, and the interest due and to become due thereon according to their tenor and effect, has granted, bargained, and sold, aliened, assigned and conveyed, and by these presents doth grant, bargain and sell, alien, assign and convey to the parties hereto of the second part, and to the survivor of them and their successors, trustees as aforesaid, all the right, title and interest which the said party of the first part now has or may hereafter acquire in and to its franchises, its entire line of railway constructed or to be constructed as hereinbefore stated, extending from Mobile, in the State of Alabama, through and across the States of Misssissippi and Tennessee, to Columbus, on the Mississippi River, in the State of Kentucky, together with all branches thereof constructed or to be constructed, together with the tolls, incomes, rents, issues and profits thereof, and all real estate, rights of way, easements, fixtures, rolling stock, machinery, tolls and equipments, and all other personal property thereunto belonging in all of said States, the true intent of this indenture being to vest all and every the property and right of property, real, personal and mixed, and all the corporate powers and franchises of every kind whatsoever, belonging or appertaining to the said party of the first part, or hereafter to be acquired, touching the aforesaid lines of railroad, in the said parties of the second part.

To have and to hold the above described premises, property, rights, franchises and appurtenances to the said parties of the second part, and the survivor of them, and their successors, as joint tenants, and not as tenants in common, to the only proper use, benefit and behoof of them, the said parties of the second part, and the survivor of them, and their successors forever.

And the said party of the first part for itself, its successors and assigns, hereby covenants to and with the said parties of the second part, the survivor of them, and their successors, that it both shall and will, from time to time, whenever and so often as thereunto re-
1384 quested by the said trustees, the survivor of them, or successors, execute, acknowledge, and deliver all and any such further deeds, conveyances and assurances in the law for the better assuring unto the said trustees upon the trust herein expressed all and singular the lands and premises aforesaid, or hereafter to be acquired as aforesaid, as by the said trustees, or the survivor, or successors, or their counsel learned in the law, shall be reasonably devised, advised, or required, in trust, nevertheless, for the equal benefit and security of all persons or corporations who may be, or who may become holders of any of the above mentioned consolidated mortgage bonds without any preference of any one of the said consolidated bonds over any other or others by reason of priority in time of issue, negotiation thereof, or otherwise; except so far as regards the bonds drawn at the annual drawing held, or hereafter provided, and for the uses and purposes herein declared and expressed.

It is hereby covenanted, declared and agreed that the premises, property, rights, franchises, and interest hereby mortgaged or conveyed, are to be had and holden by the said trustees and their successors upon and for the trusts, uses, and purposes following, that is to say:

First. Until default shall be made in the payment of the interest or the principal of any of the consolidated mortgage bonds aforesaid, the

said party of the first part shall hold, use, and enjoy all its said property, and shall take and receive the income, earnings, and profits thereof, for its own proper use, as fully as if this indenture had not been made. And further, unless, and until default be made as aforesaid, and until all the first mortgage bonds heretofore issued by the said party of the first part, as aforesaid, be exchanged for the consolidated mortgage bonds to be issued under these presents, as herein and hereby provided for, or otherwise retired, nothing herein contained shall in any manner interfere with the sale and disposition of the lands donated to the said party of the first part, by the Congress of the United States, in manner and for the uses and purposes described in the said first mortgage or deed of trust executed by the said party of the first part; but the said parties of the second part shall, with the approval of the said party of the first part, appoint a suitable agent to co-operate in and about the sale and disposition of said lands, as provided in said first mortgage, and under such regulations as said parties of the said second part may prescribe, see to the proper application of the moneys
realized from such sales, as provided for in said first mortgage and
1385 in pursuance thereof; and upon the exchange or retiring as afore-
said of the said first-mortgage bonds, and the using of the trusts therein heretofore created, then the said proceeds of said sales of said lands are applied to the withdrawal and retirement of the bonds issued under and in conformity to these presents; and of all their doings in this respect, by the said parties and their agent or agents, full records shall be made and kept, and always subject to the inspection of the parties to this indenture.

If default shall be made in the payment of the interest upon any of said consolidated mortgage-bonds on the demand of the bona fide holders of the coupons representing at least one fifth of the said bonds secured by this indenture, and ninety days after the said demand, the aforesaid trustees, or the survivor of them, or their successors, shall enter upon and take possession of all the above described property, franchises, and liens of said railroad, and by their agents duly appointed shall direct the management of the same, collecting all incomes and receipts, and after defraying the necessary and proper expenses of operating the said railroad of the said company, shall pay from the proceeds thereof all the interest then due and in arrears upon said consolidated mortgage-bonds; or the said trustees, in their discretion, may proceed, after ninety days' notice, to be given in one or more newspapers published in the city of Mobile, in the State of Alabama, and in the cities of New York and Boston, and London, in England, to sell, at public auction, in the city of Mobile, Alabama, such part of the said railroad company's property as shall be sufficient to discharge all said past due and unpaid interest, selling in the first instance the property of said company other than its lands, roadway, station-building, shops, and franchises; but if said property shall be insufficient to pay all said past-due interest, then, at and under the same notice, to proceed to sell the remainder of the property, roadway, lands, stations, and franchises, in such order as said trustees, or the survivor of them, his or their successors or successor may determine, until the full amount of such overdue and unpaid coupons shall have been realized, with all legal costs and expenses; and after any default shall have been made in the payment of the principal of any or either of the said consolidated mortgage-bonds as aforesaid, for ninety days from the time of demand for the payment of the same by the holders, and upon the demand of one-fifth in amount of said bonds remaining due at the time, then, and in that event, and if so re-

quired by the bona fide holders of said amount of bonds, the afore-
1386 said trustees, the survivor of them, or their successors, shall
enter upon the premises and take possession of the entire property, lines of railroad, and franchises of the said Mobile and Ohio Railroad Company, and shall proceed, by their duly appointed agents, to conduct the business of the same, and to control its affairs, receipts and disbursements, until the amount of any past due and unpaid principal and interest on said consolidated mortgage bonds shall have been fully discharged, or, in their discretion, the aforesaid trustees, the survivor of them, or their successors, after ninety days' notice, published in the newspapers aforementioned, may proceed to sell at public auction all such property, franchises, or such parts thereof as they may deem sufficient to satisfy and discharge all such claims, and in such order as they, or the survivor of them, or their successors, may determine to be proper.

And in case of any sale, as in either event herein authorized, said parties of the second part shall have power, and the same is hereby expressly conferred, to execute good and sufficient conveyance to the purchaser or purchasers of the same, passing thereunto all right, title and interest of the said Mobile and Ohio Railroad Company in the property and franchises so sold.

And it is hereby expressly agreed that any and every sale so made as aforesaid shall be a perpetual bar, both at law and in equity, against the party of the first part hereto, its successors and assigns, and against all and every person claiming, or to claim, the premises then sold, or any part thereof, by, through, or under it, its successors or assigns. The proceeds of such sale, after deducting the costs and expenses thereof, and the expenses of this trust, shall be, by the aforesaid trustees, applied in the first instance to the discharge of the past due and unpaid interest, and next to the payment of the principal of said bonds hereunder issued, pro rata; and the residue thereof (if any) shall be by them paid over to the said Mobile and Ohio Railroad Company.

Second. The said party of the first part further covenants and agrees that out of its net earnings, that is to say, out of the earnings left after the discharge of all expenses incident to the conduct of its business, maintenance of its property, and the discharge of its obligations on account of interest, to redeem annually one per centum of the entire amount of said consolidated mortgage bonds issued and then outstanding, as hereinbefore provided, and in order to determine which of said bonds shall be so annually redeemed, the said party of the first part shall give notice in one or more news-
1387 papers published in the State of Alabama, and in at least one news-
paper published in the city of New York, and in London, the same to be published for thirty days, of the amount of bonds to be redeemed as required by this deed, of the time and place at which by lot the specific bonds to be redeemed shall be determined; such election of the bonds so to be redeemed by lot, as aforesaid, to be made under the supervision of the aforesaid trustees, the survivor of them, or their successors, and in manner and form as they shall prescribe. Notice for at least thirty days in the newspapers aforesaid shall be given by the party of the first part, certified by the trustees aforesaid, of the specific bonds so selected by lot, and then redeemable according to the provisions of this deed; thirty days after which such bonds shall cease to bear interest. The bonds so redeemed to be cancelled under the supervision of the aforesaid trustees, who shall keep a registry thereof by their numbers; and in default of a sufficiency of net earnings for any year to provide such fund

for redemption, the deficit thereof shall be made good and employed in the redemption of bonds out of the net earnings of the year or years next succeeding, in which there are such net earnings; and the expenses attending such drawings of bonds, and the publication and notification as herein required, may be defrayed by said trustees out of said sinking fund. Provided, That such redemption of the bonds issued under this mortgage shall begin for and with the fiscal year ending January 1st, 1880.

Third. The said party of the first part further covenants and agrees to deposit with the banking house of Duncan, Sherman & Co., New York, twelve million five hundred thousand dollars of the bonds herein authorized to be issued, not to be pledged or used in any manner by the party of the first part except in the manner and for the purpose hereinafter specified, but the same or their proceeds shall be drawn out from time to time only upon the order of the president of the aforesaid company, countersigned by the aforesaid trustees, the survivor of them or their successors; the coupons upon such bonds as remain so deposited to be regularly cancelled by the said party of the first part in the presence of the said trustees, as the same mature. The existing liens upon the mortgaged premises, exclusive of the bonds hereby secured, amounting to a sum not exceeding the said sum of twelve million five hundred thousand dollars, to provide for the payment of which this deposit is to be made.

The said bonds, when and as the same are so drawn out, shall
1388 be applied or used under the supervision of the said trustees
solely in the acquisition, by exchange or otherwise, as the president and board of directors of the said Mobile and Ohio Railroad Company may arrange, and from time to time determine, of the aforesaid existing outstanding liabilities of said company, and no greater amount of said bonds shall be drawn out or used than shall equal the amount of such existing liabilities, purchased or acquired as aforesaid, until all of said liabilities, as above set forth, are fully purchased or acquired, the aggregate amount of such liabilities not exceeding as aforesaid the said sum of twelve million five hundred thousand dollars.

And the said party of the first part hereby covenants and agrees with said parties of the second part that the said mortgaged premises hereby conveyed are free and clear of all incumbrances save and except only the aforesaid liabilities, amounting in the aggregate to a sum not exceeding twelve million five hundred thousand dollars. The evidences of such existing indebtedness and liens, as the same are so purchased or acquired, as herein contemplated, to be deposited with the aforesaid banking-house for the further security of the bonds issued under this mortgage, and to be accordingly so endorsed across their face by the said trustees for the time being, until all such outstanding obligations shall have been replaced, substituted, or discharged by the issues under this deed; then the same to be delivered over to the said party of the first part after the same are duly cancelled by said trustees; or the said trustees having, by some proper endorsement thereof, put at end their assignability or negotiability, may deliver the same to the party of the first part, to be held by it as a protection to its title, in such form as may be found proper, so as in no case to interfere with the priority of the lien of this instrument over said indebtedness so purchased and surrendered; and except to the extent of the incumbrances hereinbefore specified, this conveyance is made with general warranty of title by the said party of the first part.

Fourth. The party of the first part shall and will at all times keep at

its general office in the State of Alabama an appropriate book, to be designated as the "registry of first mortgage bondholders," and any and every holder of the bonds secured hereby shall be entitled to have his name and address, and the numbers of the bonds so held or owned by him, duly inscribed therein, upon the production at said office of such of said bonds as he may, by an endorsement to be made
1389 thereon, inscribe in his name as holder or owner; and after such registration such bonds shall not pass by delivery unless the same shall again be registered as payable to bearer, but such registration shall not compel the party of the first part to pay any overdue coupons on any such bonds to the registered owner, but the same may be paid to the bearer thereof.

Fifth. It is further mutually covenanted and agreed that said trustees shall not, nor shall either of them or their successors, be in any manner responsible for the default or misconduct of each other in said trust, nor for the neglect, default, or misconduct of any agent or attorney appointed pursuant to these presents, or for anything in respect to said premises, or the trust hereby created, except personal misconduct or gross negligence in the execution of said trusts.

Sixth. It is further provided and declared that the said trustees or either of them, or any succeeding trustee or trustees, may at any time hereafter, by an instrument in writing, duly signed and forwarded to the said party of the first part, resign his or their office, and withdraw from the further execution of this trust; and thereupon, or in case at any time hereafter either of said trustees, or any trustee hereafter appointed, shall die, or be removed by a court of competent jurisdiction, or become mentally or otherwise incapacitated to execute the trusts, the president of the company, with the written approval and assent of the holders of bonds (the said consolidated mortgage) secured hereby to the aggregate extent of not less than one-third of the said bonds outstanding and unpaid, may appoint a trustee or trustees to fill such vacancy, and in such case the new trustee or trustees appointed, either while he or they shall continue to be such, shall have and possess, and be subject to the like rights, powers, estates and duties, as if he or they had been originally trustees hereunder, and, during any vacancy in the trusteeship, the remaining or surviving trustee shall have power to execute the trusts until the vacancy is filled. In default of appointment as aforesaid, it shall be the duty of the parties of the second part, or in case of neglect for a reasonable time, then for the party of the first part to apply to a court in Alabama, having jurisdiction in the premises, for the appointment of a trustee or trustees to fill such vacancy or vacancies, and so from time to time.

And it is further provided and declared, that the due appointment of a trustee or trustees shall be effectual to vest in him or them the appropriate estate, rights, powers and duties as herein provided in that behalf without any new deed or conveyance; but, nevertheless, the party
1390 of the first part hereby covenants, in any and every such case, to make and execute, upon request, any such deeds and conveyances or assurances as may be appropriate for more fully and certainly vesting in and confirming to such new trustee or trustees, such estate, rights, powers and duties; and in every case of resignation of a trustee, the resigning trustee shall, if requested, make and execute such conveyances or assurances to his successors.

And the said party of the first part further covenants that the party of the first part shall and will well and truly pay, or cause to be paid, unto the holder or holders of said bonds, the principal and interest

thereof, as such principal and interest becomes payable according to the tenor of said bonds respectively, and of the coupons thereunto attached.

Seventh. It is further provided and declared, that if the said party of the first part shall well and truly keep and perform the foregoing covenants and agreements on its part to be performed, and shall well and truly pay the said bonds hereby secured, with interest thereon, according to the tenor thereof, then these presents shall be void, otherwise to remain in full force.

In testimony whereof the said the Mobile and Ohio Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by its president and secretary the day and year first above written. In duplicate.

[SEAL OF THE COM'Y.] ABM. MURDOCK, ***President.***

A. L. WILLOUGHBY, *Secretary.*

Witnesses:

JOHN A. PUNCH.
B. W. FOSTER.
A. T. SHEPHERD.

And in testimony of their acceptance of the trusts herein conferred and imposed, the said trustees have hereunto severally set their hands and seals.

W. BUTLER DUNCAN. [SEAL.]
SAMUEL L. M. BARLOW. [SEAL.]

All the foregoing deeds of mortgage are duly probated and recorded in the several States respectively and counties through which said railroad passes, and where the lands are situated.

1391 *Charter of Alabama.*

An act to incorporate the Mobile and Ohio Railroad Company.

SECTION 1. **Be it enacted by the senate and house of representatives of the State of Alabama, in general assembly convened, That Jonathan Emanuel, George N. Stewart, Moses Waring, Sidney Smith, John Bloodgood, Miguel D. Eslava, Samuel G. Fisher, Charles LeBaron, John A. Campbell, Archibald W. Gordon, Charles Gascoigne, Philip Philips, John C. Whitsett, and M. J. D. Baldwyn, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate, by the name of the Mobile and Ohio Railroad Company; and by that name to sue and be sued, plead and be impleaded, in any court of this State; to make and have a common seal, and the same to break, alter, and renew at pleasure; and the company is hereby vested with all powers, privileges, and immunities which are, or may be, necessary to carry into effect the purposes and objects of this act, hereinafter set forth; and said company is hereby authorized and empowered to locate, construct, and finally complete a single, double, or treble railroad or way, from some suitable point in the city of Mobile, in a western or northwesterly direction, to the west line of this State towards the mouth of the Ohio River, in such route as shall be deemed most expedient; and to transport, take, and carry property and persons upon said railroad or way, by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them,** which said company may choose to apply; and for the purpose of constructing said railroad or way, the said company is hereby authorized to lay out their road not exceeding one hundred feet wide through 1392 the whole length; and for the purposes of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation in relation to the business of said company, and also to make joint stock with any other railroad corporation: Provided, that all damages that may be occasioned to any person or corporation by the taking of any such land or materials aforesaid, for the purpose aforesaid, shall be paid for by said company, in the manner hereinafter provided.

SEC. 2. And be it further enacted, That the capital stock of said company shall not exceed ten millions of dollars, to be divided into shares of one hundred dollars each, which shares shall be deemed personal property, and be transferred in such manner and at such places as the by-laws of said company shall direct. Provided, That said company may commence the construction of said road, with all the powers and privileges contained in this act, whenever the sum subscribed to the capital stock shall exceed two hundred and fifty thousand dollars.

SEC. 3. And be it further enacted, That the persons named in the first section, or a majority of them, shall open books to receive subscriptions to the capital stock of said company, at such times and places as they, or a majority of them, may appoint; and shall give such notice of the times and places of opening said books as they may deem reasonable; and shall receive said subscriptions under such regulations as they may adopt for the purpose; and if more than five thousand shares of stock shall be subscribed, they shall have the power to make the shares so subscribed the capital stock of said company: Provided, They shall not exceed one hundred thousand shares. And in case the subscription shall exceed one hundred thousand shares, the same shall be reduced, and apportioned in such manner as may be deemed most beneficial to the corporation.

SEC. 4. And be it further enacted, That the immediate government and direction of the affairs of said company shall be vested in a board of thirteen directors, who shall be chosen by the stockholders of said company, in the manner hereinafter provided, and shall hold their office until others are duly elected and qualified to take their places as directors; and the said directors, seven of whom, the president being one, shall be a quorum for the transaction of business, shall elect one of their 1393 number to be president of the board, who shall also be president of said company; they shall also choose a secretary and such other officers as they may deem necessary, and a treasurer, who shall give bond, with security, to said company, in such sum as the said directors may require, for the faithful discharge of his trust.

SEC. 5. And be it further enacted, That the persons authorized by the third section of this act, to open the books for subscription to the capital stock, are hereby authorized, after the books of subscription to the capital stock of said company are closed, or when the sum subscribed shall exceed two hundred and fifty thousand dollars, to call the first meeting of the stockholders of said company, in such way and at such time and place as they may appoint, for the choice of directors of said company; and in all meetings of the stockholders of said company each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy; and the annual meeting of the stockholders of said company for the choice of directors shall be holden at such time and place and upon such notice as said company in their by-laws may prescribe.

SEC. 6. And be it further enacted, That in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not, for that cause, be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors of said company; and said directors shall have power to fill any vacancy which may occur by death, resignation, or otherwise.

SEC. 7. And be it further enacted, That the directors shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate, and effects of said company, not contrary to this charter or the laws of this State or of the United States; the transfer of shares, the duties and conduct of their officers and servants; touching the election of and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company. Said company is also hereby authorized to purchase, receive, and hold such estate as may be necessary and convenient in accomplishing the object for which this incorporation is granted, and may by their agents, surveyors, engineers, and servants enter upon all lands and tenements through which they may deem it necessary to make said road, and to survey, lay
1394 out, and construct the same, and to agree and contract for the land,
or right of way, with the owners, through which they may intend to make the said road. In case said lands belong to the estate of any deceased person, then, with the executor or administrator of such; or in case of the same belonging to a minor, or person non compos mentis, then, with his or her guardian or guardians; or in case said lands be held by trustees of school sections, or other trustees of estates, then with such trustees; and the said executors, administrators, guardians, and trustees are hereby declared competent for such estate, or minor, to contract with said company for the right to use, occupy, and possess the lands of such estates, minors, or trustees, so far as may be useful or necessary to the purposes of said railroad; and the act and deed of such executors, administrators, guardians, or trustees, in relation thereto, shall pass the title in said land in the same manner, as if the said deed or act was made or done by a legal owner of full age; and such executor, administrator, guardian, or trustee shall account to those interested, upon their respective bonds, for the amount paid him in pursuance of such agreement and composition; and if the said company and parties representing lands prefer, they may refer the question of compensation to arbitrators, mutually chosen, whose award or that of their umpire, in case of disagreement, shall rest title according to its terms.

SEC. 8. And be it further enacted, That if the said company cannot agree with the owner of the land, through which they desire said road to pass, or with the executor, administrator, guardian, or trustee, it shall and may be lawful for the clerk of the circuit court of the county in which the said land lies, on application of said company or its agents, and he is required to issue a writ of ad quod damnum, commanding the sheriff that without delay he cause a jury of six good and lawful men to be upon such land on a day to be by said sheriff fixed and appointed, and whereof it shall be his duty to give notice to the owner, executor, administrator, guardian, or trustee at least five days before such day, if they be within his county; or if not, or if the owner or owners be unknown, then notice shall be given by advertisement, to be by said sheriff

posted and fixed at the dwelling house, if such there be, or on a public or conspicuous place at least five days before such appointed day, and also by advertising the same in some newspaper published nearest the land, at least three weeks by weekly insertions, prior to said day; and then cause said jury, after being duly sworn by said sheriff or justice of the peace, to make true inquest of the damage
1395 that will be sustained by such owner or estate, by reason of making said road through such land. If any juror shall fail to appear, or by reason of challenge for cause, or otherwise fail to sit on said inquest, the said sheriff shall fill said jury from the bystanders, and if they fail to render a verdict the sheriff shall again, on the same or a subsequent day, empannel a new jury or jurors until a verdict be had; such verdict and inquest, regularly certified by such sheriff, shall be returned to the office of the clerk of the circuit court of the county in which said land may be, and there remain among the records; and such verdict shall vest in said company the right to occupy and use such land for the purpose of said railroad on the payment, or tender of payment, of the damages thereon assessed against such company; and in case of persons absent, or unknown as aforesaid, the placing of the amount of such damages to the credit of the owner, in the hands of the judge of the county court of the county in which such lands may lie, shall be deemed and taken as payment; and such judges shall be liable on their bonds to make due payment of said money on demand.

Sec. 9. And be it further enacted, That it shall be the duty of the sheriff to appoint and hold said inquest within ten days after the receipt of said writ of "ad quod damnum," except in cases of absence aforesaid, in which case thirty days shall be allowed him, and five days in addition are allowed him for every additional jury which he may have under said writ; and for every default therein the said sheriff shall be fined by the circuit court, at the instance of either party, not less than twenty nor more than one hundred dollars; and every juror and witness summoned shall be fined not less than ten dollars for non-attendance; of all such fines, as well as costs, the circuit court of the county shall have jurisdiction. There shall be allowed the following fees: to the clerk of the circuit court, for every writ of "ad quod damnum," seventy-five cents; for receiving and filing inquest, seventy-five cents; to the sheriff for giving notice, seventy-five cents, besides printer's fees, not exceeding two dollars in each case; for holding inquest, five dollars; and for summoning witnesses, twenty-five cents each; to jurors, seventy-five cents per diem each, which fees are not allowed until a verdict be returned and filed, and shall be taxed in the bill of costs and paid by the company: Provided, however, That before the application for said writ the said company may make a tender to the owner or owners of any such land a sum of money by them deemed equivalent to the damage to be sustained, and upon refusal to accept the sum tendered, and
1396 a verdict for the same amount or a less sum, the costs shall be taxed to and paid by the owners of the land upon which inquest is held.

Sec. 10. And be it further enacted, That said company is hereby authorized to construct, erect, build, and use a single, double, or treble railway, or road, of suitable width and dimensions, to be determined by the directors of said company, on the line or course by them designated, and also, under the same rules, regulations and restrictions, and with the like privileges and immunities, as are herein granted to the main railroad, to build and construct branch railroads, on either side of the said main road, not exceeding thirty miles, and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect and maintain toll-houses and other buildings for the accommodation of their concerns, as they may deem suitable for their interest.

SEC. 11. And be it further enacted, That whenever it shall be necessary for the construction of their single, double, or treble railroad or way, to intersect or cross any stream of water or water-course, or any road or highway, it shall be lawful for said company, to construct across or upon the same; but the said company shall restore the said stream or water-course, or road or highway, thus intersected, to its former state, or in a sufficient manner not to impair its usefulness, and in all cases where any road or public highway is so located, that said railroad cannot be judiciously laid out and constructed across or upon the same, without interfering therewith, in such case or cases said corporation may, by their engineer, cause such road or roads to be changed or altered in such manner, that said railroad may be made on the best site of ground for that purpose: Provided, Said corporation shall put such road in as good repair as at the time of changing or altering the same.

SEC. 12. And be it further enacted, That it shall be lawful for the company hereby incorporated, from time to time, to fix, regulate, and receive the toll and charges by them to be received, for transportation of persons or property, on their railroad or way aforesaid, hereby authorized to be constructed, erected, built, or used, or upon any part thereof.

SEC. 13. And be it further enacted, That if any person or persons, will, or shall wilfully do or cause to be done any act or acts whatsoever, whereby any building, construction, or works of said
1397 company, or any engine, machine, or structure, or any matter or
thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, the persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to said company double the amount of damages sustained by reason of such offences or injury, to be recovered in the name of said corporation, with costs of suit by action of debt.

SEC. 14. And be it further enacted, That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company at such times and in such proportions and upon such conditions as they may deem fit; and in case any stockholder shall refuse or neglect to make payment pursuant to the requisition of the board of directors the stock of such stockholder, or so much as shall be necessary, may be sold by the directors of said corporation at public auction, after the lapse of ninety days from the time when the payment became due, and the surplus money, the avails of such sale, after deducting the payments due, and interest thereon, and the necessary expenses of sale, shall be paid over to such delinquent stockholder.

SEC. 15. And be it further enacted, That the property owned by the said company shall at all times be subject to taxation, in the same manner, and to the same extent, as similar property owned by private individuals.

SEC. 16. And be it further enacted, That if the said railroad shall not be commenced in five years from the passage of this act, and shall not be finished within this State in ten years from the time of commencement thereof, then this act shall be null and void.

Approved 3d February, 1848.

Extract from the act of the legislature of Alabama, passed the 5th of January, 1850, entitled "An act to amend and explain an act entitled 'An act to incorporate the Mobile and Ohio Railroad Company.'"

SEC. 2. And be it further enacted, That the said corporation be, and is hereby, authorized to purchase, hold, and to dispose of real and personal estate, to borrow money, to make contracts for the loan of money, to give evidences of debt and securities for the payment of the same by pledge, mortgage or otherwise, as it shall deem necessary and proper.

NOTE.—The remainder of this act authorized the city of Mobile to tax the city $300,000 to aid in constructing the road.

1398 An act to authorize railroad companies to execute mortgages, deeds of trust, other securities, &c.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened, That any railroad company chartered by the legislature of this State be, and is hereby, authorized to execute any mortgage, deed of trust, or other security on its road-bed, franchises, income, or other property for the purpose of securing the payment of any bond or bonds issued by such company to raise money or buy materials for the completion or running of its road, and any such mortgage, deed of trust, or other security shall vest in the mortgagee or trustee full power to sell and convey the road-bed, franchise, income, or other property conveyed in accordance with the provisions of such mortgage, deed of trust, or other security.

SEC. 2. Be it further enacted, That in case of a sale under any such mortgage, deed of trust, or other security of the road-bed, franchise, income, or other property of such company, the purchaser, or in case of a strict foreclosure, the mortgagee shall have and possess all the rights, privileges, franchises, and powers conferred upon such railroad company by its charter.

SEC. 3. Be it further enacted, That all such mortgages and deeds of trust heretofore made be hereby legalized, and sales made under them, or to be made, shall be held valid.

Approved February 21, 1860.

NOTE.—This statute was re-enacted by the revised code of Alabama in 1867 and again in 1868. See sections 1796, 1797, 1798 of said code.

SEC. 1794. Any railroad company in the State may sell, negotiate, mortgage, or pledge its bonds or notes, as well as any bonds, notes, scrip, or certificates for the payment of money or property which it may have received as donations, or in payment of subscriptions to its capital stock, or for other dues, at such time and such places, either within or without the State, and at such rates and prices as it may deem conducive to its interests; and if such notes or bonds are sold at a discount, they and the securities for their payment shall be as valid as if the sale had been at par.

SEC. 1795. Any railroad company in this State may open transfer-books in any of the States of the United States for the purpose 1399 of transferring stock which may be held or purchased by persons out of this State, and may employ suitable agents to keep such transfer-books, whose acts, done under authority of this section, shall be binding on such company.

The above are extracts from the revised code of Alabama of 1867, re-adopted in 1868, and now in force.

An act to constitute the purchasers of any railroad heretofore sold under authority of any law of this State, a body corporate and politic.

SECTION 1. Be it enacted, by the general assembly of Alabama, that in each and every case in which any railroad may hereafter be sold by the State of Alabama, or by any commission, office, or agent of said State, or under any proceeding, judicial or otherwise, authorized by law, the purchasers at any such sale may constitute themselves into a body politic and corporate, and shall have and possess all the powers and franchises which belonged to the company or corporation originally owning the railroad so purchased, including the power to purchase and hold real estate, and the franchise to be and exist as a corporation under such name as the purchasers may select and adopt; and the board of directors of such new corporation shall have power to issue bonds and also certificates of preferred and common stock to such an amount and with such powers as to voting in the management of the affairs of the company as said board may determine, and to lease, sell, or mortgage all or any part of the franchises or property of such corporation, including the franchise to be or exist as a corporation, and to prescribe the form of such bonds and certificates, and the rates of interest not exceeding the legal rate and dividends of the same.

Approved December 17, 1873.

1400 *Laws of Mississippi.*

CHARTER OF THE COMPANY.

An act to incorporate the Mobile and Ohio Railroad Company.

Whereas the State of Alabama, by an act approved 3d February, 1848, enacted as follows:

(The act of incorporation of Alabama is here recited in full, the same as printed for Alabama.)

And whereas the State of Mississippi is desirous to aid in accomplishing the object of the said act: Therefore,

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the railroad described in the above-recited act be extended in the State of Mississippi from the Alabama line to the State of Tennessee, in such direction and on such a route as shall be deemed most expedient; and that as to said extension there is granted to the said Mobile and Ohio Railroad Company, when organized, the same rights, powers, and privileges as are granted to it within the State of Alabama by the said act, subject, however, to the same and similar conditions, restrictions, modifications, and provisions as are in said act above recited, contained, and set forth, excepting the provision contained in section 15 of said act; and the said act is hereby concurred in and adopted within the State of Mississippi in reference to the said railroad as extended, and in reference to the said Mobile and Ohio Railroad Company, with the exception of that portion contained in section 15, as before stated: Provided, That in case of persons absent or unknown, whose lands may be condemned pursuant to sections 7, 8, and 9 of said
1401 recited act, the placing of the amount of the damages assessed to the credit of the owner, in the hands of the State treasurer, shall be taken as payment, and on such owner appearing or tendering satisfactory evidence of his claim thereto, such damages shall be paid him by the treasurer on the warrant of the auditor of public accounts.

SEC. 2. Be it further enacted, That the Mobile and Ohio Railroad Company shall have full power and authority to cross with their railway tracks any railroad in the State of Mississippi which may have been chartered prior to the passage of this act.

SEC. 3. Be it further enacted, That whenever any portion of said railroad shall be completed through this State, and is paying an interest of eight per cent. per annum on its cost, and not before, such portion may be taxed the same percentage, and no more, upon the capital expended in the construction thereof, as lands in this State shall be taxed.

SEC. 4. Be it further enacted, That so much of the 8th section of the above-recited act of the legislature of the State of Alabama, which requires certain damages therein mentioned to be placed to the credit of the owner in the hands of the judge of the county court of the county in which such lands may lie, and such deposit in the hands of such county treasurer shall be deemed and taken as payment, and such county treasurer shall be liable, on the official bonds, to make due payment of said money on demand.

Approved February 17, 1848.

Extract from an act passed by the legislature of Mississippi on the 4th of March, 1850, entitled "An act to amend an act entitled an act to incorporate the Mobil eand Ohio Railroad," approved February 17th, 1848.

SECTION 2. And be it further enacted, That said corporation be, and it is hereby authorized to purchase, hold, and dispose of real and personal estate, to borrow money, to make contracts for the loan of money, and to give evidences of debt and securities for the payment of the same, by pledge, mortgage, or otherwise, as it shall deem necessary and proper: Provided, That nothing contained in this section shall be construed into a grant of power for the exercise of banking privileges.

1402 *Laws of Tennessee.*

CHARTER OF THE COMPANY.

An act to incorporate the Mobile and Ohio Railroad Company, and the Tennessee Central Railroad Company.

Whereas, it appears to this general assembly, from the memorial of Jonathan Emanuel, president, and George N. Stewart, Sidney Smith, Moses Waring, Chas. LeBaron, and S. Griffitts Fisher, directors of the Mobile and Ohio Railroad Association, that a company has been organized at Mobile, in the State of Alabama, for the purpose of constructing a railroad from Mobile to the Tennessee River, and from thence to a suitable point near the mouth of the Ohio River; for which purpose, said board of president and directors have applied to this general assembly for the passage of such a law as may be necessary to authorize the construction of said road through the State of Tennessee; and whereas, it is deemed a matter of vital importance to this State, that a direct communication by railroad to the Gulf of Mexico be established: Therefore,

SECTION 1. Be it enacted by the general assembly of the State of Tennessee, That the said Jonathan Emanuel, president, and the said Geo. N. Stewart, Sidney Smith, Moses Waring, Charles LeBaron, and S. Griffitts Fisher, directors, and their associates, who shall be the stock-

holders of said company, and their successors, under the name and style of "The Mobile and Ohio Railroad Company," are hereby declared to be a body corporate and politic under the laws of Tennessee, with succession for five hundred years, and a common seal, with capacity to have,
1403 receive, and enjoy, to them and their successors, property and estate
of whatsoever nature and quality, and the same to alien, transfer, and dispose of, so far as may be necessary to carry into effect the main object of this charter, which is hereby declared to be the construction, use, and maintenance of a railroad from Mobile, in the State of Alabama, to some point on the Mississippi or Ohio River, near the mouth of the Ohio, passing through the State of Tennessee.

SEC. 2. Be it enacted, That said company is hereby declared capable of making all contracts; to sue and be sued; to make by-laws; to appoint officers, servants, and agents; and finally to do all things which may be necessary to carry on the business and object for which said corporation is created. The said company is invested with all the powers necessary for the construction, repair, use, and maintenance of the said railroad, with as many tracks, depots, turnouts, side tracks, landings, warehouses, workshops, and appurtenances as they may find necessary; and is authorized to make all works whatever, which may be necessary or expedient for the proper completion, use, and utility of said road; and to use the same for profit, and make dividends among the stockholders; to procure, by purchase, gift, or release, or otherwise, such lands and other property as may be necessary for the site of said railroad, or its construction and convenient use, or for the erection and use of depots, warehouses, landings, bridges, or other works connected therewith; and to construct as many lateral roads, with appurtenances, connected with said main stem as they may deem proper, not extending more than fifty miles from the main road.

SEC. 3. Be it enacted, That said company shall be authorized and required to open books for the subscription of shares in the capital stock of said corporation, in the State of Tennessee, so as to afford to the citizens of this State an opportunity to take stock, to the amount of one-fourth of the capital of said company: Provided, That if said fourth be not subscribed in Tennessee, within six months after the books are opened, then it may be taken elsewhere.

SEC. 4. Be it enacted, That the right of way is hereby granted to said corporation to pass through the State of Tennessee with said road; and to use all lands, rock, timber, earth, sand, gravel, water, or other materials which may be found on the route selected, and which may belong to the State of Tennessee, and be necessary for the use of the road; and also to appropriate and use all such land and materials, being private property, as may be necessary, making just compensation for all
1404 private property used, by contract with the parties, or by arbi-
tration with them; and when the parties cannot agree upon the compensation to be made by the company, for the use of the road, depots, &c., then the value shall be ascertained by legal proceedings as hereinafter prescribed.

SEC. 5. Be it enacted, That where any lands or right of way may be required by said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation, to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated; and the said commissioners, before they act, shall severally take an oath, before some

justice of the peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation, the commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken, or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each; and the excess of loss or damage, over and above the benefit and advantage, shall form the measure of valuation of said land or right of way. The proceedings of said commissioners, accompanied with a full description of said land or right of way, shall be returned, under the hands and seals of a majority of the commissioners, to the court from which the commission issued, there to remain of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way so valued by the commissioners or jury shall vest in said company in fee simple so soon as the valuation is paid, or tendered and refused. Where there may be an appeal, as aforesaid, from the valuation of commissioners, by either of the parties, the same shall not prevent the works, intended to be constructed, from proceeding; but where the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition of giving the opposite party a bond, with good security, to be approved by the clerk of
1405 the court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest, in case the same be sustained, and in case it be reversed, for the payment of the valuation thereafter, to be made by the jury and confirmed by the court: Provided, That when the land cannot be had by gift or purchase, the construction of the work shall not be hindered or delayed during the pendancy of any proceeding to assess its value as aforesaid; nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

SEC. 6. Be it enacted, That in the absence of any contract with the said company in relation to lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which said road may be constructed, together with the space of one hundred feet on each side of the center of said road, has been granted to the company by the owner thereof, and said company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purpose of the road, and no longer, unless the person or persons owning said land at the time that part of the road which may be on said land was finished, or those claiming under him, her, or them, shall apply for an assessment of the value of the said lands, as hereinbefore directed, within five years next after that part of said road was finished; and in case the said owner or owners, or those claiming under him, her, or them, shall not apply for such assessment within five years next after the said part was finished, he, she, or they shall be forever barred from recovering of the said land, or having any assessment or compensation therefor: Provided, Nothing herein contained shall affect the right of femes covert or infants, until two years after the removal of their respective disabilities.

Sec. 7. Be it enacted, That if any person shall wilfully or maliciously destroy, or in any manner hurt, damage, or obstruct the said railroad, or any bridge, or any vehicle, used for or in the transportation thereon, such person or persons so offending shall be liable to be indicted therefor, and on conviction shall be imprisoned not more than six nor less than one month, and pay a fine not less than twenty dollars, and shall be further liable to pay all the expenses of repairing the same. And it shall not be competent for any person so offending against the 1406 provisions of this section to defend himself by pleading that he was the owner, or agent or servant of the owner, of the land where such destruction, hurt, damage, injury, or obstruction was done, or caused, at the time the same was caused or done.

Sec. 8. Be it enacted, That every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by any officer, agent or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

Sec. 9. Be it enacted, That the said company is hereby expressly prohibited from carrying on any banking operations; but may effect insurance on lives and property transported on said road.

Sec. 10. Be it enacted, That the president and directors, clerks, agents and officers of said company shall be exempt from military duty, except in cases of invasion or insurrection, and serving on juries; and the servants of said company shall be exempt from working on public roads.

Sec. 11. Be it enacted, That the capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be laid on said road or its fixtures, which will reduce the dividends below eight per cent.

Sec. 12. Be it enacted, That the railroad authorized by this act shall be commenced within four years after the passage of this act, and shall be finished within ten years thereafter, otherwise the charter hereby granted shall be void.

Approved 28th February, 1848.

1407 *Laws of Kentucky.*

CHARTER OF THE COMPANY.

An act to authorize the Mobile and Ohio Railroad Company to extend their railroad from the south boundary-line of the State of Kentucky to the Mississippi or Ohio Rivers.

Section 1. Be it enacted by the general assembly of the commonwealth of Kentucky, That the Mobile and Ohio Railroad Company, when formed under the act of the general assembly of the State of Alabama, approved February 3, 1848, entitled "An act to incorporate the Mobile and Ohio Railroad Company," shall be allowed the privilege of making any necessary reconnoissance and survey for the purpose of ascertaining the most eligible route for extending the Mobile and Ohio Railroad to any point upon the Mississippi or Ohio Rivers in this State.

Sec. 2. Be it further enacted, That as soon as said route and point shall be ascertained, the said Mobile and Ohio Railroad Company shall be allowed the right of way for the extension and construction of their said railroad, from the Tennessee line to the Mississippi or Ohio Rivers, and that they shall be entitled to all the privileges, rights, and immunities, and subject to all such restrictions, as are granted, made, and prescribed, for the benefit, government, and direction of said Mobile and Ohio Railroad Company, within the State of Alabama, by the act above described.

Approved February 26, 1848.

1407½ *Act of the Congress of the United States.*

An act granting the right of way, and making a grant of land to the States of Illinois, Mississippi, and Alabama, in aid of the construction of a railroad from Chicago to Mobile.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby, granted to the State of Illinois for the construction of a railroad from the southern terminus of the Illinois and Michigan Canal to a point at or near the junction of the Ohio and Mississippi Rivers, with a branch of the same to Chicago, on Lake Michigan, and another via the town of Galena, in said State, to Dubuque, in the State of Iowa, with the right, also, to take necessary materials of earth, stones, timber, &c., for the construction thereof: Provided, That the right of way shall not exceed one hundred feet on each side of the length thereof; and a copy of the survey of said road and branches, made under the direction of the legislature, shall be forwarded to the proper local land offices respectively, and to the General Land Office at Washington City, within ninety days after the completion of the same.

SEC. 2. And be it further enacted, That there be and is hereby granted to the State of Illinois, for the purpose of aiding in making the railroad and branches aforesaid, every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said road and branches is definitety fixed by the authority aforesaid, sold any parts of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents 1408 to be appointed by the governor of said State, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid, which lands being equal in quantity to one-half of six sections in width on each side of said road and branches, the State of Illinois shall have and hold, to and for the use and purposes aforesaid: Provided, That the lands to be so located shall in no case be further than fifteen miles from the line of the road: And further provided, The construction of said road shall be commenced at its southern terminus at or near the junction of the Ohio and Mississippi Rivers, and its northern terminus upon the Illinois and Michigan Canal simultaneously, and continued from each of said points until completed, when said branch roads shall be constructed according to the survey and location thereof: Provided further, That the lands hereby granted shall be applied in the construction of said road and branches, respectively, in quantities corresponding with the grant for each, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever: And provided further, That any and all lands reserved to the United States by the act entitled "An act to grant a quantity of land in the State of Illinois for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan," approved March second, eighteen hundred and twenty-seven, be, and the same are hereby, reserved to the United States from the operations of this act.

SEC. 3. And be it further enacted, That the section and parts of sections of land which by such grant shall remain to the United States within six miles on each side of said road and branches, shall not be sold for less than double the minimum price of the public lands when sold.

SEC. 4. And be it further enacted, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and the said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

1409 SEC. 5. And be it further enacted, That if the said railroad shall not be completed within ten years, the said State of Illinois shall be bound to pay to the United States the amount which may be received upon the sale of any part of said lands by said State, the title to the purchasers under said State remaining valid; and the title to the residue of said lands shall reinvest in the United States, to have and to hold the same in the same manner as if this act had not been passed.

SEC. 6. And be it further enacted, That the United States mail shall at all times be transported on the said railroad, under the direction of the Post Office Department, at such price as the Congress may by law direct.

SEC. 7. And be it further enacted, That in order to aid in the continuation of said Central Railroad from the mouth of the Ohio River to the city of Mobile, all the rights, privileges, and liabilities hereinbefore conferred on the State of Illinois shall be granted to the States of Alabama and Mississippi respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio River, and that public land of the United States, to the same extent in proportion to the length of the road, on the same terms, limitations, and restrictions in every respect shall be, and is hereby, granted to said States of Alabama and Mississippi respectively.

Approved September 20, 1850.

1410 *Alabama land law.*

An act accepting of the donation of lands, made by the Congress of the United States, to aid in the construction of a railroad from the city of Mobile to the mouth of the Ohio River.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama, in general assembly convened, That the lands within this State which, under the said act of Congress, have been, or may be hereafter, entered in conformity with its provisions, shall vest in full and complete title in the "Mobile and Ohio Railroad Company," for the purposes set forth in the said act of Congress, as soon as the said company shall execute and deliver to the governor of the State a suffi-

cient bond faithfully to use the said lands for the purposes of its donation, and abide by and perform the provisions and conditions in the said act contained.

Approved December 1st, 1851.

1411 *Mississippi land law.*

An act to amend an act entitled "An act to accept a grant of land to the State of Mississippi by the Congress of the United States, to aid in the construction of the Mobile and Ohio Railroad, and for other purposes," approved November 30th, 1850.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the lands within this State which, under the act of Congress entitled "An act giving the right of way and making a grant of land to the States of Illinois, Mississippi, and Alabama, in aid of the construction of a railroad from Chicago to Mobile," approved September 20, 1850, *which* have been, or may be hereafter, entered, in conformity with its provisions, shall vest in full and complete title in the Mobile and Ohio Railroad Company, for the purposes set forth in said act of Congress, as soon as the said company shall execute and deliver to the governor of the State a sufficient bond faithfully to use the said lands for the purposes of its donation, and to abide by and perform the provisions and conditions in said act of Congress contained: Provided, Said company shall pay to the State all sums of money as have been paid or incurred by said State in defraying the expenses of locating or selecting said lands.

Approved January 28th, 1852.

1412 *Act of Congress of the 3d of August, 1854.*

(Brightley's Digest, page 492.)

(198.) SECTION 1. In all cases where lands have been, or shall hereafter be, granted by any law of Congress to any one of the several States and Territories, and where said law does not convey the fee simple title of such lands, or require patents to be issued therefor, the list of such lands which have been, or may hereafter be certified by the Commissioner of the General Land Office, under the seal of said office, either as originals or copies of the originals or records, shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim or interest shall be conveyed thereby.

1413 *Act of Congress of the United States.*

An act for the relief of the Mobile and Ohio Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whereas the State of Mississippi, by its act, approved on the twenty-eighth of January, eighteen hundred and fifty-two, and the State of Alabama, by its act, approved on the first of December, eighteen hundred and fifty-one, did transfer to the Mobile and Ohio Railroad Company the lands which were granted to said States under the provisions of the act of Congress, approved the twentieth September, eighteen hundred and fifty, to aid in the construction of a railroad from Mobile to the mouth of the Ohio River, the said transfer of said lands so made by said States, respectively, to said company, are hereby recognized, ratified, and confirmed, and the title to all bona-fide purchasers of said company are also hereby confirmed; and that the time limited by said original act of Congress for the completion of said railroad is hereby extended, and the said company is allowed further time till the twentieth of September, in the year eighteen hundred and sixty-five, to complete the same, anything in said act to the contrary notwithstanding: Provided nevertheless, That the said Mobile and Ohio Railroad Company be subjected to, and shall comply with all the conditions, restrictions, and limitations contained in the act of Congress above referred to, approved the twentieth September, eighteen hundred and fifty: And provided, That nothing herein contained shall be construed so as to release the States of Mississippi or Alabama from any liability imposed upon them by the said act of September twentieth, eighteen hundred and fifty.

Approved February 18, 1859.

1414 EXHIBIT C.

NEW YORK, *March* 16, 1859.

DEAR SIR: I have received your letter of the 4th March, and in reply I have to state, that, as you know, the correspondence of the trustees of the M. & Ohio Railroad Co. was with our late lamented friend J. J. Palmer.

Most of the letters written by him to the co. have been submitted to me and received my approval. All the papers relating to our business with the co. and the correspondence was in the possession of Mr. Palmer, and soon after the death of that gentleman I applied to his son, requesting him to turn them over to me. Within the last few weeks I have applied again, and he has promised to collect all the papers and correspondence with the co. and hand them over to me, which he will no doubt do, and when he does, I shall be prepared to do all that is proper and necessary in the premises as a trustee.

With regard to President Brown's strictures on the conduct of the trustees, I can only say that they are unnecessarily severe and
1415 utterly uncalled for. I have acted as one of the trustees of the great landed estate of the Illinois C. R. R., and am daily in the habit of signing deeds transmitted me, when the final payments have been made, and no inconvenience has been experienced nor any complaints made as to the course taken by the co.

If the Mobile & Ohio Rail R. Co. will consent to do their business in the same simple and business-like way, they cannot fail to experience the same facility in transacting the business of the land department. And that they may understand how this is done, I will send them an explanation of the mode, with a copy of one of the deeds.

The acceptance of this trust was not a mere matter of form, the execution of which was to be confided to others, at least that is not the way I shall perform my duty. The co. can sell by contract, but when a deed is presented, it should show in the face that a bond, or a portion of a bond by endorsement, has been canceled, equal to the amount the deed calls for. I know of no other mode in which I can execute the trust.

1416 With regard to the compensation to be paid to the trustees, and their withholding $18,000 of the bonds, and the amount seeming to the company excessive, but forced to a reluctant acquiescence, and that the coupons will be promptly paid, past and to become due, but with the express understanding that the amount retained by them as compensation is to include future as well as past services; I can only say, to the best of my recollection, of the correspondence held between the late M'r Palmer and the company, on the subject of compensation, the company made a specific proposal as to their compensation, which, after mutual consultation, was accepted by them; all of which will be found in the records of the company; I adhere to that arrangement, and shall expect the M. & O. R. R. Company to adhere to it also, without any further stipulations. I have no particular desire to receive these bonds in payment, and am quite willing to surrender them to the company. We took them, as you well remember, at their suggestion, and if they suppose that they were coerced we can return them
1417 and reimburse ourselves from the trust funds.

If the company should conclude to adopt the simple plan of the Illinois Central R. R. Company, which I trust they will, then so far as they have gone, for the sake of dispatch, it would be best for the company to make out an abstract of the lands ready to deed, approved by you and the company, and then send it to me, and I will approve and transmit to you, and you can deliver it to the company for record; you seeing that an amount equal to the amount received by the company is endorsed on a bond or bonds of the company.

Very respectfully, your obedient servant,
(Signed) MORRIS KETCHUM,
Trustee.

To W. R. HALLETT, Esq., *Trustee.*

1418 NEW YORK, *March 24th*, 1859.

DEAR SIR: Some days since, I requested the secretary of the Illinois Central R. R. Co. to furnish me with all the forms incidental to the sale of the lands, by the land department of that co., thinking that some of them might be found useful in the land department of the M. & O. R. R. Co.

These documents have been gotten up by men of great experience in the sale of lands (Mr. Wilson, late of the Land Department at Washington, having been at the head of the office for the last two or three years), and probably many of the forms have grown out of the practical operation of the system.

Should any of them be found useful to the M. & O. R. R. Co. in the sale of the lands, I shall not regret having forwarded them.

Very respectfully,
(Signed) MORRIS KETCHUM,
Trustee.

To W. R. HALLETT, Esq, *Trustee.*

1419 NEW YORK, *Jan'y 6th*, 1860.

MILTON BROWN, Esqr.,
Pres'd't Mobile & Ohio R. R.:

DEAR SIR: On the 21st of May I addressed a letter to the late W. R. Hallett, my associate trustee in the Mobile & O. R. R'd Co. trust, with the request that he lay it before your board.

Mr. Hallett, as you are doubtless aware before this, has deceased.

The letter, on inquiry, I find could not have been received by him before he left for the North, consequently could not have been passed over to you as I desired. I now enclose a copy of that letter, which, I believe, embraces all that is necessary for me to say to the R. R. Co. I regret that there should have been any difference of opinion between us as to the course to be pursued in the sale of the bonds, or the manner of executing the trust, and shall be most happy to do all in my power to forward the interest of the co., consistent with the trust confided to
1420 me. I am now the only trustee left, and I deem it important that one or more should be appointed, and should be glad to hear from you on this subject. You will see that they are appointed with the surviving trustee. I should also be glad to know if the co. desire to act as the agent of the trustees, in conformity to the mode adopted by the trustees for conveying the fee. If they do not, then I shall deem it my duty to establish an agency for that purpose.

I again enclose a blank form of the Ill. Cen. R. R'd Co., to be used by the M. & O. R. R. Co., which I would recommend be adopted in this instance. It has been found to work well. They like it very much after having used it for some time.

Very respectfully, your ob't serv't,
(Signed) MORRIS KETCHUM.
Trustee M. & O. R. R'd Co.

1421 (Confidential.)

NEW YORK, *June 6th*, 1860.

Mess'rs ARCH. GRACIE & SON, *Mobile:*

GENTS: Presuming upon my long acquaintance with the senior of your house, M'r A. Gracie, I take the liberty of committing to you some business, not very profitable to you, but which, I doubt not, will receive your attention.

The writer is one of the trustees, and now the only surviving trustee, to the deed of trust of the Mobile and Ohio Railroad Company, Mr. Palmer, of this city, having deceased, and now Mr. Hallett of Mobile.

By a notice which I enclose, which is all the information I have on the subject, it would seem there is a suit pending against the trustees, which comes on on the 26th inst. I had written Mr. Hallett on the subject, but the letter could not have reached him before he left for the North. I therefore do not know whether Mr. Hallett had em-
1422 ployed counsel to answer on behalf of the trustees or not, and the object of this letter is to have counsel employed if he, M'r Hallett, had not done it. This may be ascertained by applying to the counsel of the plaintiff in the suit. I enclose a copy of my letter to M'r Hallett, which, together with this letter, you will please hand over to the counsel you may employ, which will be quite sufficient for him to make an answer. It is quite possible, from some things that have come to my knowledge, that the company may be accessory to this suit for some purpose of their own, and if this is the case, I desire to show through the counsel of the trustees that it is not their fault but the fault of the company in not preparing the deeds for our execution, they having assumed to act for the trustees (by their consent) on the sale of the lands conveyed to us.

In employing counsel, please be particular that the party employed is not in the interest of the M. & O. R. R. Co., and the counsel will understand that he is to act for me individually as a trustee, unless, in con-
1423 ferring with the counsel employed by Mr. Hallett (if such coun-

sel has been employed by Mr.) he finds that all has been done to place the trustees on the right ground before the court. The counsel must bear in mind that it is possible my interests and that of the company may be adverse.

For whatever cash may be necessary, you will please check on me as trustee of the M. & O. R. R. Co.

Very respectfully, your ob't s'v't,

MORRIS KETCHUM,
Trustee M. & O. R. R. Co.

1424 NEW YORK, *July 25th*, 1860.

GENTLEMEN: Your president, Mr. Milton Brown, has been here, and, by an arrangement with him, the deeds called for by the full payment on the tracts of land sold will be made out here. I have ordered a form printed, and in the early part of the week will have them filled out in conformity to the descriptions furnished to me, which, I think, are somewhat incomplete, as in many instances the initials only of the Christian names are furnished. From your returning them in this way, I take it for granted you deem that sufficient.

I would have preferred that the deed should have emanated from the land department at Mobile, but is seems that it is necessary these deed' should be furnished as soon as possible, and to facilitate this object, I shall have them all completed, executed, and finished the early part of next week, when I shall expect a corresponding amount of bonds 1425 cancelled and delivered to me. Of this I will write more particularly when I forward the deeds.

I received but one return of land sections and lots sold where the payments have been made in full, and the parties consequently entitled to deeds. The document is marked thus, "Abstract III—Continued," from which it would seem a previous abstract had been furnished some one of the trustees, which would confirm President Brown's impression, that a large amount of payments in full had been made, and yet the numbering of the deeds in the abstract commencing with sale No. 1 would indicate this to be the first return. Please set me right on this point, and, if there are other parties entitled to deeds, send a description, and the deeds will be executed and returned at once.

I would suggest, as we are now commencing to deed this property, that a book be properly prepared and gotten up in which these deeds shall be registered. Such a book I shall have prepared here for 1426 my own guidance, but I desire such a record kept at the department in Mobile, so that no possible difficulty can hereafter occur in regard to sales and deeds; and that the page of the book in which the deed is entered, as having been executed and delivered, be endorsed on the back of each deed.

Yours, respectfully,
(Signed) MORRIS KETCHUM,
Trustee.

NEW YORK, *July* 25, 1860.

CHARLES WALSH, Esq., *Pres't:*

DEAR SIR: Accompanying this I have forwarded you 88 deeds of the trustee of the Mobile & Ohio R. R. Co., for lands sold by the co., under the instructions of the trustee, upon which the company make returns, after full payments having been made. The aggregate amounts of these deeds is $49,881.41, which, by an arrangement with the R. R. Co., I have stipulated to receive in the sterling mortgage bonds of the trustees of that co.

I have taken the liberty of confiding this business to you, from
1427 the circumstance of your filling the same official status in the
Bank of Mobile as my late trustee, Mr. Hallett, and also from
your name having been proposed as his successor in this trust.

With this explanation may I ask that you will make this exchange with the M. & O. R. R. Co., the deeds for a corresponding amount of the above described bonds—which bonds, when rec'd, I desire you to cancel in the usual way, sending me a return of the numbers, and holding them subject to the order of the trustee or trustees of the M. & O. R. R. Co.

It is my intention to make some change in the future mode of disposing of these lands, in which event I shall direct the money rec'd on acc't of land sales deposited to the credit of the trustees in your institution, which will, I trust, be some equivalent for any favors I may ask in this way.

Very respectfully, yours,
(Signed) MORRIS KETCHUM,
Trustee.

1428 NEW YORK, *Oct.* 23, 1860.

To the Pres't and Directors of the M. & O. R. R. Co.:

GENTS: On the 25th of July last I addressed you a letter advising of having forwarded 88 deeds to Cha's Walsh, esq., and requesting you to give me a new statement of sales of land previous to 1 July, 1857, arranged so that I could make out the deeds to the parties, to which letter I have rec'd no answer. I now call your attention particularly to it, and request you will furnish me with the necessary information. I also wish a duplicate of sales No. 3, and transcript of your land department cash-book from July 1, 1857 (the balance as then brought down was $37,300.80), that I may have a correct record of the sales of the land, and the receipt of money on account of the trust.

I remain yours, respectfully,
(Signed) MORRIS KETCHUM,
Trustee M. & O. R. R. Co.

1429 N. Y., *November* 21, 1860.

MILTON BROWN, Esq., *President M. & O. R. R. Co.:*

DEAR SIR: I received your letter of the 16th inst. some three days since. We have been in the midst of a financial crisis, to which you may attribute my not giving you an immediate answer, which I will now do.

I have read with care the papers enclosed, and beg to state that I see nothing in them to change my views on the subject of electing two additional trustees as communicated to you in my letter of the 7th of July last. That proposition was entirely reasonable, and in strict conformity with the requirements of the deed of trust, and I cannot but regret that we should have any disagreement on that subject.

I have written you two or three letters that have an important bearing on this trust, to which I have rec'd no answer. I now beg to
call your attention particularly to them, & request that you will
1430 give me the information desired, so that the deeds may be made
out & delivered to you, and the bond cancelled and deposited
in the Bank of Mobile, subject to my order.

Very re'p'f'y,
(Signed) MORRIS KETCHUM,
Trustee.

NEW YORK, *April*, 1860.

J. S. MORGAN, Esq.:

DEAR SIR: Yours of the 21st duly received. I sent you a hasty note by last steamer, in which I promised a full statement for the consideration of the bondholders of the Mobile & Ohio R. R. Co. by next mail, which I now submit.

In yours of the 21st you state that the directors of the M. & O. R. R. Co. have made a communication to the English bondholders, in which they are asked to sign a request to the trustees to allow the parties purchasing the lands of the Co. to pay for the same in the bonds of the Co., which shall be cancelled when the deed is given, similar to the plan
adopted by the Ill. Central Co.; that there is a considerable
1431 amount of these bonds held in England, and the holders are disposed favorably to consider the plan, but as they learn the trustees object to such an arrangement, they hesitate; and that you have promised to write me and ascertain what are the objections.

There is some great mistake or misapprehension somewhere. The statements are erroneous in almost every particular. By the enclosed correspondence you will see that, so far from objecting to the plan suggested, I had proposed it, and sent them all the blanks used by the trustees of the Illinois Central Trust, in order that they might at once adopt them.

I have never made any objections to signing deeds, because none have been made out by the company and sent me for that purpose. Whenever they are sent me, with the cancelled bonds to the amount of the purchase money, they will be executed and returned without delay.

The company have written requesting me to give some one a power
of attorney to sign deeds, which I agreed to do, as far as
1432 lands have been paid for, though on mature reflection I have my
doubts of the full propriety of my giving them even that authority, in view of my responsibility to the bondholders, for whose benefit I have been appointed, and shall now insist on seperate deeds being sent me for signature for all the lands sold, with the numbers and amounts of bonds cancelled and endorsed in each deed, in the same manner as is done by the Ill. Central R. R. Trust.

It is quite certain that the managers of the company could not so far have knowingly departed from the facts in the case in these representations to the bondholders without an object; what that object is, I will not pretend to say.

You will see by my letter to Mr. Hallett, also to the executive committee, dated March, 1859, copies of which I herein enclose, that though all the necessary blanks used by the Ills. Central Trust (and these
schemes are identical) were forwarded, that they might at once
1433 have prepared to conduct this department without any delay or
embarrassment, yet no reply has ever been received from M'r Hallett or the executive committee, nor have they indicated to me any plan of operation except the one before referred to, which will not be submitted to.

With regard to the charge of my having thrown obstacles in the was of what was proposed by the directors, in order to throw the money into my hands on which to charge a commission, is simply ridiculous. The plan of conducting the land sales presupposed the Co. to be provided with the bonds of the road, which would be absorbed at par just as fast as the money came in; and if this was done in good faith, no money would, as there never has any, reached the hands of the trustees, we preferring the company to sell the lands, as they should do, and furnishing the bonds, whereby they realized a profit of the difference between the market value and par.

I have deeded in this way nearly a million and a half of the 1434 Illinois Central lands, and cancelled that amount of their bonds; have never charge' them any commission, nor has a dollar of their money passed through our hands. It was just this system I desired this company to adopt.

I have now disposed of all the charges, and I thank you for giving me an opportunity for correcting these misrepres'ntations to the bondholders. The trust is a large and responsible one, and I should like to be relieved from it. It is not only the responsibility, but to protect the bondholders it is likely to be annoying. It has always appeared to me that the M. & O. R. R. has felt restive under the restraint of the N. Y. trustees, and now, while the bondholders are together, I beg you will induce them to designate some responsible person in Mobile to supersede me.

I am the only N. Y. trustee left, and it would be more agreeable to the managers to have one of their own people to fill the station, and, by a judicious selection, equally safe for them.

1435 If they will do this, I will speedily adjust my account with the co. and make a transfer of the trust.

The enterprise, in my judgment, when unembarrassed, is destined to become a successful one, and the bonds a good and improving security. It only requires an honest, economic, and persevering administration (which I have no reason to doubt it now has, except the shade thrown over it by these erroneous statements) to realize all the success that its friends have anticipated.

I am, dear sir, yours very truly,
(Signed) MORRIS KETCHUM.

1436 EXHIBIT D.

Original bill.

To the Hon. N. W. Cocke, chancellor of the southern chancery division of the State of Alabama, presiding at Mobile.

1. The Mobile and Ohio Railroad Company, a body politic and incorporate, chartered by the laws of Alabama, and also by the States of Mississippi, Kentucky, and Tennessee, respectfully shows to your honor that by virtue of its powers so granted by said States respectively, it has constructed a line of railway from Mobile to the mouth of the Ohio River, and is now running and operating the same.

2. The said company further shows that under and by virtue of purchases, and by grant from the Congress of the United States of America, it has obtained title to and possession of a large quantity of land and real estate. Among this property so owned by the company is a large quantity of vacant land in the States of Alabama and Mississippi which this company obtained from the source above named for the purpose of aiding in the construction of said road.

3. The said company further shows that to enable it to proceed and complete its said railway, said company has been compelled to borrow large sums of money for the payment of said loan, and also in some instances in payment for work and materials furnished the company by sundry parties, it has issued its bonds for the sum of two hundred and twenty-five pounds, of the currency of Great Britain, each, which are

commonly known in the market as sterling bonds. These bonds are made payable in London, England, in the year 1883, at the office of George Peabody & Co., and bear interest at the annual rent of six per cent., which is payable semi-annually at the place aforesaid on the first days of May and November. Six thousand of these bonds have been executed, amounting to the sum of thirteen hundred thousand six hundred and fifty pounds sterling, English currency.

4. Further your complainant respectfully shows to your honor that on the first day of November, 1853, said Mobile & Ohio Railroad Company, by its deed of that date, conveyed to Morris Ketchum and John J. Palmer, of the city and State of New York, and to William R. Hallett, of the city of Mobile and State of Alabama, the better to secure the payment of the bonds hereinbefore described, and every part thereof, with interest accruing thereon, the following described property, to wit: All the said Mobile & Ohio Railroad lying between its respective termini, constructed and to be constructed, together with all and singular the railways, rails, bridges, fences, warehouses, fixtures, privileges, rights, real estate, and all other property owned and which may hereafter be owned by said company, including the said lands donated by the Congress of the United States, that is, $419,528\frac{56}{100}$ acres of land in the State of Alabama and $737,130\frac{36}{100}$ acres of land in the State of Mississippi, total $1,156,658\frac{97}{100}$ acres; saving and excepting there-
1437 from so much as lies in township 4 S., R. 1 W., of lands subject
to entry in the S't Stephens land office, being $692\frac{78}{100}$ acres, more or less; saving and excepting also the lots and tracts in the county of Mobile, outside of the line of railway, outside of its depots, and outside the corporate limits of the city of Mobile, being lots and lands derived by private purchase not yet fully paid for, and not included in the list of lands in Mobile County derived under and by the act of Congress, and saving and reserving the rights and liens that may attach to the railway and construction therein in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that State in the event of the said State aiding in the construction of so much of the roadway as lies in said State, viz., one hundred and eighteen miles, not exceeding ten thousand dollars per mile. All of which will more fully appear by reference to said deed, which is on record in the office of the judge of probate of Mobile, and a copy whereof in print is herewith filed as an exhibit to and part of this bill.

5. Said deed was executed to said Ketchum, Palmer and Hallett, their survivor or successors, for the benefit, security and advantage of the person or persons, or corporations, or any other party who shall or may be holders of the before described bonds, or any of them, in trust for that purpose, and with certain powers over said property in said deed fully set forth.

It was therein provided that of the said $1,156,658\frac{97}{100}$ acres of lands donated by the said Congress, the said trustees should be deemed to be in immediate possession, with authority to devise and determine rules of management, of sale, of investing the net proceeds in such funds as will suitably and safely create a sinking fund for the payment of said bonds, said trustees to render annually, on 1st January of each year, to the said railroad company accounts of their doings in the matter of the trust, said trustees were authorized to appoint an agent to attend to said land business; but that no sale of said lands should be made so long as said grantor was not in default on any obligations connected with said bonds, except by and with the advice and consent of said company. The other property named in said deed was to remain

1438 under the control of said company, unless said company became in default for the payment of said bonds or interest.

6. Your orator further shows to your honor that said deed also contains a provision that if either of the said trustees should at any time or times thereafter die or become, from any cause, incapable of acting in the premises or resign his said office, the said company and the surviving or continuing trustees should select some other person to fill the vacancy occurring, and should thereupon make, execute, and deliver such other instrument or assurances as might be necessary to enable such selected person to act in the premises.

7. Your orator shows that said trustees assented to said deed and took upon themselves the burthen of its execution; that since then two of said trustees have departed this life, to wit, William R. Hallett, of Mobile, who died in July, 1860, and John J. Palmer, who died before the said Hallett, and that the only surviving trustee is the said Morris Ketchum, and that said Ketchum is a resident citizen of the State of New York, and an alien enemy of the Confederate States of America.

Your orator also shows that at sundry times before the 15th of April, 1861, your orator, in pursuance of the terms of said deed of trust, applied to the said Ketchum to unite with your orator in the appointment of trustees to fill the vacancies occasioned by the death of said Hallett and Palmer, but said Ketchum has refused to unite in the appointment of such trustees, and the places of said deceased trustees still remain vacant.

8. Your orator charges that said conduct on the part of said Ketchum is a breach of the spirit and letter of said trust deed, and that it has proceeded from selfish and interested motives on his part, and that he has pursued a course of conduct in relation to the trust that has embarrassed and operated to the injury of your orator.

Your orator shows that no provision is made in said deed for compensation to the trustees except in event of a forfeiture thereof, which has not occurred, and which your orator hopes will not occur. No services have been rendered by said trustees beyond the simple acts of 1439 signing the mortgage bonds and a few other papers directing and authorizing the sale of a small portion of the lands. Said trustees have not made any of the annual reports called for by the deed. It was the duty of the trustees to have directed the sale of lands, but they have failed to do so, except to a small extent hereinafter named; such plain duties they have disregarded, whereby great injury has been done to your orator and to the bondholders, retarding and preventing the sale of lands, and thereby impairing the market value of the bonds which were to have been received in payment for lands. The said Hallett, before his death, resided in Mobile, but when applied to, he declined acting, stating that the active management of the trust was with his co-trustee, Ketchum, always referring your orator to said Ketchum, and professing to refer all communications to him. Thus having the active management of said trust business, the said Ketchum, has used his power oppressively to your orator and for selfish purposes.

When said bonds herein described were signed, the said Ketchum, in the name of himself and co-trustees, retained eighteen thousand dollars on the pretense of compensation for signing said bonds, and this against the wishes of your orator; and, notwithstanding the protest of your orator which was then made and been repeatedly renewed, said bonds, with all the coupons for interest thereon, have been withheld from your orator. Said Ketchum has in addition also demanded regular salaries at high rates. While your orator would not object to reasonable com-

pensation for actual service, it has refused to accede to the demands because they were exorbitant and could not be yielded to without submitting to gross wrong. Since the death of his said co-trustees said Ketchum has refused to unite in the appointment of new trustees except on condition that he shall retain what he has already obtained, and also have a fixed salary at some high rate, to begin about the year 1855 and continue till the maturity of the trust in 1883. Said Ketchum also claims the right to move the management of the land department from
Mobile to New York, and then to organize it by committing it to
1440 officers appointed by himself, and has notified the president of
this company of his having appointed the chief agent or superintendent thereof. Your orator, to induce said Ketchum to consent to the appointment of new trustees, has obtained the request of a majority of the bondholders for that purpose, but without avail. Said Ketchum has still persisted in his refusal to unite in the appointment of such new trustees.

Your orator charges that these actings and doings of said Ketchum are in violation of his duties as trustee, and that he is an unfit person to continue in his position of trustee.

9. Your orator further shows that by a writing under date of 10th of January, 1855, the said Ketchum and other trustees advised and directed the sale of lands embraced in the trust, not exceeding 100,000 acres, in such terms as to price and time of payment as said company by its board of directors should approve, and promised to ratify such sale and execute proper deeds to the lands so sold. In pursuance of said authority your orator has sold a large quantity of land to sundry purchasers, who have complied with the terms of sale, and paid most of the purchase-money. Your orator has made due reports of said sales to said Ketchum, and has in all things performed the conditions on which said sale was to be made, and called for deeds for the purchases from him as trustee holding the legal title, but he has refused to ratify the sale and has failed to make deeds for the purchases; said purchasers have demanded of your orator deeds for their lands, and one has filed his bill in this honorable court, to compel the specific performance of the contract with him. Others of said purchasers are threatening to pursue a similar course, and so your orator has been subjected to annoyance and cost, and is likely to be still further injured by the misconduct of said Ketchum in his said office of trustee.

These matters have been urgently presented to said Ketchum by your orator, but he has given no heed to their applications, and not even acknowledged its report to him, and when personally applied to,
refused to execute the necessary deeds, except on condition of
1441 his demands for past compensation and future salary being com-
plied with.

10. Your orator shows that it is highly important that further sales of lands should be made; that such was originally intended to be made, for the purpose of completing said road; and it was expressly declared that the said sterling bonds so issued by the company should be received in payment of lands to be sold. This can only be done by the agency of trustees under said deed of trust. That the lands lie in the States of Alabama and Mississippi, and their management should be confided to persons who can and will superintend their management in those States, and in the city of Mobile, where the trust-deed was executed, where the chief business of your orator has necessarily to be executed, and where the trust will have to be executed, and that the removal

of the control and direction of this business should be to the manifest letriment and injury of your orator and all others concerned.

It shows that the security of the bondholders requires the active gency of suitable and a full board of trustees to look after their interest in this property, and that interests so large should not be left in the control of one person alone, that the deed was originally to three, and good faith to the creditors of your orator, the cestuis que trust, requires that the office should be full.

Your orator charges that said Ketchum has proved himself an improper person to manage the property as trustee thereof; that he has been unfaithful to said trust. It also charges that said Morris Ketchum is an alien enemy; said property is wholly in the Confederate States, and consists of real property and franchises and personal property, whose chief value arises from its connection with the realty, and can be properly managed only by resident citizens of these Confederate States.

11. Your orator prays that said Morris Ketchum may be removed
from his said position as trustee under the said deed of trust herein
described; that the vacancies created by the deaths of John J. Palmer
and William R. Hallett may be filled, and that some suitable per-
1442 son be also appointed trustee in the place of said Morris Ketchum,
and that said trustees so to be appointed be clothed with all the
powers conferred by said deed upon the said Ketchum, Palmer, and
Hallett.

Your orator prays that said Morris Ketchum be made a party hereto, and that publication be made as provided by the statute in the case of application for the appointment of trustees and for such other and further relief as may be consistent with equity and the nature of its case, and, as in duty bound, will ever pray, &c.

(Signed) GEORGE N. STEWART,
Sol'rs for Compl't.
HAMILTON & OWEN,
Sol'rs Compl't.

Comes Milton Brown, who, being duly sworn, saith he is president of the Mobile and Ohio Railroad Company; that said Morris Ketchum is of mature age, and is a resident citizen of the State of New York, in the United States of America; and further, that he, said affiant, has read the foregoing bill of complaint, and the allegations thereof are true, to the best of his knowledge, information, and belief.

(Signed) MILTON BROWN.

Sworn to and subscribed before the undersigned this 3d January, A. D. 1862.

(Signed) T. M. BRINDLEY,
J. P., M. C.

(Copy.)

Whereas, W'm R. Hallett and J. J. Palmer, two of the trustees under our first mortgage, executed to secure our sterling bonds, have departed this life; and whereas Morris Ketchum, the surviving trustee, has attempted, and so far as in his power, practiced gross fraud on this company and the bondholders; and whereas said Ketchum is a citizen of the State of New York, and an alien enemy, and in all respects disqualified and unfit to act as a trustee:

1443 Therefore, resolved, that our counsel be instructed to apply to the chancery court, or such court as may be most suitable, to have three trustees appointed to act under said mortgage, with power to order sales of land, directing, if they deem it best, the taking of sterling bonds in payment, and to make deeds for lands already sold and to be hereafter sold, and to do all and everything necessary and proper to be done in the due execution of said trust; and, be it further resolved, that we recommend the appointment of Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, said trustees under said mortgage.

I certify the foregoing to be a true copy of a resolution passed by the board of M. & O. R. R. Co., at a meeting of said board on the 5th of December, 1861.

[SEAL OF COMP'Y.] (Signed) J. P. RUTLAND,
Secretary.

JANUARY 6TH, 1862.

MOBILE, *January* , 1862.

I hereby acknowledge myself complainant's security for costs in this cause.

(Signed) W. H. BLOODGOOD.

Filed January 6th, 1862.

JNO. M. TAYLOR,
Register.

EXHIBIT TO BILL.

(Printed copy deed of trust.)

Order of publication.

AT RULES, REGISTER'S OFFICE,
Mobile, Ala., January 6th, 1862.

1444 This being a regular rule day of the court of chancery aforesaid, the following order was made by the register of said court in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE.

At rules, register's office, Mobile, January 6th, 1862.

In this cause it appearing that the defendant, Morris Ketchum trustee, is of mature age, and that he resides beyond the limits of the State of Alabama, to wit, in the city and State of New York, in the United States of America, it is ordered that he answer or demur to the allegations of the bill of complaint on file on or before the first day of March next.

It is further ordered that this order be published once a week for four consecutive weeks in the Mobile Daily Tribune.

Attest:

JNO. M. TAYLOR,
Register.

Decree pro confesso.

AT RULES, REGISTER OFFICE,
Mobile, Ala., March 30th, 1863.

This being another regular rule day of the court of chancery aforesaid, the following order was made by the register of said court in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE.

At rules, register's officer, Mobile, March 30th, 1863.

1445 In this cause complainants, by their solicitors, presents the printed notice of publication heretofore made against the defendant, Morris Ketchum, and proves by affidavits thereto attached that said publication was regularly made, published once a week, for four consecutive weeks, in the Mobile Daily Tribune (a newspaper printed and published in the city of Mobile), and that a copy thereof was posted up at the court-house door of Mobile County, all within twenty days of the date of this order of publication; and it appearing that said defendant has failed to appear and plead, answer or demur to the allegations of the bill of complaint in this cause, it is ordered that the allegations of the same be taken as confessed against him.

Attest:
(Signed) JNO. M. TAYLOR,
Register.

Decree of reference, &c.

At a special term of the court of chancery aforesaid, held in the city of Mobile, commencing on the first Monday of April, 1863, being the 6th day of said month, honorable Nathaniel W. Cocke, chancellor of said court, present and presiding, and on the 7th day of April, 1863, the same being a regular day of said special term, the following decree was rendered in this cause, to wit:

MOBILE & OHIO RAILROAD COMPANY
vs.
MORRIS KETCHUM, TRUSTEE.

This cause was submitted on the bill, exhibits, and decree pro confesso. The object of the bill is to appoint trustees under a certain deed of trust exhibited by the complainant, of the date of 1st November, 1853, a copy of which is attached to the bill, in place of William R. Hallett and John J. Palmer, who are dead, and also to remove the surviving trustee, Morris Metchum, for breaches of duty as trustee, and also because he is an alien enemy, and incompetent to act. The court is
1446 satisfied of the death of said Palmer and Hallett, and of the fact
that said Ketchum is an alien enemy; it is therefore ordered, adjudged, and decreed that said Ketchum be removed from his said trusteeship; and further, that the prayer of the bill be granted for the appointment of trusteees in place of said Ketchum, Hallett and Palmer, be granted.

And the said complainant suggests as proper persons to be appointed in place of the former trustees Charles Walsh, George H. Young, and Alexander Jackson, all citizens of the Confederate States. It is referre to the master to ascertain and report whether the above-named parti be suitable persons to receive the said appointment of trustees afor said.

Master's report.

And on the 8th day of April, 1863, the same being still another day of the said special term of said court, the following report was read by the master in this cause, to wit:

MOBILE & OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

The master came in court and reported as follows:

This cause comes before the master with instructions to ascertain and report whether Charles Walsh, George H. Young, and Alexander Jackson are suitable persons to be appointed trustees in place of William R. Hallett and John J. Palmer, former trustees, who are dead, and of the defendant, who has been removed.

The master reports that he gave notice of the time and place of considering the matter referred to him, and was attended by complainant's solicitors; that he examined reliable witnesses introduced, and is satisfied from their testimony that the said Walsh, Young, and Jackson are fit and proper persons to be appointed trustees under the
1447 deed of November 1st, 1853, and in place of the former trustees, Hallett, Palmer, and Ketchum.

Respectfully submitted.

(Signed) JNO. M. TAYLOR,
Master.

April 8th, 1863.

And thereupon it is ordered that said report lie over one day.

Final decree.

And on the 9th day of April, A. D. 1863, the same being another of the special April term aforesaid, honorable Nathaniel W. Cocke, chancellor of said court, present and presiding, the following decree was rendered in this cause, to wit:

MOBILE & OHIO RAILROAD CO.
vs.
MORRIS KETCHUM.

In this cause, the master, in pursuance of the former order of this court, having made his report at a former day of this term, and the same having been read in open court more than one day, and no exceptions being filed, it is ordered that said report be in all things confirmed. It is hereupon ordered, adjudged, and decreed, that said Charles Walsh, of Alabama, George H. Young, of Mississippi, and Alexander Jackson, of Tennessee, who consent thereto, be appointed trustees under the deed described in the bill of complaint, in room and in place of William R. Hallett and John J. Palmer, former trustees, deceased, and of Morris Ketchum, former trustee, who has been removed by decree of this court. It is further averred, adjudged, and decreed that said trustees hereby appointed be clothed with all the rights, powers, and privileges named in said deed of trust, and that they be charged with all the duties by said deed imposed upon the trustees in the same manner and to the same extent as if they were the original appointees, and that they proceed and execute the trusts declared in said deed according to the terms and provisions thereof, and as to all other matters of complaint and prayers in said bill contained, it is ordered that said bill be dismissed without prejudice to complainant's rights to relief therein, or to any matter of account.

It is ordered that the complainants pay the cost of this proceeding.

1448 EXHIBIT E.

Opinion of Hon. W. B. Woods.

United States circuit court, southern district of Alabama.

MORRIS KETCHUM
vs.
MOBILE & OHIO RAILROAD COMPANY AND others.

In equity; heard on motion for the appointment of a receiver of the property and effects of the defendant railroad company.

The facts, so far as necessary to the decision of the motion, were as follows:

The Mobile & Ohio Railroad Company was an Alabama corporation, having its principal office at Mobile.

On the first day of November, A. D. 1853, said company executed its deed of trust, conveying to Morris Ketchum and John J. Palmer, then of New York, and William R. Hallett, then of Mobile, and to the survivors and successors of them, in fee-simple, all its railroad property and franchises, in trust, to secure six thousand bonds of one thousand each, to be issued by the company, to be payable in thirty years, with semi annual interest.

1449 Among the property conveyed by said deed of trust were one million one hundred and fifty-six thousand six hundred and fifty-eight acres of land donated to said company by act of Congress. The said deed provided that "said Ketchum, Palmer, and Hallett shall at once have possession and control of said lands, and any other lands that may be obtained by said company, with authority to devise and determine rules of management of sales, of investing the net proceeds in such funds as will suitably and safely create a sinking-fund for the redemption or payment of said bonds; said Ketchum, Palmer, and Hallett rendering an exhibit and account of their doings on or before the first days of January of each and every year, during the period of the trust herein made to the said railroad company.

The said deed of trust further provided that "if either of them, the said Ketchum, Palmer, or Hallett, shall at any time or times hereafter die, or become, from any cause, incapable of acting in the premises, or resign his office under these presents, then the said company, or said Ketchum, Palmer, and Hallett, or either of them, may select some other person to fill the vacancy occurring, &c." 1450

No provision was made by the trust deed for any compensation to the trustees. Ketchum was not and is not a bondholder, stockholder, c officer of the railroad company. He was a naked trustee.

The bonds secured by this deed of trust were issued by the compa and sold, some in the United States and some in Europe.

Before July, 1860, both Palmer and Hallett had died. On the 6th January, 1862, the railroad company filed its bill in the chancery cou for the county of Mobile, in the State of Alabama, against Morri Ketchum, who was represented to be, and was, in fact, a citizen of New York, and who was alleged to be, and was, in fact, the sole survivor of the trustees named in said deed of trust.

The bill charged upon Ketchum, among other things, neglect of duty
as trustee, refusal to unite with the company in the appointment
1451 of new trustees; that the trust property was entirely within the
Confederate States, and that he was an alien enemy; that the trust property was suffering for want of a trustee capable of acting; and that the interests of holders of bonds secured by the trust deed imperatively demanded the appointment of trustees residing within the territory of the Confederate States, who could perform the duties incident to the trust.

The bill prayed that Ketchum might be removed from his position as trustee under said deed of trust, and that the vacancies created by the death of Palmer and Hallett, and the removal of Ketchum, might be filled by the appointment of the court.

Upon this bill proceedings were taken, according to the code of Alabama, to bring in said Ketchum by publication. Notice of the filing, pendency, and prayer of the bill having been made by publication, ac-
cording to the statute-law of Alabama, and Ketchum having made
1452 default, a decree pro confesso was taken against him, and in due
course a final decree was made, removing him from his office as trustee, and appointing Charles Walsh, George H. Young and Alexander Jackson as trustees under the deed of trust.

The provisions of the code of Alabama (Walke's Revised Code), under which these proceedings were taken, are to be found in the code of 1852, and were in force in 1853, when the trust deed was executed, and in 1863, when the bill was filed and the decree made.

The provisions (section 3321) give the court jurisdiction over nonresidents "when the object of the suit concerns an estate of lien or charge upon lands or the disposition thereof * * * within the State. Section 3335 provided for service upon a non-resident by publication, and section 3455 declared that upon the petition or bill of any person interested in the execution of a trust, the court of chancery may remove any trustee who has violated or threatened to violate his trust * * * or who, from any other cause, is an unsuitable person to execute the
trust." And section 3000 of the same code provided that "such
1453 court has the authority to appoint a new trustee in the place of
a trustee removed."

The trustees appointed by the said chancery court accepted said trust and discharged the duties thereof for many years, without challenge or question, were in the possession and management of the lands of said railroad company not appurtenant to the line of railroad, and sold portions thereof, and made deeds therefor. They continued in said trust until the 19th of April, 1875, when, said Young and Jackson having resigned, the said Walsh, then sole trustee, and the said railroad company, in accordance with the provisions of the deed of trust, appointed W. Butler Duncan and A. Foster Elliot trustees under the same, who accepted the trust, and at once entered upon the duties thereof. From period before the commencement of the late war, down to the filing his bill in this case, Ketchum did not act, and set up no claim to the office of trustee. In 1865 he learned of the proceedings of the 54 Mobile chancery court, and of the decree purporting to remove him and appoint Walsh, Young, and Jackson.

The railroad company having made default in the payment of the interest due upon the bonds secured by said deed of trust, on the first days of May and November, 1874, said Duncan and Elliot, on the 8th day of May, 1875, by virtue of the provisions of said deed of trust and the assent of the said railroad company, took full possession of all the property of said railroad company, and on the 11th of May, 1875, filed their bill in equity in this court, praying, among other things, to be confirmed in their possession, and protected from all interference by any or parties whomsoever, for leave to apply to the court for instructions in the discharge of their duties, and that the equity of redemption of the said railroad company in said railroad property, &c., might be forever foreclosed, &c.

Upon this bill the court, by its decretal order, recognized Dun-
1455 can and Elliot as trustees in possession, and made various other orders directing them in the discharge of their duties as such, and appointing a master to examine their accounts and to discharge the other duties appropriate to the office of master in said cause.

After all these proceedings and not until ten months after the filing of the bill of Duncan and Elliot, to wit, on March 14th, 1876, Morris Ketchum filed the present bill, to which he made the railroad comdany, Duncan and Elliot, and others defendants, in which he alleged that he was the sole surviving trustee of the said deed of trust, that Duncan and Elliot had, without authority, intruded themselves into said trusteeship.

The prayer of his bill was, that the property conveyed by deed of trust, in which he is named as trustee, might be sold and disposed of for the benefit of the bondholders, and that a receiver might be appointed to take charge of and administer the mortgage property until such sale could be made.

1456 The railroad company filed its plea, setting up the proceedings and decree of the Mobile chancery court, and alleged the removal of Ketchum thereby as a bar to any relief prayed by the bill.

The cause was heard on the motion of complainant for the appointment of a receiver, and upon the bill, plea, and various affidavits.

Mess'e'rs Edward L. Andrews, with whom were Alexander McKinstry, D. C. Labat, and B. F. Jones, for the motion.

M'r Andrews argued:

I. The proceeding in the Confederate chancery court of Alabama is a nullity, because it presumed to deprive a loyal citizen of the United States of his title and property on the specific ground of his loyalty. (Texas vs. White, 7 Wall, 700; Hickman vs. Jones, 9 Id., 197.)

II. Said proceedings are a nullity for want of jurisdiction over Ketchum. (Shortridge v. Macon, 1 Abb. U. S., 36; Cuyler v. Ferrill, 1 Id., 169; The Protector, 9 Wal'., 687; Dean v. Nelson, 10 Id.,
1457 172; Railroad Co. v. Trimble, 10 Id., 367; United States v. Wiley, 11 Id., 508; Bigler v. Walker, 14 Id., 297; Lasere v. Rochereau, 17 Id., 437; Masterson v. Howard, 18 Id., 99; University v. Finch, 18 Id., 106; Taylor v. Thomas, 22 Id., 479.)

Jurisdiction can arise from two sources only: by the court taking actual custody of the property, or by serving the defendant with process in this case. The claim that a proceeding to remove a trustee is a proceeding in rem is untenable. (Miller v. Pridden, 1 De G., M. & G 335; Foster v. Goree, 4 Ala., 440; Railroad Co. v. Trimble, 10 Wall, 37

The proceeding in this case was in personam; service was theref a prerequisite to jurisdiction. (Evelyne v. Foster, 8 Vesey, j'r, 96; derson, ex part., 5 Id., 240; Cooper v. Reynolds, 10 Wall., 308; Holle worth v. Barbour, 4 Pet., 470; Harris v. Hardman, 14 How., 334.)

Two cases precisely like the one in hand have been adjudicated b the courts of Virginia and Maryland, and the power of the courts, under the circumstances of this case, to remove a trustee denied.
1458 (Washington, A. & G. Railroad Co. v. Alexander & Washington Railroad Co., 19 Gratt., 592; Johnson v. Robinson, 34 M'd, 165.)

Mess'rs Geo. N. Stewart, P. Hamilton, and John A. Campbell, contra.

M'r Stewart argued, that the proceedings of the chancery court, by which Ketchum was removed as trustee, were in strict accordance with the Alabama code; that the proceedings were in rem, and cited Wyman v. Campbell (6 Potter, 219).

As to the effect of decree in rem and acquiescences, Big. on Est., 156, 157, 158; 10 Pet., 474; Satcher v. Satcher's adm'r, 41 Ala., 26; Big. on Est., 511. The was suspended Ketchum's rights. (Griffin v. Ryland and Burns' ex'rs, 45 Ala., 688.)

M'r Hamilton claimed that the proceedings by which Ketchum was removed were not only according to the statute of Alabama, but also equity jurisprudence. Ketchum had actually and specifically abandoned his trust. He had done no act as trustee for ten years. A court of equity will not disturb the condition of things which has been
1459 acquiesced in for a period of years. (Big. on Est., 511; 4 Pet., 471; 10 Wall., 319; McQuiddy v. Ware, 20 Id., 14; Lill v. Neafie, 31 Ill., 101.)

M'r Cambell: The bill for the removal of Ketchum charged a violation of trust, neglect of duty, exorbitant demands for compensation, and inability to discharge his duties by reason of non-residence. As war was flagrant between the sections, he was described as an alien enemy. A decree pro confesso was taken against him, which, by the code of Alabama, was an admission of the allegations of the bill. Rev. Code, sec. 3, 391. The proceeding was authorized by the statute of Alabama, and the statute was strictly followed. A court of chancery, by its general authority over trusts, may remove a trustee for changing his residence to a foreign state, or permanently residing beyond the jurisdiction of the court. (2 Spen. Eq. Jur., 942; Uredale v. Ettrick, 2 Ch. C., 129.) In Rider v. Kidder (13 Ves., j'r, 123), the court, upon proof of absence of the trustee, ordered service to be made on the clerk of the court. In Attorney-General v. Mayor of London (3
1460 Browns, ch. 171), there was a trust for the advancement of Christianity in America and the conversion of infidels, which had been declared before the American Revolution. William and Mary College, in Virginia, and Harvard College, in Massachusetts, were the administrators of the trust. There was a suspension of payments to these corporations during the war, and at the end of the war the question arose whether they could be continued. The chancellor determined that a foreign corporation could not be retained.

The jurisdiction of State chancery courts is the same as the chancery courts of Great Britain. (Williamson v. Suydam, 6 Wall., 723, 733; Bowditch v. Banneloo, 1 Gray, 220; The People v. Norton, 5 Seld., 176; Lill v. Neafie, 31 Ill., 101.)

The effect of the war on the powers and decrees of the courts was not such as complainant claims. (The People v. Norton, 5 Seld., supra; Gaines v. Harvin, 19 Ala., 498; Suydam v. Williamson, 24 How., 427; Williamson v. Suydam, 6 Wall., supra; Horn v. Lockhart, 17 Id., 580.)

61 The decree removing Ketchum did not become absolute for eighteen months, and this period was extended till 1869 by acts assed in 1866, 1867, and 1868. During this period the decree was open for review on the application of Ketchum. A similar act was adopted after the great rebellion in Great Britain. (Sheffield v. Lord Castleton, 2 Vern., 392.) Such remedial acts have been sustained by the Supreme Court of the United States. (Jackson v. Lamphire, 3 Pet., 280; Wilkinson v. Leland, 10 Id., 294; Watson v. Mercer, 8 Pet., 88; Kearney v. Taylor, 15 How., 494; see also Blagg v. Miles, 1 Story, 426.)

There is no power to declare that the decrees of the court of chancery are void, when the decree is within the scope of its regular jurisdiction, and it has conformed in its proceedings to the law of the land. They cannot be collaterally impeached. (Gaines v. Harvin, 19 Ala., 491; Budd v. Hiler, 3 Dutch. (N. J.), 43; Green v. Borland, 4 Met., 330; People v. Norton, 5 Seld., supra.)

WOODS, circuit judge:

1462 Complainant's claim is, that he is still trustee, under the deed of trust, and in the Mobile chancery court, which took place during the war of the rebellion, and while he was a citizen of and actually residing in New York, were entirely ineffectual to remove him from his trusteeship, which was not only an office but an estate, and were absolutely null and void. That the court by the publication of a notice which could not lawfully reach him acquired no jurisdiction over his person, and that its proceedings and decree in the premises are absolutely without effect.

In the cases cited by counsel for complainant it was held that the decree of the court of a country engaged in war, by which the estate of a party was divested, who was prevented from appearing in the court by the fact that he was outside the military lines of the country in which the court was held, and was prohibited from entering those lines, was absolutely null and void.

1463 I think this case is clearly distinguishable from those cited by complainant. Ketchum was a naked trustee. He had no personal interest in the property conveyed to him by the trust-deed.

It was a property which according to the record cost $0,000,000, and the cestui que trust of this immense estate was scattered all over the United States and Europe. Ketchum's co-trustees were both dead, and the war which existed between the United States and the Confederate States rendered Ketchum as impotent to discharge the duties of the trust as if he also had been dead. The interest of the cestui que trust imperatively demanded the service of a trustee.

In this condition of things the settler of the trust, namely, the railroad company, applied to a court of competent jurisdiction, alleging neglect of duty on the part of the surviving trustee, and stating such facts regarding the trustee as showed that it was impossible for him to discharge the duties of his trust by reason of the war then raging.

1464 The filing and averments of this bill, and the subsequent proceedings and decree, were in strict conformity with the statute law of Alabama, which had been enacted and was in force when the trust-deed was executed.

It is true that the notice to Ketchum by publication was ineffectual t bring him into court, but does this fact render the proceedings and d cree of the chancery court absolutely void? The court was called on act in the conservation of an immense property lying within its jur diction, in which thousands of persons, among them aliens, married w men, infants, and trustees, were interested. The court acts to preser this property, and acts in strict conformity to the laws of the land which it sits. Can it be possible that the proceedings of the court ar absolutely void because service was not made upon a naked trustee, whom it was impossible to serve? Is the removal of a trustee incapable of acting and the appointment of another to act in behalf of such
1465 a trust one of the class of decrees declared by the authorities to be void because the removed trustee was beyond the military lines and could not be served?

In my judgment, the chancery court, under the circumstances of this case, had jurisdiction, and it would have been its duty, even in an ex parte proceeding, to appoint a trustee to administer this trust. The war might have lasted twenty years, during all which time it would have been impossible to serve the absent trustee. It seems to me to be a very unreasonable proposition that during all this time the court of chancery must see the trust estate perishing for want of a trustee, and refuse to act on the ground that a naked trustee, whom it was impossible to serve, had not been served with process. The proceedings were not absolutely void. It was at least effectual for the valid appointment of trustees to act during the disability of the original surviving trustee, even without notice to him. (McKeske vs. Brady, 1st Barb.
1466 Cha., 329. In re Mais, 12 Eng. L. & E., 306. Ex parte Hardeman, 3 M. D. & D., 559.)

This view is also supported by the language used by the Supreme Court of the United States in the case of Lockhart vs. Horn, 17 Wall., 580: "We admit," says the court, "that the acts of the several States in their individual capacities, and of their different departments of government, executive, judicial, and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the national authority or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding. The existence of a state of insurrection and war did not loosen the bonds of society or do away with civil government, or the regular administration of the laws. Order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, estates settled, and the
1467 transfer and descent of property regulated precisely as in time of peace. No one, that we are aware of, seriously questions the validity of judicial legislative acts in the insurrectionary States touching these and kindred subjects, when they were not hostile in their purpose or mode of enforcement to the authority of the national government and did not impair the rights of citizens under the Constitution."

If the decree of the Mobile chancery court was not absolutely void, it was the duty of Ketchum, as soon as peace was restored, to assert his right to the office of trustee. He says, by implication in his bill, that in 1865 he learned of the decree which purported to remove him and appoint other trustees in his stead. The laws of Alabama gave him until the 26th of June, 1869, to apply to the court to open its decree and allow him to make his defense to the bill. He never made such application. On the contrary, although important duties, such as making conveyances for lands sold, were imposed upon him by the

1468 deed of trust, although the same instrument required annual reports to be made by him to the railroad company, he never did any act of any kind under his trust, held no communication with the railroad company, its officers or agents, in reference thereto, and set up no claim to the office of trustee until the filing of his bill in this case in March, 1876.

In the mean time, the trustees appointed in his stead were active in the discharge of their duties, were making conveyances of vast quantities of the trust lands sold by the railroad company, and finally Walsh, the remaining trustee, concurred in the appointment of Duncan and Elliot, whose title to the office of trustees has been recognized by this court.

Clearly such a course of conduct on the part of Ketchum is an abandonment of any title he may have had to the office of trustee and acquiescence in the order of things established by the decree of the Mobile chancery court.

1469 "When there has been long acquiescence in an irregular appointment, the court will not remove." (Attorney-General vs. Cummings, 2 Young & Collyer Ch. Cas., 150.)

It is to be noticed that long acquiescence in a particular grievance, without effort to redress it, is generally held to be a complete bar to relief in equity, either by a receiver or an injunction.

And plaintiffs, who had quietly acquiesced in defendants' possession of property for a long period of years, without attempting to assert their rights to the property, and who then seek to change such possession by a receiver, will be denied the aid of a court. (High on Receivers, sec. 742.)

If Ketchum, at the close of the late war, had the right to disregard the proceedings of the Mobile chancery court by which he was removed and to resume his duties as trustee, he has clearly lost that right by neglect to do so and by long acquiescence in the existing order of things. (McQuiddy vs. Ware, 20 Wall., 19.)

The result of these views is that Ketchum is not a trustee in
1470 the deed of trust, as claimed by him in his bill. As all the relief asked by him is based on the claim that he is such trustee, his motion for the appointment of a receiver is without grounds to support it, and must be overruled.

1471 EXHIBIT F.

Opinion of Hon. John Bruce, judge.

In the circuit court of the United States, of the southern district of Alabama, in the fifth circuit. In equity.

MORRIS KETCHUM, AS SURVIVING TRUSTEE of the first mortgage of the Mobile and Ohio Railroad Company,
v.
THE MOBILE AND OHIO RAILROAD COMPANY, William Butler Duncan, and A. Foster Elliott.

This case was heard upon the plea in bar of the Mobile and Ohio Railroad Company, defendant, and upon the demurrer of William Butler Duncan, defendant, to the complainant's bill.

The facts, as they appear from the allegations of the bill and plea in bar, may be briefly stated as follows:

That complainant, Morris Ketchum, is a citizen of the State of Connecticut. That, on the first day of November, 1853, the Mobile and Ohio Railroad Company, a body corporate, organized under the laws of Alabama, and authorized by law to purchase, hold, and dispose of real and personal estate, to borrow money, and to give evidences of debt and securities for the payment of the same by pledge, mortgage, or otherwise, as it shall deem necessary and proper, executed its deed of trust
conveying to Morris Ketchum and John J. Palmer, then of New
1472 York, and William R. Hallett, then of Mobile, and to the survivors and successors of them, in fee simple, all its railroad property and franchises, in trust to secure six thousand bonds, each for the sum of two hundred and twenty-five pounds sterling, and payable in thirty years from date thereof, with coupons attached for interest, payable semi-annually. There was included in said conveyance one million one hundred and fifty-six thousand six hundred and fifty-eight and $\frac{92}{100}$ acres of land, and as provided in the deed of conveyance, complainant and said Palmer and Hallett are "to have and to hold the said granted and demised premises, property, and franchises, in trust nevertheless for the benefit, security, and advantage of the person or persons, or corporations, or any other party who might become holders of the bonds hereinbefore described, or any of them, issued, or to be issued, by said company, and for the payment of the interest-coupons thereon as the same shall respectively fall due."

That said Ketchum, Palmer, and Hallett accepted the trust and became the mortgagees of the said property in trust for the holders of the bonds above described; that the railroad company did afterwards sell and negotiate the bonds to bona fide holders thereof, the same being made negotiable by delivery; that most of them are now outstanding, and are valid claims against said company, and valid liens against and upon the property and income and assets of said company; that John J. Palmer and William R. Hallett, co-trustees with complainant, both died about January 1st, 1861, leaving complainant, Morris Ketchum, the sole surviving trustee of the first mortgage of the Mobile and Ohio Railroad.

Complainant alleges that he is informed that about the 5th day of December, 1861, and nearly nine months after the State of Alabama had adopted an ordinance of secession from the United States, and after the commencement of armed hostilities, the directors of the Mobile and Ohio Railroad Company applied to a court of chancery then sitting in the Confederate States, so-called, and within the territory of the State of Alabama, for an order declaring his removal from the trusteeship of the said mortgage.

1473 That he is informed that "on the 6th day of April, 1862, an order or decree was granted by said court to remove him from said trust on the sole ground that he was a citizen of New York and an alien enemy of the Confederate States."

He alleges that he never heard of or had any knowledge of the pretended proceedings to remove him until after the termination of armed hostilities between the Confederate States and State of Alabama and the United States in the year 1865; that he has from the time of his appointment as original trustee under said mortgage down to the present time continued to act as such trustee and perform the duties of said office and has acted with and concerted with his cestuis que trust during all of said time for the protection of the rights of the bondholders.

He alleges that he had no personal interest in the said bonds; that his sole object, purpose, and desire is to perform his duty as trustee toward the bondholders and to protect their interest and defend the trust; that he has been requested by a number of the holders of said bonds, owning bonds to a large aggregate amount, to institute these proceedings upon the default in the payment of interest, which default he alleges has been made.

He alleges that the Mobile and Ohio Railroad Company is largely indebted, embarrassed in its business affairs, utterly insolvent, and unable to pay its debts.

He says that he is totally remediless to enforce the said claims and liens at law without the intervention and process of a court of equity.

The prayer of his bill is, that the property conveyed in the deed of trust may be sold for the benefit of the bondholders; that a receiver be appointed to take charge of and administer the property until a sale can be made; and for general relief.

To this bill is interposed a plea in bar by the Mobile and Ohio Railroad Company, setting up the proceedings and decree of the court of chancery of the State of Alabama for the first district of the southern chancery division of Alabama, in the city of Mobile, in which the company was complainant and Morris Ketchum was made defendant, in
which bill it was charged "that said Ketchum had failed to
1474 perform his duties as trustee, as provided by said deed; that he
had been unfaithful in the performance of his duty as such trustee; that he was not trustworthy as such trustee, and was an unfit and improper person to hold said office; that he had fraudulently withheld the property of said company in his hands from their custody; that he resided beyond the limits of this State and in a territory at the time hostile to the State in which the property was, and that he could not execute and carry out the duties of said trust nor perform the duties required thereby."

"That said court did assume and exercise its jurisdiction, and did, by order, cause publication to be made according to the laws and practice of said State, requiring the said Morris Ketchum, as defendant to said bill, to appear in said court and to defend against the same; which publication was made, and the court did proceed to hear and determine the matter of the complaint; and, at the April term, 1863, it was ordered and decreed by the chancellor in said court of chancery at Mobile that said Morris Ketchum, defendant in said cause, should be, and he thereby was, removed from his said office as trustee, and by said decree a successor to Morris Ketchum was appointed, and who from that time did hold and execute the duties of said office of trustee as the successor and in lieu of said Morris Ketchum, until the time when the co-defendants of said company, William Butler Duncan and Andrew Foster Elliott, were appointed such trustees."

"That said decree is still of record in said court of full force and effect; that it has not in any manner been impaired, reviewed, reversed, or set aside; nor has any new trial or rehearing been applied for or had, as provided by the law of said court, nor any appeal; but the same has been fully executed by the removal of said Ketchum from said office and his discharge therefrom and his place supplied.

"And that he, the said Ketchum, well knowing that he has been discharged and removed, has, from the rendition thereof to the date of his filing said bill in this court, acquiesced in said decree, and has not during said time done or performed any of the acts or duties, or done anything whatever in the execution of said trust duties."

1475 The ground of the demurrer to the bill of complaint by William Butler Duncan is: That the bill shows that Ketchum had knowledge of his removal and the appointment of new trustees, and shows no compliance with the laws which gave the court jurisdiction to review, nor any attempt to have the decree re-opened within the time named by the several statutes on the subject.

Substantially the same questions are raised by the plea and demurrer, and they will be considered together.

George Hoadley, D. C. Labatt, and Edward L. Andrews, for complainant.

John A. Campbell, George N. Stewart, and Peter Hamilton, for defendants.

BRUCE, J.:

This statement of the issue made in the pleadings presents directly the question as to whether the decree of the court—which, for the sake of brevity, may be called the State chancery court at Mobile—is a bar to the relief sought in complainant's bill. In other words, did the proceedings and decree of the State chancery court at Mobile, in law, remove Morris Ketchum from his position as trustee in the deed of trust? This depends upon the question of the jurisdiction of that court to hear and determine the cause brought by the Mobile and Ohio Railroad Company, in 1863, against Morris Ketchum to remove him from his trusteeship in the deed of trust set out in the complainant's bill.

No question is made as to the general jurisdiction of the chancery courts of Alabama prior to the war of the late rebellion.

It may also be assumed that this jurisdiction continued during the existence of the State of Alabama as one of the so-called Confederate States of America; that is, so far as such jurisdiction, and the decrees of such courts, can be now recognized and held as valid by the courts of the United States, State and Federal.

1476 The Mobile and Ohio Railroad Company is a corporation, organized under the laws of Alabama, with its chief place of business in the city of Mobile, Alabama, and the portion of its property within the State of Alabama was within the territorial jurisdiction of the State chancery court at Mobile.

But, did the said chancery court have jurisdiction of the defendant, Morris Ketchum? for the legal principle is that there must not only be jurisdiction of the subject-matter, but of the parties as well. Notice and an opportunity to be heard are essential to the jurisdiction of a court to hear and determine a cause. A party defendant must have his day in court. It is a fundamental legal maxim that no one shall be condemned in his person or estate without an opportunity to be heard in his own defence. (Windsor v. McVeigh, opinion of U. S. Supreme Court, Albany Law Journal, January 6, 1877.)

It is not claimed that Morris Ketchum had actual notice of the proceedings in the chancery court at Mobile. But it is claimed that he had constructive notice; that he was at the time a non-resident of the State of Alabama, and that under section 3335 of the revised code of Alabama, which was the law of Alabama at the time of the suit, a publication was made in a newspaper printed in the city of Mobile.

It is not questioned that this publication of notice was made in accordance with the statute law of Alabama in force at the time, and that a proper return of such publication was made to the court.

The fact is, however, that Ketchum did not appear in said court to plead or answer to the bill filed against him, either in person or by attorney. He made default, and a decree pro confesso was taken against him, and, in due course, a final decree for his removal as trustee.

He says in his bill of complaint that he never heard or in any way had any knowledge of the said pretended proceeding to divest him of his property as trustee as aforesaid, until after the termination of armed hostilities between the so-called Confederate States and the State of Alabama and the United States, in the year 1865.

1477 Courts are bound judicially to know the public history of the country.

On the 11th day of January, 1861, the State of Alabama, in convention assembled, passed what is known as the ordinance of secession, purporting to dissolve her connection with the Federal Union as one of the States thereof.

Immediately thereafter a State government was organized in hostility to the Government of the United States, and declared itself to be a State of the so-called Government of the Confederate States of America, which was organized in all its departments, executive, legislative and judicial, with its seat of government in the city of Montgomery and State of Alabama.

On the 15th day of April, A. D. 1861, the President of the United States, by executive proclamation, recognized the existence of armed insurrection against the United States by Alabama and her confederate States.

At and before the time of these proceedings in the chancery court in the city of Mobile, war was flagrant between the two sections of the country. Ketchum was at that time a resident citizen of the State of New York. In actual fact, military lines were established, and organized armies lay between him and the place where the court was held in which he was cited to appear. Moreover he was, at the time, a citizen of the United States, and his duty of allegiance to his government made it unlawful for him to cross the military lines—even if that were possible—and to appear in a court organized by the government of the enemy and in a country at the time held by the enemy.

In July, 1861, Congress passed what is known as the non-intercourse acts, by which all intercourse and correspondence with persons within the enemy's lines was interdicted and made unlawful.

Under these circumstances, whatever jurisdiction might be accorded to a court of one of the Confederate States of America during the war of the rebellion—such as was this chancery court of Alabama sitting in
Mobile—as between citizens of Alabama, or as between citizens
1478 of the Confederate States, the proposition seems clear that such
a court could acquire no jurisdiction of citizens of the United States, residing, and being at the time, in the States adhering to the Government of the United States.

In Hanger vs. Abbott (6 Wall., 535) it is held by the Supreme Court, opinion by Justice Clifford, that "war when duly declared or recognized as such by the war-making power, imparts a prohibition to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemies' country." (Also, Cuyler vs. Ferrill, 1 Abbott, 180.)

These views are sustained in later cases in the Supreme Court of the United States. (Dean vs. Nelson, 10 Wall., 172; Lasere vs. Rochereau, 17 Wall., 437.)

The precise point seems to have been passed upon by Chief Justice Chase while on the circuit, in the case of Livingston vs. Jordan (10 Amer. Law Rep.), in which he says:

"As between parties residing in the State of South Carolina and parties residing in the States which adhered to the national government, between whom war made intercourse impossible, there could be no jurisdiction in the courts of South Carolina while the war continued, by which the rights of non-residents could be injuriously affected."

These authorities are irreconcilable with the idea that there was in the chancery court of Mobile at the time these proceedings were had, any jurisdiction as to Morris Ketchum which could authorize it to render a decree which can now be recognized as valid in the courts of the United States.

But it is said that the Mobile and Ohio Railroad is a corporation organized under the laws of Alabama, with its principal place of business in the city of Mobile, and that Morris Ketchum knew, when he accepted the trust, or will be held to have known, what the laws of Alabama at the time were, in reference to service upon non-residents by publication,
and that by section 3455 of the code of Alabama it is provided
1479 that "upon the petition or bill of any person interested in the
execution of a trust, the court of chancery may remove any trustee who may have violated or threatened to violate his trust, or who from any other cause is an unsuitable person to execute the trust."

No law of Alabama is shown making it illegal to settle a trust upon a non-resident of the State. From the mortgage deed it appears that Ketchum was, at the time the trust was created, a citizen of New York. He did not become a non-resident of Alabama, for, from aught that appears, he never at any time was a citizen or resident of Alabama. The deed was made to three persons, two of whom are described in it as residents of New York; and from this fact, taken in connection with the nature and purpose of the trust, it is fair to presume that their residence at the acknowledged money centre of the country was a part of the scheme intended by its authors as inducement to parties to become purchasers of the bonds.

But it was urged in argument that when a condition of affairs in the country arose, which, as is said, rendered the duties of the trust impossible of performance by him by reason of his separation from the property, he should have resigned his position. The fact is, however, he did not resign, and it is his legal rights we are now dealing with.

It is claimed that the suit in the chancery court of Mobile was a suit in rem and not in personam.

It is not clear that it was in any strict legal sense a proceeding in rem, but I do not deem it necessary to discuss this question, for if it was so, still the defendant was entitled to notice and an opportunity to be heard, which was, as we have seen, an impossibility in the then condition of the country, Ketchum then residing in the State of New York, one of the adhering States of the Federal Union, while Alabama had joined her fortunes to the Confederate States, and war was flagrant between the two sections of the country. (Earle vs. McVeigh, 1 Otto, p. 503.)

If this view is correct it is decisive of the case, for without jurisdiction of this sole defendant the court, though it may have been legally
constituted, could render no decree competent to divest Ketchum
1480 of the title to the property (real estate) which he acquired under
the deed of trust.

The next inquiry is as to the competency of this court, constituted as it was, to make a decree which can now be held conclusive as to the rights of complainant.

Before entering upon this question it is proper to inquire what this trust really was. A trust is defined to be an "estate held for the use of another." The deed shows the conveyance of the title in fee simple to the trustees, and it also contains specified duties to be performed by the trustees. It is then more than a mere office. It is an estate. It is more than a simple trust. It is a special trust, with active duties to be performed, and with powers in the nature of a trust.

It appears that Ketchum does not own any of the bonds, but it cannot be questioned that he, by the acceptance of the trust, became invested with an estate and held a position of responsibility to the bondholders, from which he could not release himself by a resignation or any voluntary act on his part; for after the purchase of the bonds, they, the bondholders, became parties in interest in the transaction. With this view of the nature of the trust and the relation of Ketchum to it as trustee, the question of the competency of the State chancery court of Alabama, sitting in Mobile during the war, to pass a decree to be taken and held as valid and conclusive as to the rights of the complainant herein, can be more clearly considered.

The question then is: What validity is now to be accorded to the acts, legislative and judicial, of the Confederate States during the period of their existence as States of the so-called Government of the Confederate States of America, and while the Confederate States were at war with the United States?

Before passing to the decisions of the Supreme Court of the United States upon this subject, I call attention to the law as it has been held and declared in this circuit.

In the case of Van Epps vs. Walsh et al., reported in 1st Woods, 609, the court, Woods circuit judge, says: "The decree of the chancery court of Mobile County, directing Dorgan and Walsh to enter satisfac-
1481 tion of the mortgage made to them by Van Epps, the guardian,
was also made coram non judice.

The main party in interest was the minor Van Epps, who was in the State of New York, and prohibited by the laws of the United States from making any defence.

"It is not pretended that any actual notice was served, or could be legally served upon him; and, even if served, he could make no defence, and the purpose of the decree against him was to deprive him of the security which the guardian had given him to protect his estate.

"It was a decree depriving him of his just rights, and in rendering it the court was no court, and the decree is ineffectual." Citing Cuyler v. Ferrill, and other authorities.

In the case of Lockhart v. Horn, in this circuit, reported in 1 Woods, 628, afterwards affirmed in the Supreme Court of the United States and reported in 17 Wallace, p. 570, Justice Bradley, speaking, as it seems to me, with much care, uses this language:

"As a general rule, in my judgment, all transactions, judgments and decrees, which took place in conformity with existing laws of the Confederate States, between citizens thereof, during the late war, except such as were directly in aid of the rebellion, ought to stand good."

From these authorities it appears that the law, as held in the fifth circuit up to this time, is, that judgments and decrees of the State courts of the Confederate States, rendered during the war, are to stand good as between citizens thereof; but as to citizens residing in the adhering States they are not valid, and the court, as to them, is no court.

I now pass to a review of the decisions of the Supreme Court of the United States, to see if these views, and authorities heretofore cited, are borne out by the decisions of that court, which is the ultimate judicial authority by which we are bound.

The question of validity of the acts, legislative and judicial, of what may be called the Confederate States during the war, is not a new question in that tribunal. There are many cases, and I have to extract from them the true rule of decision, and apply it to the case at bar.

1482 An early and a leading case, to which reference is often made, is the case of Texas v. White, reported in 7 Wallace, 733. In that case the court, by Chief Justice Chase delivering the opinion, says: "It is not necessary to attempt any exact definitions within which the acts of such a State government must be treated as valid or invalid. It may be said, perhaps, with sufficient accuracy, that acts necessary to peace and good order among citizens, such, for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful, government, and that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must in general be regarded as void."

In some of the latter cases decided by the Supreme Court, the rule is stated with more brevity and exactness, but they are all on a line with the case of Texas v. White.

The leading authorities are: Texas v. White (7 Wallace); Lockhart v. Horn (17 Wallace, 57); University v. Finch (18 Wallace, 107); Sprott v. United States (20 Wallace, 459); United States v. Insurance Companies (22 Wall., 99).

The latest case brought to my notice upon this subject is the case of Taylor v. Thomas, reported in 22 Wallace, 491. After a review of some of the former decisions on the subject, the court, speaking by Justice Clifford, quotes from the case of Horn v. Lockhart, in which case Justice Field, delivering the opinion of the court, said: "Order was to be preserved, police regulations maintained, crime prosecuted, property protected, cont acts enforced, marriages celebrated, estates settled, and descent of property regulated precisely as in times of peace. No one that we are aware of," say the court, "seriously questions the
1483 validity of judicial or legislative acts in the insurrectionary States, touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the national government, and did not impair the rights of citizens under the Constitution."

In the case of the United States v. insurance companies, cited by defendants' counsel, the same doctrine, substantially, is laid down.

The case was that of two insurance companies, corporations created by the legislature of Georgia in 1861 and 1863, while the State was in armed rebellion against the United States, and the errors assigned were—

1st. In holding that claimants had a legal existence.

2nd. In holding that the rebel legislature of Georgia could create a corporation capable of suing the United States after the suppression of the rebellion.

In the opinion of the court, delivered by Justice Strong, after quoting from the former decisions of the court on the subject, he states the rule thus: "All the enactments of the de facto legislatures in the insurrectionary States, during the war, which were not hostile to the Union or to the authority of the general government, and which were not in conflict with the Constitution of the United States, or of the States, have the same validity as if they had been enactments of legitimate legislatures." He proceeds, "Any other doctrine would work great and unnecessary hardship upon the people of those States without any corresponding benefit to the citizens of other States, and without any advantage to the national government."

This case illustrate the rule clearly, and shows the principle upon which it rests.

The incorporation of insurance companies had no element of hostile legislation. They could not, in carrying out the legitimate purposes of their organization, give aid to the rebellion, or affect the rights of citizens of the United States. Their incorporation pertained purely to the domestic affairs of the State, and was just such legislation as would have been called for in times of peace.

1484 The Confederate State governments were, during the war, charged with the duty of protecting civil society within their respective States. This was to be done, not by the suspension of the functions of the legislative and judicial departments of these governments, but by their continued exercise. Law was to be administered, social order preserved; and this could only be done by the activity of the agencies provided for that purpose.

The proposition then is, that the acts, legislative and judicial, of these de facto State governments during the war, within certain limits, are to have the some validity as if proceeding from State governments de jure. And this rule rests upon public policy and is to have its full scope and effect, but the limitations are to be steadily kept in view.

Though these limitations may not be capable of expression in precise language applicable to every case, they may be thus stated:

First. That the acts were not in aid of the rebellion, or hostile in their purpose or mode of enforcement to the national authority.

Second. That they did not injuriously affect or impair the legal rights of citizens of the United States residing at the time in the adhering States of the Union.

Tested by this rule, with these limitations in view, what shall we say of the decree of the State chancery court at Mobile, rendered in 1863, removing Ketchum from his trusteeship in this deed of trust.

There may be some difficulty in applying the first of the rules above laid down because the purpose or motive for action may not be apparent, and the rule is perhaps to be limited to cases where hostility is apparent.

A railroad is a very important agency in carrying on military operations, and it is a matter of history that this particular road was of great service to both parties during the late war, but it does not clearly appear that the removal of Ketchum was intended as a war measure in aid of
the rebellion, or that in its effect it made the Southern portion of
1485 the road any more valuable to the Confederacy, or the Northern
portion of it any less valuable to the Government of the United
States in the actual prosecution of the war then going on.

The chancery court, however, seems to have based its decree on the ground that Ketchum was an alien enemy of the Confederate States, which implies a purpose to place this trust in the control of some one at least not an enemy to the Confederate States, and when Ketchum's residence in one of the adhering States of the Union is considered, the presumption arises that some benefit to the Confederate States, present or prospective, was sought by the change, though that presumption, perhaps, may not be conclusive.

It is suggested that it was sought to divest Ketchum of the lands in order that sales might be effected for Confederate money, but that also rests upon inference and is not conclusive.

But the question recurs, was this decree of the State chancery court at Mobile, in its effect if accorded validity, an impairment of the rights held by Ketchum, "a citizen of the United States, under the Constitution?" to use the language employed by the Supreme Court in case of Taylor vs. Thomas, 22 Wallace.

I do not understand the phrase "rights of citizens under the Constitution" to mean exclusively Federal rights as such, but legal rights—just rights—rights for the infraction of which the law furnishes remedies. And it is such rights of citizens of the United States which it was not competent for this court to impair or injuriously affect.

The argument seems to be that the judgments and decrees of the State courts of the Confederate States during the war are to be held and regarded as of the same validity as the judgments and decrees of the courts of the States adhering to the Federal Union, and when regularly rendered cannot be attacked collaterally, but only in a direct proceeding.

The cases cited do not, in my judgment, sustain that doctrine, and some of the opinions of the Supreme Court of the United States
1486 express dissent from such a view; the predicate for such a doctrine was destroyed when the Confederate power and government was overthrown.

But it is claimed that this decree has been ratified and validated by the action of the State conventions of the State of Alabama, held after the war, to restore the State to its proper relations to the Union, and that this deed of trust was made with reference to the laws of Alabama and is to be governed by those laws alone.

If I am right in my conclusion that this decree was void as to the rights of Ketchum, as trustee in this trust, it follows that it could not acquire validity from such acts, as it was incapable of legal life. But this scheme for raising money upon bonds secured by deed of trust upon the property of the railroad company, located (in part) in Alabama, with its principal place of business in the city of Mobile, looked for its execution and accomplishment beyond the limits of the State of Alabama.

It was not expected to raise six millions of money in this State, and the form of the bonds and coupons, as negotiable securities, payable to bearer, for so many pounds sterling, at the banking house of George Peabody & Co., London, shows the purpose to have been to reach the money centres of the world. When the bonds were sold the purchasers acquired an interest in this security, and the transaction became a contract between the parties. The bondholders have never been parties to any judicial proceedings for, or given consent to, the removal of Ketchum as trustee. To remove the trustee and substitute another in his place in any other way than by a proper judicial proceeding, was to change and impair the obligation of the contract. This the State of Alabama, neither by its constitutional conventions nor by its legislature, had any power to do. Hence, it could not ratify and make valid that which was beyond its power to do in the first instance. Knapp v. Railroad Company, 20 Wallace.

It is further claimed that, after the war, when the proceedings of the chancery court at Mobile were brought to the knowledge of
1487 Ketchum, he should have availed himself of the time that was given by the constitutional conventions of Alabama to apply for

a rehearing of this decree, or have taken an appeal from it, time having been given for these purposes.

If I am correct in my conclusion that this decree was void as to him, then he was under no obligation to pay any regard to it. The effect of an application on his part, after the war, to open the decree or to take an appeal—time for which was amply extended by the law-making power of the State—it is not important to discuss, for the fact is, he did not make any such application. The doctrine of estoppel is also invoked as to the complainant. He admits that he acquired knowledge of the proceedings and decree in the State chancery court at Mobile in the year 1865, after the close of the war. It is claimed that from that time to the time of the filing of this bill (1876), he has taken no steps to assert his rights as trustee, and has thereby acquiesced in what has been done, and is estopped from asserting any right as trustee in the deed of trust.

It is to be observed that by the terms of the deed of trust, after specifying the duties of the trustees as to the lands covered by the deed, it goes on to say: "As to other items of assets of real estate, tolls, or income of said company, they are to remain in the possession or under the control of the said company, except the said company become in default for the payment of said bonds or interest, or any portion thereof. In such case the said party of the second part is hereby vested with full authority to take possession and control of all and singular the entire estate," &c., &c. And again, "Said party of the second part shall not claim to take possession and control unless said company remains in default of payment of said bonds or interest for the space of three months after being due and payable."

This default in the payment of interest occurred in May, 1875, so that up to that time, by the terms of the deed, the railroad company was entitled to the possession and control of the property, except the lands, and as to them, until the default, no sales could be made "without the advice and consent of the company."

1488 The trustees were at once, however, to have possession and control of the lands donated by Congress, with authority to devise and determine rules of management of sale, of investing the nett proceeds in such funds as will suitably and safely create a sinking fund for the redemption or payment of said bonds, &c., &c. This suit was brought in May, 1876, so that, as to property other than the lands, Ketchum's duties arose in fact only a few months prior to the bringing of this suit.

But with regard to the land grant the matter is quite different, for, by the terms of the deed, the trustees had duties to perform as to the sale of the lands, with a view to the creation of a sinking fund with the proceeds thereof.

This indicates a neglect of duty on the part of Ketchum, and might afford good cause, in a court of competent jurisdiction, in a proper proceeding and upon proof, to depose him from his trust, but that is all. A mere neglect of duty as trustee will not, and cannot, ex proprio vijore, divest his title to the trust estate.

This is not a plea of the statute of limitations. It is acquiescence since the year 1865. Acquiescence implies something to be acquiesced in, and the plea is that "he acquiesced in the decree"—meaning the decree of the State chancery court at Mobile.

The rule of law upon this subject is thus stated by the supreme court of the State of Alabama in the case of Ware et al. vs. Cowles, reported in 24 Ala., p. 446. Goldthwaite, J., delivering the opinion, says: "The first question presented upon the record is, whether upon the case made by the bill Cowles was estopped from asserting his title against Seales and Jones.

"It is clear, both upon principle and authority, that the conduct or admission which concludes a party must be plainly inconsistent with the right which he afterwards sets up." Again: If the act or admission be susceptible of two constructions, one of which is consistent with the right, the party would not be concluded by its assertion, because to do so might operate to defeat a man's right by argument or inference, which is not allowable.

1489 Again the court says, "So, too, the admission, however unequivocal it may be, will not operate as an estoppel unless the other party has acted upon it," citing authorities.

Now apply this rule:

Did Charles Walsh, when he became a trustee under the appointment of the court, act upon any conduct or admission of Morris Ketchum? Was not the decree of the court the acknowledged foundation and source of whatever rights he acquired?

The plea says that "by said decree," meaning the decree of the chancery court of Mobile, "a successor to Ketchum was appointed, and who from that time did hold and execute the duties of said office as successor in lieu of and stead of said Ketchum until the time when the co-defendants of this company, William Butler Duncan and Andrew Foster Elliott, were appointed such trustees." Manifestly, then, the decree was the basis and source of the alleged rights of the present trustees, not any acts or admission of Ketchum, for he was then living in the State of New York, and without the opportunity or right of intercourse with the parties.

The most that could be said is, that the silence of Ketchum may have increased the confidence of the trustees in their position, but that mere silence under such circumstances could operate to divest the title to a trust estate, is, to my mind, untenable. The result of these views is that the plea in bar and the demurrer are overruled.

1490

EXHIBIT G.

MOBILE, *March 5th*, 1875.

GEORGE A. STEWART,
General Solicitor M. & O. R. R. Co:

DEAR SIR: In reply to your request that I shall execute a power of attorney jointly with the two other trustees of the mortgage made by the Mobile & Ohio R. R. Co. on the first of November, 1853, to an agent or agents in New York, to enable the company to do what may be there needed in respect to the management of the interests of the company, and also for the prosecution and defence of such proceedings as may arise in the court there, to execute bonds when necessary to protect the property of the trust, &c., I have to say that I have fully considered of the subject, and I have come to the conclusion that neither the interests of the company nor mine would be benefited by my so doing.

I suppose it is probable that under the present difficulties of this road, as well as of all other roads at this time, that intricate litigations will arise, and when commenced I cannot foresee how long it will
1491 be before they can be closed. I am not myself in a situation to attend personally, at New York or elsewhere, to the complicated questions which may arise in adjusting the rights of all the conflicting trusts; and, to tell the truth, I do not feel willing to empower others to act for me in such matters on my responsibility.

I prefer to resign the position of trustee, so that trustees in New York, on the spot, may be appointed who can act promptly and furnish such affidavits and bonds as may be needed in judicial proceedings, which I am not in a condition to do. I have reason to believe that my course would not be considered injurious to the parties interested. As the matter now stands, the trustees are scattered, never can act together, and their action cannot be very prompt or effectual. At all events, I prefer to tender my resignation as a trustee, which I will thank you to forward to the president of the company.

I regret to have to take this course, but believe it best for all parties under present circumstances.

Your obedient servant,
(Signed) **CHA'S WALSH.**

1492 **JACKSON, TENN.**, *March 9th*, 1875.

M'r **GEORGE N. STEWART**,
General Solicitor M. & O. R. R. Co.:

DEAR SIR: Having carefully considered the foregoing communication of M'r Charles Walsh, and coinciding with his views, I hereby join in requesting that you will forward my tender of resignation as trustee to the president of the company, coupled with the request that, in accepting my resignation, all proper proceedings may be had necessary to exempt and relieve me from future responsibility as trustee.

Respectfully yours,
(Signed) **ALEX. JACKSON.**

Witnesses present—
GEORGE N. STEWART.
HOWELL E. JACKSON.

WAVERLY, MISS., *March 10th*, 1876.

To **GEORGE N. STEWART**,
General Solicitor of the Mobile & Ohio R. R. Co.:

1493 **DEAR SIR:** On consideration of the view expressed by M'r Charles Walsh, and concurred in by D'r Alexander Jackson, as within stated, I have to say that I fully concur with them in the opinion that it would be better for the interests of the company, its bondholders, and of my own, that I should also resign the position of trustee of the deed of trust within referred to, and I therefore request that you tender my resignation as such trustee to the president of the company; and I also make the request, as made by D'r Alexander Jackson, that such proceedings be had that I shall be relieved from all future responsibility on account of said trusts.

(Signed) **GEO. H. YOUNG.**

MOBILE, *March 12th*, 1875.

GEORGE N. STEWART,
General Solicitor Mobile & Ohio R. R. Co.:

DEAR SIR: When I addressed to you my request that you should tender my resignation as trustee under the deed of mortgage and 1494 trust made by the Mobile & Ohio Railroad Company on the 23d of November, 1853, I did so with the great desire to be relieved for the future from the duties and responsibilities of said trust; such is now still my earnest wish, but it was under the full belief that it would cause no injury or inconvenience to the company, but rather advance its interests.

I have now, however, been shown that the two other trustees having also resigned, the result is that the mortgage is left without any trustee to represent the interests of the beneficiaries, and that the trust, for want of a trustee, cannot be made effectual without application to a court of chancery, which would require much time, and the duty has been pressed on me that at least one trustee should remain, in order that the succession of trustees may be maintained; under this pressure on me, in view of the consequences, and upon urgent solicitations of friends, I have been induced to say to you, as my determination to resign has not yet been presented by you for acceptance by the 1495 railroad company, that you will withhold it and consider it revoked until further instructions from me.

This course seems now a duty on my part under the circumstances, although I had hoped to be relieved from the trust, and such is still my desire to effectuate so soon as future events will permit.

Please consider my instructions to you in this respect as revoked and annulled.

Your ob't servant,
(Signed) CHA'S WALSH.

MOBILE, *April* 20, 1875.

J. J. WALKER, Esq.,
Vice-President of the Mobile & Ohio R. R. Co.:

SIR: I have heretofore, in a letter to Geo. N. Stewart, esq., expressed my desire to resign my position of trustee under the deed of mortgage and trust executed by the Mobile & Ohio Railroad Company, dated November 1st, 1853, known as the first mortgage of said company, 1496 but at your suggestion the said resignation has not been presented. I have, since that time, at the request of the company and in accordance with what seems to be my duty under said deed, united with the company in the appointment of trustees in place of Mess'rs Young and Jackson, trustees, whose resignation as trustees under the same deed have been accepted.

I now renew my intention of resignation, and request that I may be immediately relieved of all further duty and responsibility in the trusteeship by the acceptance of this my resignation, and that proper resolutions be adopted by the company for my security and protection.

Your ob't servant,
(Signed) CHA'S WALSH.

Filed April 2nd, 1877.

N. W. TRIMBLE, *Clerk.*

1497 *Petition for commission to examine plaintiffs.*

Circuit court of the United States, southern district of the State of Alabama, at Mobile.

DORETH ZIEGLER, BERNARD DE WATTERVILLE, Henry Jump, Masson Chavanas,
vs.
MOBILE & OHIO RAILROAD COMPANY, W'M Butler Duncan, W. D. Dunn, A. Foster Elliot, et als.
} No. 102.

To the honorable the judge of the circuit court of the United States, 5 circuit and district aforesaid:

The Mobile & Ohio Railroad Company, a defendant in this case, respectfully represents that a motion has been made on behalf of the plaintiffs for the appointment of a receiver of all the property of the said company embraced in a first mortgage executed by the company the first of November, 1853. These plaintiffs describe themselves as aliens residing on the continent of Europe, and as represented in this country by D. C. Moran, Amedee Moran, and Charles Moran, in the State of New York.

Also, notice of a motion for a receiver and injunction; and the order specifies that an order has been made by the district judge of
1498 said court, of the date of the 13th April instant, at Huntsville, in the State of Alabama, fixing the second day of May next, at Mobile, for a hearing of the motion.

Your petitioners respectfully ask that they be allowed to have a commission from the said court for the examination of the plaintiffs in the said bill, and of the said Charles Moran, D. C. Moran, Amedee Moran, and such other witnesses as may be proper, in order to make preparation for the said motion, the said witnesses being material.

(Signed) J. A. CAMPBELL,
Sol. for Def't.

Personally appeared before me, I. G. Eustis, a commissioner of the circuit court of the United States, district of Louisiana, A. Foster Elliot, who, being duly sworn, deposes and says that he is one of the parties to the foregoing petition, and that the same is true to his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he is so informed, and believes them to be true.

(Signed) AND. FOSTER ELLIOT.

1499 Subscribed & sworn to before me on this 18th day of April, A. D. 1877.

(Signed) J. G. EUSTIS,
U. S. Commissioner for the Dist. of La.

Order on petition.

The clerk of the circuit court at Mobile will issue commissions according to the rules on application of the defendants or any of them for the examination of such witnesses as they may propose, to be examined viva voce, the plaintiffs or their agent or attorney to have notice one day of the time and place for examination.

(Signed) W. B. WOODS, *Judge.*

Filed April 23rd, 1877.

(Signed) N. W. TRIMBLE, *Clerk.*

1500 *Depositions of Charles Moran et als.*

United States circuit court for the southern district of Alabama.

D'ORELLI ZIEGLER ET AL.
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

Depositions of witnesses examined on the part of the defendants before me, Joseph Gutman, j'r, U. S. commissioner, under and pursuant to a commission issued out of the above-entitled court in the above-entitled cause, on the twenty-third day of April, 1877.

APRIL 27, 1877.

Present, M'r Blandy, for plaintiff; M'r Bangs, for defendants.

CHARLES MORAN, called and sworn on behalf of the defendants, and examined by M'r Bangs, deposes and says as follows:

Q. 1. Be so good as to state your residence, your business, your firm-name, and your place of business, and the members of your firm.

A. I am banker; I reside at 12 East Fifty-third street; of the firm of Moran Brothers, consisting of myself and my two sons, Daniel C. and Amidee D. Moran.

Q. 2. Have you with you any of the papers which you were required to produce at this examination?

A. I have brought with me the correspondence and instructions.

Q. 3. Will you please produce them?

A. I will, sir. (Papers produced by witness.)

Q. 4. Allow me to see them.

A. Will you not allow me to retain them?

Q. 5. Undoubtedly they will be returned.

A. They are private letters.

Q. 6. Don't you wish to produce the letters?

A. I do not wish to produce them, they are private letters.

Q. 7. Have you anything under the seal of Rudolph Merian?

(Objected to on the ground that the witness has been called to produce the papers, and upon its production the paper will speak for itself.)

Q. 8. I now ask you if you will produce the papers called for in the subpœna, and place them in my hands?

A. I decline.

Q. 9. Have you anything under the seal of Rudolph Merian?

(Objected to for the reason that the witness is the witness of the defendant, and there is a remedy open to the defendant against this witness if he declines to produce papers that are called for.)

A. I decline to state, for the reason that the paper can be produced and would speak for itself—will show whether it is under seal.

Q. 10. Have you anything over the signature of Rudolph Merian?

A. I have, but not with me.

Q. 11. Have you anything under the seal or over the signature of Alfred Renevier?

A. I have over the signature, I think; but I have not brought those; I have brought only the letters of four correspondents, which I thought were the plaintiffs indicated in that Ziegler bill.

Q. 12. Don't you know the plaintiffs in this bill?

A. There are many plaintiffs.

Q. 13. Do you mean to say Rudolph Merian is not a plaintiff in this bill?

A. Not in the one I have seen.

Q. 14. Are you sure of that?

A. I have executed several documents, and it may not be the one this refers to.

Q. 15. Will you state that, according to your understanding of it, Rudolph Merian is a plaintiff in this suit?

A. I suppose he is not.

Q. 16. But you are not confident?

A. I am not; I brought such correspondence as I supposed
1501 was from those to be named in the Ziegler bill.

Q. 17. Were you not subpœnaed to produce all letters of instruction or powers of attorney from the plaintiffs in this action?

A. I do not know.

Q. 18. Then produce the subpœna.

(Subpœna produced.)

Q. 19. Upon production of the subpœna it appears that you were required to produce all powers or letters of attorney, or letters of instruction or correspondence, or bonds or coupons received by you from or held by you for any or either of the plaintiffs. Why under that subpœna did you not produce your powers of attorney and letters of instruction from Rudolph Merian, Alfred Renevier, Eugene Renevier, and Masson Chavannes?

A. There is some misunderstanding on my part.

Q. 20. Did you not know that they were plaintiffs in this suit?

A. Not in this suit.

Q. 21. Then which of the plaintiffs has furnished you with the papers which you have?

A. I have got with me the documents which I thought were demanded; have got the authority of Bernard.

(Counsel interrupting.)

Q. 22. I do not wish you to state what you have with you, when you refuse to produce them. Why didn't you produce the papers which were sent to you or placed in your hands by the plaintiffs named in the Ziegler bill?

A. I did not suppose those were the ones you wanted. I can produce them to-morrow morning.

Q. 23. You can produce them?

A. Certainly.

Q. 24. You can produce what papers you have from Rudolph Merian or Alfred Renevier?

A. Yes, whatever I have. I am under a misapprehension. I have read a copy of the bill of Ziegler, and in that there are only four names.

Q. 25. Are you sure of that?

A. I am not sure of anything. I am not sure of having read the right bill.

Q. 26. When did you read the bill which you say you have read?

A. This morning.

Q. 27. Where was it?

A. It was in the counsel's office.

Q. 28. Was it the original bill?

A. No; it was a copy.

Q. 29. Did it purport to contain a copy of the affidavit sworn to by you?

A. Yes.

Q. 30. Did you ever swear to such an affidavit?

A. Yes; I know I did.

Q. 31. Do you remember before what commissioner?

A. I have sworn to so many I wouldn't be positive.

Q. 32. Do you remember before what commissioner that particular affidavit was taken?

A. No, sir.

Q. 33. Did you subscribe the affidavit?

A. I did.

Q. 34. Was it not on a separate sheet of paper at the time you subscribed?

A. How on a separate sheet? It was either that or a part or parcel of the whole bill.

Q. 35. Did you read the paper to which it was attached?

A. I did.

Q. 36. And yet, after having read that paper, you declare that the persons I have named were not plaintiffs?

A. I did not declare they were not plaintiffs; I declared on the bill I read they were not.

Q. 37. Then if a bill of complaint has been filed in Mobile, in which those parties are united with Ziegler as plaintiffs, and that bill purported to have been signed and sworn to by you, as their attorney in fact, the truth is, you never signed or swore to such a bill?

A. That is your assertion.

Q. 38. I ask you that.

A. I never signed a bill without first reading it.

Q. 29. If any paper has been filed in Mobile, containing the names of the parties whom I have referred to, their names were not mentioned in the paper at the time you signed it?

A. No, sir; I don't say that at all; I said I have signed several papers, and there might have been changes made; I am not certain; I was shown what I supposed was the one you wanted; if I had known it, it would have been just as easy for me to bring the papers; only tell me what it is.

Q. 40. Be so good as to tell me why it is that you cannot remember who are the plaintiffs in this suit sufficiently to obey a subpœna served upon you?

A. If I have not given sufficient explanation, it is not within my power to give more.

Q. 41. Do you know the firm of Pestalozzi au Thalhof?

A. Yes, sir.

Q. 42. Where does the firm exist?

A. At Zurich, in Switzerland.

Q. 43. Of whom does it consist?

A. M'r D'Orelli Ziegler.

Q. 44. Are you personally acquainted with him?

A. I have been personally acquainted with him for many years.

Q. 45. D'Orelli Ziegler is his name?

A. D'Orelli Ziegler is his name.

Q. 46. Have you the signature of that firm with you?

A. I have not; I have of Pestalozzi au Thaloff.

Q. 47. Have you the signature of that firm with you?

A. Yes, sir.

Q. 48. Have you the signature of D'Orelli Ziegler with you?

A. No.

Q. 49. Have you the signature on your premises, or under your control?

A. Yes, sir.

Q. 50. Subscribed to a power of attorney?

A. No, sir.

Q. 51. Subscribed to letters?

Yes, sir.

Q. 52. Have you the signature of Pestalozzi au Thalhof subscribed to a power of attorney?

A. No, sir.

Q. 53. Subscribed only to letters?

A. Yes, sir.

Q. 54. Do you think you would know their signature if you saw it?

A. Yes, sir.

Q. 55. Is that their signature?

(Paper produced and shown by counsel to witness.)

A. Yes, sir.

1503 Q. 56. I ask you now to produce whatever authority you have to make them plaintiffs in the lawsuit.

(Paper produced by witness.)

Q. 57. This paper you produce, is it under seal?

A. No, sir.

Q. 58. When is it dated?

A. The eighth of March, 1877.

Q. 59. In what language is it?

A. French.

Q. 60. Will you permit the examiner to take a copy of it and attach it to your deposition?

A. All the parts that relate to the present interrogatories.

Q. 61. Will you permit him to select the parts that, in his opinion, relate to the subject?

A. I submit to my counsel whether I must show the letters.

Q. 62. What does your counsel say?

By Mr. Blandy: I advise you that you are bound only to show so much as relates to the subject-matter; and that portion I advise you to give the translation of.

A. I have brought translations of those parts which relate to the matters, or will give a verbatim copy of the matter to-morrow.

Q. 63. I desire that you give a verbatim copy of the parts that relate to the subject, and that you will not give a translation.

(Translation produced by witness, as follows:)

8TH MARCH, 1877.

You will find annexed an extract of a publication by the committee of a few holders of the Mobile & Ohio bonds, which has appeared in all the public papers, and which Mess'rs Lombard, Odier & Co., of Geneva, have reproduced translated into French. You will know better than I, if that committee have the right to speak so arbitrarily in favor of their own interests at the expense of the interests of those who refuse to submit to their wishes. If I have properly comprehended the opinion emitted by Judge Bruce, we are not yet reduced to the alternative of accepting the conditions of the committee of the Tennessee bonds, or be exposed to lose our capital through our non-acceptance. However, I can only beg you to act in regard to my bonds as you do with those that belong to you.

Q. 64. What are the bonds to which he refers in that letter?

A. The first-mortgage sterling bonds.

Q. 65. Have you brought a suit as the owner of your bonds?

A. I have brought a suit as the holder.

Q. 66. Where have you brought a suit?

A. I tried to interplead in something.

Q. 67. Where have you brought a suit?

A. I suppose there is a suit brought in our name in the court at Mobile.

Q. 68. In the name of Moran?

A. Moran Brothers—I am not sure; I think so.

1504 Q. 69. Will you swear that you have brought a suit in Mobile?

A. I am not certain at all; I have not drawn the papers intended for the suit.

Q. 70. When your authority was limited to acting for Pestalozzi, as you would do for yourself, why have you brought a suit in Mobile for him without bringing one for yourself?

(Objected to as incompetent, for the further reason that the witness is a witness for the defendant, and he is proceeding to cross-examine his own witness, and as immaterial.)

A. I say that I don't know; I am not sure a suit was brought in my name. I instructed my counsel to bring one; whether he has or not I am not certain.

Q. 71. This paper says: "I can only beg you to act in regard to my bonds as you do in regard to those that belong to you." Before bringing the suit in the name of Ziegler or Pestalozzi au Thalhof, whichever it was, or simultaneously with bringing that suit, did you bring a suit in your own name in the United States circuit court in Alabama?

(Objected to as immaterial.)

A. I reply as I did before; I signed a paper with a view to it.

Q. 72. Do you mean you do not know whether you have brought a suit in Mobile or not?

A. If you can only tell me how I can answer more explicitly, I will answer. It may be I have not. I won't say I have or have not.

Q. 73. If you have, who have you employed?

A. M'r E. L. Andrews.

Q. 74. Have you not employed M'r Grandin?

A. No.

Q. 75. Then, if you have employed M'r Andrews to bring a suit in your name, how do you account for it that you have instituted a suit through M'r Grandin, and not M'r Andrews, when your instructions were to act for Ziegler as for yourself; in other words, why have you employed one counsel for yourself and another counsel for Ziegler?

(Objected to as immaterial.)

A. My whole relation to these gentlemen is such that whatever I am willing to do for myself, I do for them without hesitation.

Q. 76. Do you mean to say that you have absolute authority?

A. Absolute authority. I sell the securities without any authority on their part.

Q. 77. Do you mean to say that you have absolute authority to do what you please with D'Orelli Ziegler's bonds?

A. Yes, sir.

Q. 78. Where is that authority; you were subpœnaed to produce it?

A. It is a thing ten or fifteen years ago.

Q. 79. Is it *it* in writing?

A. Writing and conversation. I have long known him personally.

Q. 80. Have you any power of attorney under which you exercised that authority?

1505 A. No, sir; but he put the securities in my hands for full control.

Q. 81. Is that understanding expressed in writing?

A. I probably have it in very old letters.

Q. 82. Here is a letter of the eighth of March; he says he begs you to act with his bonds as you do with your own.

A. Yes.

Q. 83. You have acted with his bonds by asking M'r Grandin to bring a suit?

A. I understand by that to do anything for his interest.

Q. 84. I asked you whether you had employed M'r Grandin to bring a suit in his name?

A. I never employed M'r Grandin.

Q. 85. Have you employed M'r Grandin to bring a suit in your name?

A. No, sir.

Q. 86. Haven't you brought suit in Tennessee?

A. Not through M'r Grandin.

Q. 87. In any way?

A. In no way that I am aware of; M'r Andrews may have engaged him as associate counsel; I act entirely through M'r Andrews.

Q. 88. Have you brought a suit in Tennessee?

A. Unless I have acted through M'r Andrews.

Q. 89. Haven't you brought a suit in Tennessee?

A. If you will let me have access to the records of the court, I can tell.

Q. 90. Can't you tell without access to the records of the court?

A. I executed papers to bring a suit there.

Q. 91. You don't know whether there has been a suit brought there?

A. I don't know; there are forms and processes of the courts.

Q. 92. What papers did you prepare to bring a suit in Tennessee?

A. A bill.

Q. 93. Haven't you brought a suit in Kentucky?

A. Yes, sir.

Q. 94. Through what counsel?

A. M'r Andrews.

Q. 95. You swore to a bill for that purpose?

A. Yes, sir.

Q. 96. And you have brought a suit in Mississippi?

A. Yes, sir.

Q. 97. Through M'r Andrews?

A. I have sent bills to do so.

Q. 98. In Mississippi?

A. I believe so; I executed papers with a view to it; but the actual standing of the legal proceedings, I don't know.

Q 99. Then your present recollection is, that you have brought a suit in Kentucky and Tennessee and Mississippi, and in Mobile, through M'r Andrews?

A. Yes.

Q. 100. Have you brought four such suits in the behalf of Ziegler?

A. No; I think not.

Q. 101. Why don't you, when his instructions were to act in regard to his bonds as you did with those that belonged to yourself?

A. I was not advised by counsel that it was necessary.

Q. 102. Who do you mean by counsel?

A. M'r Andrews.

Q. 103. How long have you known M'r Andrews?

A. About six months.

Q. 104. Were you introduced to him by Morris Ketchum?

A. I went to him myself, directly.

1506 Q. 105. How long ago did you bring your suit in Mississippi?

A. My counsel can remember that; I cannot recollect dates as far back as that.

Q. 106. Was it at the same time that you brought your suit in Kentucky?

A. I think it must have been about the same time.

Q. 107. How long ago was it you brought your suit in the State court of chancery in Mobile?

A. I have brought no suit there.

Q. 108. Are you sure of that?

A. As far as I know.

Q. 109. Will you undertake to say positively that whatever suit has been brought in that name has been brought without your knowledge?

(By witness, interrupting:)

A. Without my knowledge.

Q. 110. Will you undertake to state positively that you have not made a bill in chancery, and sworn to it in Mobile?

A. I do not know; I cannot state positively.

Q. 111. Then it may be so?

A. I should be very much surprised; I do not believe I have, to the best of my knowledge; I have no recollection of doing so, or anything intended for that purpose; when I sign bills I have to trust to my counsel; I might have signed bills which he made use of in other courts; I read what the documents are and the heading, but I am very sure there has been no bill in the chancery court.

Q. 112. Do you mean to say if there has been any bill filed that it was without your authority?

A. Not if I signed it; it is doubtful in my own mind.

Q. 113. It may be so?

A. It may be I authorized it.

Q. 114. How many bonds of M'r Ziegler's did you hold?

A. Eighteen bonds.

Q. 115. What are the numbers?

A. I have them on a piece of paper; shall I read them?

Q. 116. Yes.

A. 2112, 3487, 4247, 3960, 3950, 4466, 4494, 4856, 4878, 5504, 4868 to 4870 inclusive, and then 501 to 506 inclusive, altogether 18 bonds.

Q. 117. Where are those bonds?

A. In our safe down at the office.

Q. 118. Have you any authority on paper over the seal of Bernard De Watteville?

A. I have.

Q. 119. Over his seal?

A. No; not over his seal, over his signature.

Q. 120. Will you please produce it?

(Paper produced by the witness.)

Q. 121. In what language is it?

A. This is the power of attorney signed on a printed form.

Q. 122. That is your authority, is it?

A. No, sir; that is only a mere fraction of my authority; he sent me other authority, but fearing it might not reach me he sent me more.

Q. 123. That is an exhibit?

A. No; you can copy it.

Q. 124. Is that an original?

1507 A. That is an original. Paper referred to read in evidence, as follows:

Power of attorney.

The undersigned, holders of securities of the Mobile & Ohio Railroad Co., now revoking all other powers, do hereby request and authorize   to act on our behalf in the election of a purchasing-committee, composed of two first-mortgage bondholders and one second-mortgage bondholder, who shall have the preceding plan carried into execution by final decrees of the circuit courts of the U. S., and by purchase and reorganization thereunder, and who shall take any and all proceedings deemed by them advisable in furtherance of said plan, which shall not be effectual until approved by a majority of the first-mortgage bondholders, after the reorganization on the foregoing basis, the possession of the road to be delivered to the directors, who may be selected by a vote of the first-mortgage bondholders controlling the stock of the company under the foregoing plan.

B. DE WATTEVILLE DE PORTES,
Berne, Switzerland.

First-mortgage bonds, bonds 97.

The second power of attorney produced by the witness, introduced in evidence, as follows:

Power of attorney.

The undersigned, holders of securities of the Mobile & Ohio Railroad Co., now revoking all other powers, do hereby request and authorize Moran Brothers, New York, to act in our behalf in the election of a purchasing-committee, composed of two first-mortgage bondholders and one second-mortgage bondholder, who shall have the preceding plan carried into execution by final decrees of the circuit courts of the U. S., and by purchase and reorganization thereunder, and who shall take any and all proceedings deemed by them advisable in furtherance of said plan, which shall not be effectual until approved by a majority of the first mortgage bondholders; after the reorganization on the foregoing basis, the possession of the road to be delivered to the directors, who may be selected by a vote of the first-mortgage bondholders controlling the stock of the company under the foregoing plan.

B. DE WATTEVILLE DE PORTES,
Berne, Switzerland.

1508 First-mortgage bonds, bonds 100.

Q. 125. Those two papers are printed on the back of a printed circular?

A. Yes, sir.

Q. 126. Do you mean to say that that circular and the scheme expressed in it has been approved by a majority of the first-mortgage bondholders?

A. No, sir; I do not.

Q. 127. What other authority have you from M'r De Watteville?

A. I can show you something superior to that.

Q. 128. You have additional authority?

A. Yes, sir.

Q. 129. In what language?

A. In French.

Q. 130. And you have that with you now?

A. Yes, sir.

Q. 131. Will you please show me such parts as relate to the subject?

(Paper handed counsel by witness.)

Q. 132. Which part relates to it; the whole?

A. The three extracts; part of them is direct authority; there are also comments upon the merits of the question.

Q. 133. That, then, is a paper dated [illegible] December, 1876?

A. Yes, sir; that one; there are two others.

(The three extracts produced by witness are put in evidence, as follows:

28TH DECEMBER, 1876.

I duly received your letter of 24th Nov. last, containing a circular relative to the present situation (or condition) of the Mobile & Ohio Railroad, together with a power of attorney to be signed so as to represent the parties in interest (or claimants) before the tribunals. After mature reflection, I hand you inclosed said power of attorney, duly signed by me, though having some doubts as to the question whether the Tennessee substitution bonds have or have not acquired the lien in favor of the State bonds, which they served to reimburse. On one side it would appear from the law which authorized them, this lien was expressly assigned to them; but, on the other side, it is not generally in this manner that a mortgage or lien is transferred, but rather it accompanies the old obligation, when the latter is sold to a new creditor. Now, in this case, on the one hand, there has been an annulment of the old obligation (the State bonds), and, on the other hand, the creation of a new obligation (Tennessee substitution bonds). The first-mortgage bonds are of older date than the latter, and therefore cannot, it seems to me, be deprived (or stript) by them of the rights of a first mortgage.

31ST JANUARY, 1877.

1509 M'r Odier came to Berne expressly to speak to me of the double position in which his house found itself in consequence of the position of the Mobile & Ohio Railroad. The result of our interview was that I told him I should certainly send you the full power necessary to act judicially in this affair, which moreover was a natural consequence of the general authorisation which you had from me to act in my interest to the best of your judgment. As to me, the more I think on the subject the more am I convinced that it is necessary to annihilate this pretension to invest the Tennessee claims (substitution bonds) with the rights of a first mortgage, which are already possessed by the first-mortgage bonds; these possessed them before the first-mentioned were created, and it would be contrary to all the general principles which govern mortgages. Therefore be of good cheer, gentlemen; if justice prevails the victory will be ours. You will find enclosed the power of attorney signed by me.

9TH MARCH, 1877.

I thank you sincerely for your letter of 16th ultimo, which gives me most important and most precious information in regard to the progress of the Mobile and Ohio affairs. The terms of the law on which our adversaries rely, appear to me so clear and so precise that I cannot comprehend how a lawyer could find in it the transfer of a mortgage. The word cancellation of the State bonds says that all (claim) was at an end. Meanwhile the annexed publication, cut out of the Journal De Geneve, shows that Mess'rs Lombard, Odier & Co., and associates, are full of confidence. What above all seems to have given them this confidence is the statement of a M'r R. T. Wilson, 2 Exchange Court, dated New York, 13th January, that fills four closely printed pages. You undoubtedly possess this document. What to his eyes is lacking in the law in question is a simple slip (of the pen) to which no court of law will ever pay any regard.

Q. 134. What was the circular referred to in that extract?

A. That circular I suppose—I will look at it first to see—I suppose it was this circular. (Refer'ing to circular already produced in evidence.)

Q. 135. What was that circular?

A. This was the one (indicating).

Q. 136. The one on which the powers of attorney are printed?

A. Yes, sir.

Q. 137. Circulars signed by you?

A. Signed by me and other persons.

Q. 138. Then the second authority referred to by you from M'r De Watteville is dated the 31st January?

1510 A. Yes, sir; that is the letter; it is dated the 31st.

Q. 139. What was the power of attorney inclosed in that letter?

A. This other.

Q. 140. The first one you produced?

A. The first one is in December.

Q. 141. The one that is referred to in that extract is the first one you produced?

A. Yes, sir; the first one I produced, where there is ninety-seven bonds, and where there is a blank.

Q. 142. Then the second one was enclosed in his letter of the 31st January, 1877?

A. Yes, sir.

Q. 143. Which was in the letter of January 31st, 1877?

A. You will notice in that letter he says that he encloses the power of attorney.

Q. 144 Then you received a third letter dated 9th March, 1877, which you now produce; did you?

A. Yes, sir; that merely contains comments on it—no direct authority.

Q. 145. Then you received a fourth letter on the 23d December, 1876, of which you produce an extract?

A. No, sir; that is another correspondence.

Q. 146. Are those the authority under which you acted in instructing M'r Andrews to bring the suit which has been brought in Mobile in the name of M'r De Watteville as a plaintiff?

A. Yes, sir.

Q. 147. Can you give the number of M'r De Watteville's bonds?

A. Yes, sir.

(Witness produces numbers of bonds as follows:)

Bernard De Watteville, 9700, 8 per cent.; 613, 646, 740, 1419, 1752, 1822, 1930, 1931, 1939, 1942, 1995, 2144, 2550, 2648, 2699, 2798, 2817, 2818, 3262, 3294, 3298, 3299, 3312, 3 39, 3404, 3410, 3423, 3548, 3568, 3576, 3599, 3601, 3661, 3662, 3663, 3766, 3769, 3770, 3879, 3906, 3907, 3909, 3910, 3959, 4116, 4180, 4187, 4381, 4383, 4385, 4476, 4477, 4478, 4479, 4497, 4794, 4882, 4883, 5017, 5028, 5029, 5030, 5031, 5070, 5248, 5270, 5284, 5412, 5413, 5430, 5469, 5224, 5560, 5569, 5656, 5688, 5689, 5690, 5691, 5767, 5769, 5771, (82) 6 per cent. stg.; 4962, 4983, 4984, 4985, 4986, 5736, 5737, 5738, 5739, 5740, 5744, 5745, 5746, 5747, and 5748, (15).

Q. 148. Have you anything under the seal of Masson Chavannes & Co.?

A. Not under seal; under his signature.

Q. 149. Will you produce the authority which you have from him?

A. This is a special authority in 1876.

Q. 150. What language is it?

A. French.

Q. 151. Have you a translation of it?

A. I have it there, sir.

1511 The translation referred to produced in evidence, as follows:

Masson Chavannes & Co., of Lausanne, Switzerland, to Moran Brothers:

22D DEC., 1876.

As to the $17,000 sterling bonds, we shall follow absolutely your ideas, which appear to us just and equitable. We give you all powers to that purpose, and leave you free to act as you may deem best, begging you to keep us advised of what occurs. We find the plan of reorganization advocated by Mr. Iselin not at all equitable; and while desirous from principle to avoid litigation between the two classes of mortgages, we can never consent to give our adhesion to the said plan. It seems likely that the emission of the substitution bonds was made at the time without due consideration, but in good faith, and that now they (Iselin & Co.) seek by all possible means to protect the interests of their friends and associates. Nevertheless, it appears to us that the modification [or alteration] in the rate of interest in the bonds originally held by the State of Tennessee and transferred to the present substitution bonds is an indisputable change [or alteration], and that the lien [to the State] no longer exists.

(Words in brackets underlined are not in the original, being placed by the translator to express what he understood to be the meaning of the writer.)

Q. 152. Are the words in brackets in this translation in the original?

A. No; they are those which are difficult to translate. You know how difficult it is to translate idiomatic expressions. I took the nearest English words to the French words, but there were some words that are put in there that are not in it. In the words "the lien no longer exists" I have inserted what it means, viz, "to the State."

Q. 153. There is no corresponding language in the original?

A. No, sir; "that the lien no longer exists" are the exact words used in the original.

Q. 154. Is that all the authority you have from Masson Chavannes?

A. That is the only authority except the general one which we have.

Q. 155. Where is your authority besides?

A. No other authority besides that, except the general authority, time out of mind, in general correspondence.

Q. 156. Where did you get that authority?

A. In the course of long years of business transactions.

Q. 157. Have you general authority to bring lawsuits on all
1512 other property?

A. On any bonds I hold for them.

Q. 158. You have that authority?

A. I have it; the general authority.

Q. 159. Where did you get the authority to bring this suit on those bonds?

A. That is the authority (indicating the part translated above).

Q. 160. Have you anything over the seal of Henry Jump?

A. Not under seal, but over signature.

Q. 161. Give us the numbers of Chavannes' bonds?

(Numbers produced by witness as follows: Masson Chavannes & Co., 8 per cent.: 297½, 3530, 3562, 3947, 5681, 736, 1374, 1444, 1545, 1761, 2684, 2773, 2780, 3321, 4357, 5928.)

Q. 162. Have you a copy of this circular without the signatures?

A. Yes, sir.

Q. 163. Here?

A. No, sir.

Q. 164. One that you can spare?

A. Yes, sir.

Q. 165. Can you supply us with one?

A. Yes, sir.

Q. 166. Then your authority from M'r Jump you now produce?

A. Yes, sir.

Q. 167. Will you allow the stenographer to take this, so that he can copy it on the blank you will furnish?

A. Yes, sir; or I will furnish a copy.

(Witness produces the power of attorney, of which the following is a copy:)

NEW YORK, *November 24th*, 1876.

To the creditors of the Mobile & Ohio Railroad Company:

The undersigned, owners of first mortgage sterling bonds of the Mobile & Ohio Railroad Company, have duly considered a circular signed by Mess'rs William H. Hays, William S. Pearson, and T. Haskins Dupuy, accompanying a plan of reorganization of said company, which has been submitted to us for our signatures.

The object of this plan can only be, as it appears to us, to further the interests of the inferior securities of the Mobile & Ohio Railroad at the expense of the first and other mortgage bondholders. After a careful examination we believe it to be most unjust to our interests as holders of those bonds, and we respectfully call the attention of all the parties in interest to the following simple statement of facts, and the conclusions drawn from them by us. The facts are mostly taken from the records of the courts having the present custody of the property of the Mobile & Ohio Railroad Company, and hence cannot be denied.

Mess'rs William B. Duncan and A F. Elliott have been for
1513 several years directors of the Mobile & Ohio Railroad Company.
The former was the head of the banking-house of Duncan, Sherman & Co., of this city, and the latter the New Orleans agent of that house. For about a year before the default of the Mobile & Ohio Railroad Company on the interest of the first-mortgage bonds, M'r Duncan had been president of the company, and still acts as such president.

In April, 1875, shortly before the default in the payment of interest, Mess'rs Duncan and Elliott claimed to become trustees of the first sterling mortgage, M'r Duncan, at the time, being already a trustee for the so-called Tennessee substitution bonds, and likewise for the consolidated mortgage bonds. Immediately upon the default, which transpired in May, 1875, the directors surrendered possession of the entire property of the Mobile & Ohio Railroad Company to Duncan and Elliott, as trustees for the first mortgage bondholders. A few days afterwards Duncan and Elliott filed a bill in the United States circuit court for Alabama, and were invested by said court with the powers of receivers of the property. Since that time Duncan and Elliott have administered the property, through the agency of T. Haskins Dupuy.

THE FLOATING DEBT CLAIMS.

On or about the 9th day of April, 1876, the floating debt creditors of the company applied to the United States court for the sale of $550,000 (five hundred and fifty thousand dollars) of securities, belonging to the first mortgage, and the application of the proceeds in liquidation of their claims.

W. B. Duncan and A. F. Elliott, claiming to represent the first mortgage bondholders, offered absolutely no opposition to this demand.

The sole defence of the interest of the first mortgage bondholders was made on behalf of M'r Morris Ketchum, as surviving trustee of their mortgage, aided by some of the bondholders. Without this timely action on the part of M'r Ketchum, it is clear that the court would have been led to grant the order in favor of the floating debt claimants, which would, in effect, have appropriated our property for the benefit of other persons. Indeed the lack of all opposition on the part of the first mortgage bondholders, other than as above stated, was urged on the court as an acquiescence by the bondholders generally in this
1514 appropriation of their property. Fortunately, however, the scheme was entirely defeated, and the United States circuit judge sustained M'r Ketchum in his opposition on our behalf.

The assets, amounting to more than half a million dollars of securities, thus saved for our benefit, we should seek to have applied to the payment of our overdue coupons. The strange proceedings of the floating debt holders, and the absence of all defence on our behalf by W. B. Duncan and A. F. Elliott, warn us of the necessity of a proper representation of the first mortgage bondholders.

ALEXANDER DUNCAN'S CLAIMS.

In their proceedings by bill filed in the United States circuit court, Mess'rs Duncan and Elliott declare that the coupons of the first-mortgage bonds which fell due in May and November, 1874, which had been paid to the bondholders, were still outstanding and subsisting first-mortgage liens on the property. These coupons were presented and were paid in the same manner in which all previous coupons had been presented and paid. It was generally supposed, and every one had a right to suppose, when they were paid and surrendered, that they ceased to be a part of the first mortgage. Nevertheless, it was claimed about the time of the default in 1875 that these coupons were outstanding liens on the property, and they now reappear, mainly in the hands of M'r Alexander Duncan, father of M'r William B. Duncan, who claims them by assignment from Duncan, Sherman & Co., to the extent of nearly ($736,000) seven hundred and thirty-six thousand dollars. It is claimed that these coupons should participate in our mortgage, and, to the same extent, reduce the value of our bonds. These coupons were paid in the regular and usual way, and they should not be paid again, at least with our consent. Dead and paid coupons cannot be revived in this way to eat up the mortgaged property. If this should be submitted to the payment of mortgage interest can always be turned into a loan to the bondholder, to be deducted from the amount of his mortgage. We cannot consent to any plan of reorganization which proposes to take this three-quarters of a million of dollars from the mortgage estate, as does the plan offered under date of October 12th, 1876, which purposes to include all coupons "whose original due date named therein shall not be later than November 1, 1877."

1515 **THE TENNESSEE CLAIMS.**

In the various proceedings before the United States circuit courts, W. B. Duncan and A. F. Elliott admit that certain claims, called Tennessee substitution bonds, hold a priority over the first mortgage sterling bonds, on the 118 miles of the main line running through the State of Tennessee. In addition, a distinct suit in the United States circuit court of Tennessee was instituted in the name of William B. Duncan, Adrian Iselin, and R. T. Wilson, as trustees of these Tennessee substitution bonds, to enforce in their favor a priority over the first mortgage bonds. The sole representatives of the first mortgage bonds served with notice of these legal proceedings in Tennessee were Duncan & Elliott, who claim to represent the first mortgage bonds as trustees. No defence whatever was made by them in this action, and the consequence was that a decree was obtained, by default, against the first mortgage, and an order of sale of the Tennessee section of the road was entered for the benefit of the Tennessee substitution bonds, leaving the first mortgage bonds only such balance, if any, as might remain. The excuses offered by W. B. Duncan to palliate his conduct in this matter and his efforts to avoid the effect of his laches, cannot countervail his expressed admissions in favor of these subordinate claims and against the first mortgage.

Now, in fact, the first mortgage is a first lien on the entire line, the lien formerly created to protect the advances made by the State of Tennessee to the company having long since been satisfied by the return to the State of its bonds to the full amount of the advances made by the State. It is true there was an attempt to assign the State's lien, after its liquidation, to the holders of the Tennessee substitution bonds; but as these bonds were created long after the first mortgage bonds, and were issued only after the full liquidation of the advances of the State, and as they are entirely different in nature from the cancelled State bonds, these new substitution bonds cannot obtain a priority over the first mortgage bonds by any arrangement between the company and its subsequent creditors.

But even assuming that the substitution bonds are entitled to the benefit of the satisfied and extinct lien of the State of Tennessee, the proposed plan of reorganization gives them an advantage over
1516 the first mortgage bonds, entirely unwarranted and unjust; the
first mortgage bonds are for £225 sterling each, payable in London, equal to $1,100 gold, or $1,200 currency. These bonds are proposed to be admitted into the reorganization only for the sum of $1,000, and they are allotted only $440 in the new first-mortgage bonds for each sterling bond, whilst the Tennessee substitution bonds, which cannot claim more than $1,000 currency under the State lien, are allotted $625 for each $1,000 bond. And the past due coupons of these bonds are admitted into the proposed reorganization at $36 each, although only entitled to claim under the State lien $30 in currency.

In fact, these various proceedings are simply attempts to give an unjust priority over the paramount rights of the first-mortgage bonds to the following claims:

Floating claims	$536,000
Alexander Duncan's claims	736,000
Tennessee claims	2,018,028
Total loss to mortgage bondholders	**$3,290,028**

Those who favor or passively submit to the priority of those various claims over the first-mortgage bonds appeal to the current, well-founded objection against litigation in the courts. But, if litigation continues, on whom shall the blame fall; on those who defend their just rights, or on those who attempt to secure an undue and unjust advantage over prior liens? In all events, we shall henceforward take good care that the property and assets are fairly managed and applied for the benefit of the parties entitled to them.

In our judgment the property should be promptly taken out of the courts and placed under the direct administration of the mortgage bondholders and their representatives; and we sincerely believe that an effort by the bondholders to protect themselves against the foregoing claims, and to reorganize the property in their own interest, while treating all the various other interests with the utmost liberality, will meet with the same success that attended the resistance to the priority over the mortgage bonds sought to be obtained by the floating creditors.

In case of the sale of the road on foreclosure it would probably not bring the amount of the first mortgage. It therefore rests entirely 1517 with the first-mortgage bondholders to determine the conditions on which they will admit the junior securities to participate in the purchase.

We suggest and recommend to our fellow bondholders and to all other parties in interest to unite with us in order to effect

THE REORGANIZATION OF THE M. & O. R. R. CO.

on the following terms, which appear to us equally just to all the various parties in interest:

I. Obtain from the court an order for the application to the payment of our overdue coupons of the assets which it was lately attempted to apply to the payment of the floating-debt creditors.

II. Release the property from the hands of the court by the sale of the entire line, from Mobile, Alabama, to Columbus, Kentucky. At such sale the property to be purchased for the benefit of all the securities of the present company, and the purchasers to reorganize the company in accordance with this plan.

III. The reorganized company to create and issue new securities, as follows:

(*a.*) Six per cent. bonds, payable, principal and interest, in gold, secured by a first mortgage on the entire line, from Columbus, Kentucky, to Mobile, Alabama, and on all the property, rights, franchises, and lands acquired by the purchase for account of the reorganized company, said bonds to be issued in exchange for the first mortgage sterling bonds, and for the interest bonds, and for the unpaid coupons on those bonds, which matured on and after the first of May, 1875. We propose to admit the interest bonds on the same basis with the first-mortgage bonds, because the old first-mortgage coupons are held in trust for the benefit of the holders of the present interest bonds.

(*b.*) First preferred income bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the present second-mortgage bonds and for unpaid coupons to March 1, 1878.

(*c.*) Second preferred income bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the present convertible bonds and unpaid coupons to March 1, 1878.

(*d.*) Third preferred income bonds, bearing seven per cent. interest

1518 non-cumulative, and payable only when earned, to be issued in exchange for the Tennessee substitution bonds and unpaid coupons to January 1, 1878.

(*e.*) Fourth preferred income bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the consolidated bonds.

(*f.*) Surplus income bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued only in settlement of floating debt.

COMMON STOCK,

To be issued to the amount of the present common stock, but to be held and voted on by the trustees of the new first mortgage until interest on all the above bonds has been paid out of net earnings for three successive years. Thereupon, the certificates to be assigned to the present stockholders or their representatives.

We are satisfied that the property is amply able to meet the amount of first mortgage interest called for by the above plan, and that the charter rights will be unimpaired by a sale for our benefit.

The holders of all the securities other than the first mortgage who do not accede to this plan within a time to be limited by the purchasing committee, will be debarred from participating in the purchase and reorganization.

In order to consummate the above plan of reorganization without unnecessary delay, we request all the creditors of the Mobile & Ohio Railroad Company to return, signed, the accompanying power, addressed to Committee of Mobile & Ohio Railroad bondholders, 8 William street, New York.

MORAN BROTHERS,
H. AMY & CO.
ARENTS & YOUNG,
LOUIS J. BELLONI.

(Copy.)

Power of attorney.

The undersigned, holders of securities of the Mobile & Ohio Railroad Company, now revoking all other powers, do hereby request and authorize Messrs. Moran Brothers, of New York, to act on our behalf in the election of a purchasing committee composed of two first 1518 mortgage bondholders and one second mortgage bondholder, who shall have the preceding plan carried into execution by final decrees of the circuit courts of the United States, and by purchase and reorganization thereunder; and who shall take any and all proceedings deemed by them advisable in furtherance of said plan, which shall not be effectual until approved by a majority of the first-mortgage bondholders. After the reorganization on the foregoing basis, the possession of the road to be delivered to the directors who may be selected by a vote of the first-mortgage bondholders controlling the stock of the company under the foregoing plan.

Names and address.	Classes of claims.	Amount.
(Signed)	No. 3420. 1st mortgage bond..............	£225
Henry Jump.	" 1471. " "	225
	" 4266. " "	225
	" 4273. " "	225
	" 4473. " "	225
	" 4053. " "	225
	" 4057. " "	225
	" 4575. " "	225
	" 4687. " "	225
	" 4992. " "	225
	" 5073. " "	225
	" 5926. " "	225
	" 5072. " "	225
	" 5506. " "	225
	No. 47. Bond for funding arrearage of interest..............	$1,000
	" 48. " "	1,000
	" 49. " "	1,000
	" 45. " "	500
	" 111. " "	500
	" 112. " "	500
	" 312. " "	500

N. B. The bondholders and other parties in interest may send this power to the signers of the above plan, or to any other person they may desire to entrust with their interests.

(Signed) HENRY JUMP.

Q. 168. Is that all the authority you have from M'r Jump?

A. That is all.

Q. 169. Have you anything over the seal of Rudolph Merian?

1520 A. I have letters from him, but I have nothing with me.

Q. 170. M'r Moran, do you mean to say that the scheme to which M'r Jump's name has been signed has the approval of a majority of the first-mortgage bondholders?

A. No, sir; I do not.

Q. 171. You know it has not, don't you?

A. I know it has not as far as I know.

Q. 172. Was the bill you swore to, in which Ziegler is one of the plaintiffs, sent to you from Mobile, or was it prepared here?

A. Prepared here.

Q. 173. Are you sure of that?

A. I think so; yes, sir.

Q. 174. Was it all the same handwriting, the document which you swore to?

A. That I would not say; it may have been written by two copyists.

Q. 175. Do you remember whether it was all in the same handwriting?

A. I paid no attention.

Q. 176. You don't remember?

A. I don't remember anything about it.

Q. 177. Would you recognize the writing of * * * if you saw it?

A. I never saw it in my life.

Q. 178. Was any part of the bill which you swore to in a female hand?

A. No, sir; I am sure it could not be.

Q. 179. From your recollection it was not?

A. No, sir; a female hand might look so much like a man's, I might make a mistake.

Q. 180. None of it attracted your attention as being in a female hand?

A. None.

Q. 181. So if anything has been inserted or attached over your signature, or in a female hand different from the rest of the bill, it was not there when you swore to it, was it?

A. I should think not.

Q. 182. Did you swear to any amendments to the bill, or to any amendment to the bill?

A. Yes, sir.

Q. 183. Were there not some blank pages in that when you swore to it?

(Objected to as immaterial, and as cross-examining his own witness.)

A. I have no recollection, though there might have been, to be filled up by my counsel.

Q. 184. Now, M'r Moran, just confine yourself to recollection, no matter about probabilities?

A. That is my recollection; there was no blank unless it was a document to be inserted.

Q. 185. Was there a blank?

A. I cannot say positively; I think not.

Q. 186. Did you sign your name close to the foot of the amendments, or at the distance of two pages from the amendments?

A. Close to the amendments.

Q. 187. That is your recollection?

A. Yes, sir.

Q. 188. Close to the amendments?

A. I don't know what you mean—a line or two; my recollection is, it was near the bottom of the amendments.

Q. 189. Do you remember whether there was any blank in the middle of the document?

1521 A. I think there was a blank or some document in one of the papers I signed; I think there was a page.

Q. 190. How long ago did you swear to that?

A. I cannot recollect.

Q. 191. Within a few days?

A. No.

Q. 192. Within a few weeks?

A. Yes; I am not positive.

Q. 193. Was it in the last document you swore to?

A. I cannot recollect; these things are too vague in my mind; I cannot charge my mind with it at all.

Q. 194. Discharge your mind of it. Was it among the last documents you signed?

A. I cannot say which one it was.

Q. 195. Who did you swear to it before—the one with the blank in it?

A. I cannot tell you which one had a blank.

Q. 196. Was it the amendments to Ziegler's bill?

A. I think not; I think that was filled up fully; I always avoided signing anything that had a blank.

Q. 197. How came you to sign this paper that had a blank in it?

A. I don't know that this had a blank there; I have a faint recollection that one was a blank to put a printed paper in; and I am not sure that that was not put in before I signed it; I left it to my counsel, as I am forced to do sometimes.

Q. 198. Has any fund been contributed by bondholders to meet the expenses of the prosecutions instituted by you?

(Objected to as immaterial.)

A. I believe some; I don't know the amount.

Q. 199. What is the amount of the fund?

(Same objection.)

A. I don't know.

Q. 200. How do you know it has been got up?

A. I don't know.

Q. 201. I thought you said some had been got up?

A. I heard so.

Q. 202. Who did you hear from?

A. I cannot remember now; I believe my counsel told me so.

Q. 203. Who do you mean?

A. M'r Andrews.

Q. 204. Told you the fund had been contributed?

A. Money had been contributed.

Q. 205. Your counsel told his client that money had been contributed, but the client don't know—but the client of the counsel who told you don't know?

A. I don't see what you see so strange in that.

Q. 206. Do you mean to say that you don't know how much fund, or money, has been raised to meet the expenses of the litigation you have instituted?

A. I have never received any money from any one.

Q. 207. You have not?

A. No.

Q. 208. From whom did your counsel receive that fund?

A. From various persons; you must ask him.

Q. 209. Why must I ask him?

A. I suppose I need not answer that.

Q. 210. Do you know, from his information, or otherwise, what fund has been raised, or who raised it?

A. No.

1522 Q. 211. Don't know; then you don't know how the expenses of this litigation are met, do you?

A. I know I have contributed to it.

Q. 212. And you don't know that anybody else has?

A. I am told others have, but I don't know, and did not inquire.

Q. 213. Who told you?

A. My counsel.

Q. 214. He did not tell you how much?

A. No.

Q. 215. Did you pay your contributions to him?

A. I paid him money.

Q. 216. That is the shape in which your contribution was made?

A. Yes.

Q. 217. You have not paid anything to Morris Ketchum?

A. Yes, I have.

Q. 218. What made you say you paid it to your counsel?

A. For the expense of the suit.

Q. 219. Besides that, have you paid M'r Ketchum some?

A. Yes.

Q. 220. What is the assessment on the bondholders by M'r Ketchum?

(Objected to.)

A. They made no assessment.

Q. 221. How much assessment did M'r Ketchum pay?

A. Need I answer the question?

Q. 222. How much money has M'r Ketchum raised?

A. I don't know.

Q. 223. How much did you contribute to M'r Ketchum?

By M'r Blandy to the witness: I advise you that you are not bound to answer that question.

Q. 224. Did you pay him a thousand dollars?

By M'r Blandy to the witness: I advise you that you are not bound to answer that.

Q. 225. Did you give M'r Ketchum a thousand dollars?

A. I decline to answer.

Q. 226. Will you name the sum you did give him?

A. I decline to answer.

Q. 227. Was it after you had requested M'r Duncan and Elliot, as trustees under the first mortgage, to take possession of the property, that you contributed to the fund to enable M'r Ketchum to institute a suit against them?

(Objected to as immaterial.)

A. I did not contribute anything to institute a suit if I understand what the meaning of the whole question is.

Q. 228. What was the object of the contribution you made to M'r Ketchum?

(Same objection.)

A. I object to answer.

Q. 229. You must answer.

A. No.

Q. 230. Was it after you had signed the paper protesting against the removal of Duncan and Elliot as trustees that you made a contribution towards M'r Ketchum's expenses for the purpose of removing them?

(Objected to as before.)

A. Yes; afterwards.

Q. 231. You first recommended their retention?

A. Yes, sir.

Q. 232. And then contributed toward a fund to remove them?

A. When I was ignorant of the facts——

Q. 233. What facts do you know that you didn't know before?

(Objected to as immaterial.)

1523 (M'r Blandy advises the witness is not bound to answer the question.)

A. I will not answer.

Q. 234. You recommended the court to retain M'r Duncan and M'r Elliot as trustees?

A. Yes, sir.

Q. 235. You subsequently contributed toward a fund to remove them?

A. Yes, sir.

Q. 236. You say you ascertained facts that you did not know at the time you recommended them to retain them?

A. I think I will state them; I was not aware under what authority M'r Duncan and M'r Elliot claimed to be trustees; nor was I aware what M'r Morris Ketchum's claim to be trustee was until I came back from Europe, in October, 1876; and M'r Duncan not having kept his promises to me, I immediately took measures to defend my rights and those of my friends, and then I joined with M'r Ketchum.

Q. 237. Those were the facts?

A. Those were the facts.

Q. 238. When M'r Morris Ketchum first brought a suit to displace Duncan and Elliot, and get a receiver appointed over their heads, you recommended the court to retain them; do you say you did not know that Morris Ketchum did not claim to be a trustee?

A. I did not go near him, and did not know the facts.

Q. 239. You knew he brought a suit?

A. I knew it in the papers.

Q. 240. In the suit he brought you recommended the court to retain Duncan and Elliot?

A. Yes, sir; because M'r Duncan told me M'r Ketchum wanted to levy blackmail, and I believed M'r Duncan.

Q. 241. What has altered your opinion as to M'r Ketchum's object?

A. Because I examined into the authority that both the parties had to be trustees.

Q. 242. Do you mean that M'r Ketchum's object is not to levy blackmail?

A. I don't care whether he does or not, I think he is the only person who has a right to be trustee.

Q. 243. You would promote his suit if it would protect your rights?

A. If it would protect my rights and those of my friends, I would be willing to have M'r Morris Ketchum in.

Q. 244. I asked you what has changed your opinion?

A. M'r Duncan's statement to me, and the facts in regard to the authority which both parties claim; I was not aware that Morris Ketchum had been removed because he was an alien enemy.

Q. 245. You signed a recommendation to retain Duncan and Elliot?

A. Yes, sir.

Q. 246. And you signed that in a suit—in Ketchum's suit?

A. Yes, sir.

Q. 247. You knew Ketchum had brought a suit?

A. Yes.

1524 Q. 248. You gave the court a recommendation to retain Duncan and Elliot as trustees, didn't you?

A. Yes.

Q. 249. You knew that Ketchum had brought a suit?

A. I knew there was something.

Q. 250. You knew that Ketchum had brought a suit?

A. In the papers there was something.

Q. 251. Don't you know that Ketchum had brought a suit?

A. Yes, sir.

Q. 252. And you knew he had brought a suit claiming to be trustee?

A. Yes.

Q. 253. How long have you held Mobile and Ohio bonds?

A. Quite a number of years.

Q. 254. Are they not signed and confirmed by Ketchum as trustee?

A. I knew he had been a trustee.

Q. 255. How did you know he had been removed?

A. I never examined.

Q. 256. You knew perfectly well that M'r Ketchum represented a minority of the bondholders?

A. I don't know; I suppose so.

Q. 257. And yet you do not believe he is trying to blackmail the majority?

A. No.

Q. 258. What you believe his object to be is to aid the first-mortgage bondholders in protecting their rights; did the first-mortgage bondholders ever oppose his being trustee?

A. I think he is taking care of them.

Q. 259. Upon what terms, as between you and counsel, or as between Morris Ketchum and his counsel, is the litigation being conducted by him; is it not upon a contingent and speculative compensation?

(Objected to as immaterial; and witness advised not to answer unless he is so disposed.)

A. I object to answer.

Q. 260. Upon what terms has Morris Ketchum employed counsel; isn't it on a speculative fee?

A. I know nothing about the fees.

Q. 261. How came you to employ his counsel then?

A. Because he was his counsel.

Q. 262. You employed M'r Ketchum's counsel because he was M'r Ketchum's counsel?

A. Yes, sir.

Q. 263. That is, you employed another man's counsel because he was not yours?

A. I made him mine by employing him.

Q. 264. You mean you bought him from him?

A. You go on and give my testimony, if you please.

Q. 265. You mean you bought him from M'r Ketchum, or how; in other words, which of these two masters is that man serving?

A. Those questions are not proper, and I shall not answer.

Q. 266. Do you understand that M'r Andrews owes his duty to the trustee or to M'r Moran?

(M'r Blandy objects to the witness's understanding.)

A. I don't know what M'r Andrews thinks.

Q. 267. Do you understand that in reference to the Mobile & Ohio Railroad Company M'r Andrews is under a professional obligation to M'r Morris Ketchum as trustee?

1525 (Objected to as immaterial and incompetent.)

A. I don't know anything about it.

Q. 268. Do you understand that he, M'r Andrews, is under a professional obligation to M'r Morris Ketchum as trustee, to take care of all the interests of all the bondholders?

A. That requires no answer from me; I propose not to answer that.

Q. 269. You understand that M'r Andrews is under a professional obligation to you to take care of your interests without regard to those of other bondholders?

(Same objection.)

A. I suppose in protecting mine he is protecting all.

Q. 270. Do you suppose he protects the interests of Hays, Pierson, and Du Puy?

A. I suppose mine is protected by M'r Morris Ketchum and Andrews.

Q. 271. Is it your object to protect the bondholders represented by Hays, Pierson, and Du Puy?

A. I propose to protect myself: whatever I gain the others shall gain; I have not proposed to shut anybody out at any given date.

Q. 272. Has anybody else shut anybody out?

A. They have threatened to, and published it in all the papers in Europe; Hays, Pierson, & Du Puy have; that if they did not join before the 1st of March they would be excluded.

Q. 273. You have seen those publications?

A. Yes, sir.

Q. 274. Where?

A. It makes no difference.

Q. 275. It makes a good deal of difference; did you employ M'r Andrews to protect the interests of the bondholders represented by Hays, Pierson, & Du Puy?

A. Yes; as far as *far as* their interest goes.

Q. 276. You have employed counsel for Hays, Pierson, & Du Puy?

A. I have employed counsel to protect those interested like myself.

Q. 277. Have you employed counsel to protect the interest of Hays, Pierson, & Du Puy, or to oppose them?

A. To oppose them, as far as they propose to attack the interest of the first-mortgage bonds.

Q. 278. That is, so far as they propose the attack the interests of the first-mortgage bondholders?

A. I propose to grant them all the just rights that lies in my power.

Q. 279. Are you opposed to them—the second-mortgage bondholders?

A. Not at all.

Q. 280. What is the difference between you and Hays, Pierson, & Du Puy?

A. There is no need of my answering that.

Q. 281. You don't want to answer that?

A. I would object; it is only losing time; you know as well as I do; you know what I object to; I object to the Duncan coupons coming in under the mortgage.

1526 Q. 282. When did you first make that objection?

A. When I commenced my suit.

Q. 283. You had a conversation with M'r Duncan in May, 1874, on that subject, didn't you?

A. No, sir.

Q. 284. Didn't you tell M'r Duncan, in May, 1874, to be careful in purchasing those coupons that he complied with all necessary forms?

A. No, sir; if M'r Duncan so informed you, he is misinformed as to dates: I had such a conversation, but it was later, in September, I think, in 1874.

Q. 285. You then advised him, if he purchased coupons, to be careful that he complied with all necessary forms?

A. Yes, sir.

Q. 286. What made you talk to him about purchasing coupons, and keeping them alive?

A. Because he told me he might purchase them, and I cautioned him as a friend.

Q. 287. You understand they were purchased in September, 1874?

A. No, I do not; he said something about there might be a purchase.

Q. 288. If they were purchased, what objection have you got to their being paid?

(Objected to.)

A. I will not answer.

Q. 289. If they were purchased under your advice?

A. I am not trying this case under Justice Bangs, I believe?

Q. 290. I know as well as you do you are not trying the case before me, but I know I am trying you, and you do not stand the trial as well as you think you do; I would like to have you state what objection you have to M'r Duncan's being paid the amount of the coupons you advised him to purchase?

A. I did not give him the advice.

Q. 291. Didn't you say you gave him the advice?

A. I gave him advice to be careful what he did.

Q. 292. Did you not advise him to be careful, and to conform with all necessary forms?

A. I told him to be careful, or he might lose all the rights of the mortgages.

Q. 293. If he purchased bonds?

A. If he purchased coupons.

Q. 294. And your recollection of that is clear as to time?

A. Yes, sir.

Q. 295. And you are quite confident——

Witness (interrupting). Quite confident.

Q. 296. Of what? You are quite confident that that statement is consistent with all the statements you have made on the subject?

A. Yes, sir.

Q. 297. And it is as true as any other statement you have made on the subject?

A. I suppose so.

Q. 298. Do you know?

A. Yes; it is.

Q. 299. Your memory is not any fresher to day than it was yesterday?

A. No.

Q. 300. Or the day before that?

A. No, sir.

Q. 301. Is it any fresher than it was a week ago?

A. No, sir.

Q. 302. Is it any fresher than it was three weeks ago?

A. Yes; I suppose so.

1527 Q. 303. Have you received any communication from M'r Duncan showing to you his proposed answer?

A. He wrote me a line; I forget the import, but he can furnish a copy.

Q. 304. Didn't he write to you, showing to you his proposed answer? Did he not write to you, offering you an opportunity to intervene in the defence of the suit brought to foreclose the Tennessee substitution lien?

(Objected to as incompetent, immaterial, and as hearsay evidence.)

A. He wrote, sending me a copy of the amendments, or a bill, or something—I don't know the exact kind—to be entered in Tennessee in regard to the suit in favor of the substitution bonds. I replied to him that we could not consent to it; that that would not meet our requirements.

Q. 305. Did not he show you a proposed answer?

A. He showed me nothing.

Q. 306. Didn't he send you a proposed answer?

A. He sent me something, and in reply I told him that it would not meet our views. I can give you a copy of my letter to him.

Q. 307. Did he send you a copy of an order which had been consented to, opening a decree which had been obtained in favor of the Tennessee substitution?

A. There was something of that kind.

Q. 308. You understood that the Tennessee decree had been opened?

A. I don't know.

Q. 309. Do you know what a decree means?

A. Yes.

Q. 310. When you swore to the Ziegler bill you knew what you meant when you swore that there had been a litigation. Didn't he send you a consent opening that decree?

A. I will give you a copy of my letter to him and his letter.

Q. 311. Didn't he offer you an opportunity to come in and defend ?

A. I acknowledged I received that, and I replied I don't know the terms you use—the technical or legal phrases. Whatever he sent me I acknowledged. I will give you the letter he wrote me, and will give you my reply. There is no attempt to shirk anything, or refuse to answer.

Q. 312. Don't you remember M'r Duncan and M'r Barlow calling upon you within the last two months and giving you an order ?

A. M'r Barlow never came near me within three months.

Q. 313. That implies you have seen him at some time ?

A. I saw him in 1874 and 1875.

Q. 314. In connection with the Mobile & Ohio Railroad ?

A. Never. M'r Barlow has never approached me about it.

Q. 315. Have you not approached him ?

A. Never been near him ; never, except when he spoke in M'r
1528 Duncan's presence, when he spoke to him about buying coupons.

Q. 316. When you spoke to M'r Duncan about buying coupons M'r Barlow was present ?

A. Yes.

Q. 317. Who first mentioned to you the idea of buying coupons at that time ?

A. M'r Duncan.

Q. 318. What did he say ?

(Objected to as calling for hearsay evidence.)

A. This was years ago.

Q. 319. What did M'r Barlow say ?

A. Nothing except about the coupons.

Q. 320. What was said in his presence ? M'r Duncan said he was going to buy coupons ?

A. No ; he did not.

Q. 321. What did he say ?

(Objected to as before.)

A. He never said that he was going to buy coupons ; never said he had bought them.

Q. 322. Didn't he say he had already bought large amounts ?

A. Never to me that I remember. I am sure he never told me anything about buying coupons.

Q. 323. When did you first hear of a decree having been obtained in the Tennessee substitution suit ?

A. In July, I think.

Q. 324. Who told you ?

A. My sons told me.

Q. 325. How did they learn it ?

A. I was in Europe.

Q. 326. And when you were in Europe and received that information did you not receive a letter which had been sent to your sons by M'r Duncan ?

A. No, sir.

Q. 327. Were you not informed by your sons that M'r Duncan had written to them ?

(Objected to as calling for hearsay evidence.)

A. No, sir.

Q. 328. And that from them you learned of the existence of the decree ?

A. I cannot remember that ; it is too long ago.

Q. 329. You won't deny that they did so inform you?

A. I would not say they did not; they can give their answer.

Q. 330. Will you swear to their answer?

A. It is a strange question; it is an absurd question; it requires no answer.

Q. 331. You referred me to them for an answer; if I ask them, will you swear to their answer?

A. Their oath is as good as yours. I got my knowledge from them while I was in Europe. I derived my knowledge from them.

Q 332. Don't you refer me to others for answers to questions I put to you?

A. Then, I won't answer your questions.

Q. 333. What do you know about the directors of the road in 1858 making any efforts to defeat the object of their trust?

(Objected to as immaterial.)

A. I don't know what you mean.

Q. 334. You don't know of any such efforts?

A. In 1858?

Q. 335. Yes; in the efforts on the part of directors of the road to defeat the object of the trust.

1529 A. I don't know about the directors.

Q. 336. You don't know of any such efforts, or do you want to refer me to your sons again? Did you know of any efforts in 1858 on the part of the directors to defeat the object of the trust?

A. I don't know what you mean by the question; if I understand it you must refer to something that I have heard, and been told that there was some difficulty between the directors and the trustees about the disposition of the land; that is all I know, and nothing else about it.

Q. 337. Was that within your knowledge?

A. That was not within my knowledge; I was so informed; I know nothing of my own knowledge.

Q. 338. What do you know about any efforts of the directors to get the trustees to give the directors powers of attorneys to convey away lands?

A. I know nothing of my own knowledge.

Q. 339. Where did you get the information to that effect that is embodied in the Ziegler bill?

A. Of my counsel, M'r Andrews.

Q. 340. You understand that M'r Andrews is better acquainted with these matters than you are?

A. Yes; because he was acquainted with M'r Ketchum and gained knowledge I don't know.

Q. 341. Then, you commenced this suit upon grievances, the knowledge of which you got from M'r Andrews?

A. Some of them; the main facts were obtained by myself.

Q. 342. What facts are within your knowledge concerning M'r Morris Ketchum being a trustee at this date of the Mobile & Ohio Railroad Company?

A. Nothing but hearsay.

Q. 343. From whom did you hear that?

A. From general information acquired in time gone by.

Q. 344. Nothing more than that?

A. No; I have never examined into the facts; I have heard it from M'r Morris Ketchum himself.

Q. 345 Did you likewise hear of some conversation between M'r Milton Brown and M'r Morris Ketchum?

A. I have seen it, I believe, in some of your proceedings printed.

Q. 346. Some correspondence between Morris Ketchum and Milton Brown?

A. Yes; I have seen those letters.

Q. 347. That was a part of the information?

A. Yes, sir.

Q. 348. See if this was a part of the information you got. Did you ever read a letter from Milton Brown to Morris Ketchum, dated July 20th, 1860—no; a letter from M'r Milton Brown to M'r Beers, dated New York, July 21st, 1860, in which M'r Brown says this, speaking of M'r Ketchum: "His character is worse than I supposed; no one who knows him has the least confidence in his integrity. In a conversation with M'r
1530 Osborn, president of the Illinois Central, the death of Colonel
Hallett was referred to, and I remarked that it left M'r Ketchum the sole trustee under our mortgage. He replied: 'Then you are in a hell of a fix.' He then went on to tell me that he was one of the trustees under their mortgage, and also a director in the road; that he managed first to get a fixed salary of fifteen hundred dollars a year. Then, not content with that, taking advantage of his position, he carried his frauds so far that the other two trustees had to take the trust into their own hands, and then the board of directors refused to consult with him; in face of all this he had the impudence to appear at a meeting of the board; on his entering the room, he (Osborn) rose and said to him: 'How dare you show your face at a meeting of this board?' he enquired if the board allowed the president to use such language towards him, and no reply was given; he then retired; but he still holds on to his office as trustee; the other two trustees perform the duties, and he collects his salary."

(Objected to as immaterial and incompetent, and as calling for hearsay evidence; that the production of the letter will speak for itself.)

Q. 349. Did you ever receive the information imparted in that letter, accompanied with the information that he was a trustee of the Mobile & Ohio Railroad Company?

(Same objection.)

A. I have read over this book.

Q. 350. Did you ever receive that particular information?

A. I can only say that I have read this book, and as that is part of that, I have read it.

Q. 351. Did you ever receive that information?

A. You gave it to me.

Q. 352. Did you ever receive it before?

A. I think I have had that book in my hand, and as it is there I have seen it.

Q. 353. Then, you know the opinion of M'r Milton Brown and M'r Osborn of M'r Ketchum?

A. This one to M'r Beers, you say? I don't recollect that name, but at the same time it appears, I heard about this; I don't remember the whole of it.

Q. 354. And you say that M'r Ketchum administered the Mobile & Ohio trust in the same way in which he is there described as having administered the Illinois Central trust; is that so?

A. I don't know; you are putting the words in my mouth.

Q. 355. There are statements in your bill on that subject?

A. I don't remember what you allude to.

Q. 356. You stated in your bill that M'r Ketchum had administered the trust of the Mobile & Ohio Railroad Company in the same way as he had the Illinois Central.

1531 A. I don't think there is any such thing; I mentioned the same system.

Q. 357. That is all you meant?

A. Yes.

Q. 358. You do not mean he behaved in the manner described by M'r Brown?

A. No.

Q. 359. Have you seen the official correspondence, referred to in your bill, between M'r Ketchum and the bondholders?

A. I saw correspondence between M'r Morris Ketchum and M'r Morgan, of London, on the subject.

Q. 360. You saw it?

A. Yes.

Q. 361. Did you see the original?

A. I saw the reply from M'r Morgan.

Q. 362. Where did you see that?

A. I had the letter in my hand.

Q. 363. Where did you get it?

A. From M'r Morris Ketchum.

Q. 364. When?

A. Some time last week.

Q. 365. What object can be accomplished by the Ziegler suit, as far as you know, that cannot be accomplished by the Ketchum suit?

(Objected to.)

A. I refuse to answer.

Q. 366. In the discharge of your duty to those you represent, what do you seek to accomplish in the Ziegler suit, that cannot be accomplished in the Ketchum suit?

(Objected to as calling for a legal conclusion, and that the production of the bills themselves will show absolutely.)

A. I don't think that our interest can be properly promoted by M'r Duncan and M'r Elliot.

Q. 367. What object do you seek to accomplish by the Zeigler suit, that cannot be accomplished by the Morris Ketchum suit?

(Same objection.)

A. I desire to have the litigation in other hands.

Q. 368. Than in those of Morris Ketchum?

A. That this entire Ziegler suit should be free from other suits.

Q. 369. What object can be accomplished in the Ziegler suit, that cannot be accomplished in the Morris Ketchum suit?

(Same objection.)

A. I don't know that it makes any difference.

Q. 370. As matter of fact, what object do you understand can be accomplished in the Ziegler suit that cannot be obtained in the Morris Ketchum suit?

(Objected to as calling for the conclusion of the witness and as incompetent.)

Q. 371. Will you answer that question?

A. I think it is needless.

Q. 372. Will you answer it?

A. No, sir.

Q. 373. What purpose do you seek to accomplish in the iegler suit that cannot be accomplished in the Morris Ketchum suit?

(Same objection, and further objection that the bill and papers in the different suits will speak for themselves.)

Q. 374. Will you answer that question?

A. That is my reply, that the bills speak for themselves.

1532 Q. 375. I want you to speak for yourself, and ask you whether you will do so?

A. No.

Q. 376. What do you, in your own mind, intend to accomplish by the Ziegler suit that cannot be accomplished by the Morris Ketchum suit?

(Objected to as calling for the conclusion of the witness's mind, and as incompetent.)

A. I have nothing to add; we state in the bill what we desire to accomplish.

Q. 377. Why do you seek that method of accomplishing it, instead of taking the proceedings that Mr. Morris Ketchum has commenced?

(Same objection.)

A. Because we prefer another suit.

Q. 378. Have you any want of confidence in Morris Ketchum?

A. No.

Q. 379. Do you believe in his fidelity?

A. Yes.

Q. 380. And his counsel?

A. Yes.

Q. 381. Do you believe in his pecuniary and other ability to maintain the Ketchum suit?

A. Yes.

Q. 382. Then why do you institute another suit for the same purpose; in other words, what is your motive?

(Same objection.)

A. For the same reason that other parties resort to other suits. It is to protect my interest.

Q. 383. How do you understand that you can protect the interest of your friends in the Ziegler suit better than the Morris Ketchum suit?

(Same objection.)

A. We are to be the judge of that.

Q. 384. Give us an answer.

A. There is no answer required. I decline to answer.

Q. 385. You won't answer that question?

A. No.

Q. 386. Is not the object of the Ziegler suit to oppress Duncan and Elliot with litigation, and to force them to a settlement that you want to make?

A. No, sir; for the simple reason that when we press this suit we oppress ourselves as much as them.

Q. 387. You consider the Ziegler suit a misfortune to yourself?

A. Yes, sir.

Q. 388. How is it a misfortune?

A. It gives us annoyance and trouble.

Q. 389. What object or what degree of protection do you expect and intend to obtain in the Ziegler suit that you cannot obtain in the Ketchum suit?

A. That is more a question for my counsel than for me to answer myself; by advice of my counsel I have undertaken that suit to protect the interest of my friends.

Q. 390. How do you intend to protect the interest of your friends in the Ziegler suit better than in the Ketchum suit?

A. I decline to answer. I won't answer until I am instructed by the ourt that I must.

Q. 391. Have you not proved your own bonds in the Duncan and Elliot suits?

A. I have.

Q. 392. Don't you suppose that the court will give a just decision?

A. Not if the suit is used as it has been.

1533 Q. 393. Then you have got counsel in the Duncan & Elliot suit?

A. No; I have not.

Q. 394. You have no counsel?

A. No.

Q. 395. You have not employed any counsel to protect your interest there?

A. No; not unless you consider M'r Andrews as such.

Q. 396. Is he your counsel?

A. Yes.

Q. 397. In the Duncan and Elliot suit?

A. I have employed him to defend my interest in every suit.

Q. 398. Do you know of his having filed a petition for you in the Duncan & Elliot suits?

A. Yes.

Q. 399. Didn't you employ him to contest the coupons of 1874?

A. Yes, sir.

Q. 400. Your object is to get your just rights as a bondholder of the Mobile & Ohio property?

A. Yes, sir.

Q. 401. Why cannot you get that in the Duncan & Elliot suit in the same court in which you have filed your petition?

A. Because I have no confidence in M'r Duncan and M'r Elliot.

Q. 402. How does your want of confidence in Duncan & Elliot prevent your getting justice in the Duncan & Elliot suit, in which you are a party; will you answer that question?

A. In my opinion it is necessary to have the Ziegler suit

Q. 403. Having proved your claim in the Duncan & Elliot suit, having employed counsel in that suit, having filed a petition in that suit, having employed the same counsel who appears for Morris Ketchum, what prevents you from getting in the Duncan & Elliot suit the same share of the proceeds of the property for yourself and your friends which you seek to obtain in the Ketchum suit or in the Ziegler suit?

A. Because they have organized a plan by which we are shut out from our just rights, making us dependent on that scheme.

Q. 404 You have not become a party to that scheme?

A. No, sir.

Q. 405. How does an agreement between other parties shut you off from your just rights?

A. Because Duncan & Elliott have used their efforts to bring it to a success; because they intend to get advantages improper and illegal.

Q. 406. Have you brought a suit to prevent the success of that scheme?

A. I have tried to.

Q. 407. Is it the object of your suit to prevent the success of that scheme?

(Objected to as calling for the conclusion of the witness's mind, and on the further ground that the suit itself shows what the object is.)

A. I refuse to answer.

Q. 408. Do you not understand that it is a part of the scheme to have the rights of all the parties submitted to the court at as early a date as possible and passed upon?

(Objected to.)

A. I don't know what the understanding is.

1534 Q. 409. Don't you so understand?

A. I understand the object is to attack and injure our proper rights.

Q. 410. Don't you understand that as a combination of the creditors to buy the property when it is offered for sale?

A. I don't know.

Q. 411. Wasn't you offered a chance to go into that scheme?

A. Yes, but the whole thing was concocted in my absence, and we were kept in ignorance of such a scheme being in view.

Q. 412. Is that what you are mad about?

A. What improper language counsel puts to me.

Q. 413. You are mad, any way?

A. Not very.

Q. 414. Are you aggrieved that a number of bondholders have got up a scheme in any way for their own protection?

A. Not at all.

Q. 415. Don't you know that it is the object to protect the rights of all parties, and have the property sold and give each party his share of the claims?

(Objected to as calling for a conclusion of the witness's mind.)

Q. 416. Will you answer that question?

A. No, sir; I will not.

Q. 417. What do you understand to be the object of the scheme?

(Same objection.)

A. I don't know the object.

Q. 418. Don't you understand that the Duncan & Elliot suit is ready for hearing in June?

A. No, I do not.

Q. 419. What prevents it from being reached?

A. Legal difficulties, I think.

Q. 420. What legal difficulties?

(Objected to.)

A. I don't know.

Q. 421. What legal difficulties do you believe exist?

A. I don't know.

Q. 422. Who told you they existed?

(Objected to as hearsay.)

A. I don't know.

Q. 423. Who told you there were legal difficulties?

A. My counsel.

Q. 424. Whom do you mean?

A. M'r Andrews.

Q. 425. What legal difficulties did he tell you were in the way of the case being heard in June?

(Objected to as calling for hearsay evidence.)

A. I am not here to discuss a legal question, M'r Bangs.

Q. 426. What legal difficulties are in the way of having this case decided in June?

(Same objection, and also objected to as calling for a probable theory.)

A. I refuse to answer.

Q. 427. You refuse to answer. Have you any understanding of what legal difficulties will prevent the Duncan & Elliot suit from being brought to a hearing in June?

A. I refuse to answer.

Q. 428. What legal difficulty in fact exists to prevent the Duncan & Elliot suit from being brought to a hearing in June?

A. I refuse to answer.

Q. 429. Do you know of any; and, if so, what is it?

A. I refuse to answer.

Q. 430. When do you expect the Ziegler suit to be brought to a hearing?

1535 A. Just as soon as we can get it.

Q. 431. How soon do you expect the Ziegler suit to be brought to a hearing?

A. You know better than I.

Q. 432. I knowing better than you, tell you that the Ziegler suit will be brought to a hearing in three years.

A. I refuse to answer such a question.

Q. 433. Do you know how long it usually takes to get a decree of foreclosure in a railroad suit?

(Objected to as immaterial.)

A. Perfectly immaterial; I refuse to answer.

Q. 434. Have you ever had anything to do with railroad foreclosures?

(Objected to as immaterial.)

A. Yes.

Q 435. What railroad?

(Mr. Blandy advises the witness that he need not answer.)

Q. 436. Have you had anything to do with the Selma, Rome & Dalton Road?

A. Yes, sir.

Q. 437. What was the price of the securities when the foreclosure commenced?

A. I refuse to answer.

Q. 438. Did you have the handling of the foreclosure?

(Same objection.)

A. No more than anybody else.

Q. 439. Did you have as much as anybody else?

A. Yes.

Q. 440. What was the price of the securities when you began?

(Same objection.)

A. I don't remember.

Q. 441. What was the difference in the price between the time when you began and the price when you ended?

(Same objection.)

Q. 442. Do you remember?

A. I refuse to answer such improper questions.

Q. 443. How long did it take you to get a decree?

(Same objection.)

A. I refuse to answer.

Q. 444. Did you ever have anything to do with any other railroad foreclosure?

(Same objection.)

A. I refuse to answer.

Q. 445. Do you know whether you ever had?

(Same objection.)

A. I decline to answer.

Q. 446. Do you think a decree can be got in the Ziegler suit?

(Same objection.)

A. I do not know.

Q. 447. What is your opinion?

A. I have no opinion on the subject.

Q. 448. What rights do you think the plaintiffs in the Ziegler suit have; do you think they have a right to priority over the Tennessee substitution lien?

A. I do.

Q. 449. And over the coupons?

A. Yes, sir.

Q. 450. Do you know Louis J. Belloni?

A. Yes, sir.

Q. 451. Don't you know that Belloni has raised the question of the right of priority of the Tennessee substitution lien and the coupons in the Duncan & Elliot suits?

(Objected to as calling for the contents of papers which go to make up the suit, and as immaterial.)

A. I know he has.

Q. 452. Have you not employed counsel to contest the claim of the coupons?

(Objected to.)

A. Yes.

Q. 453. What counsel did you employ?

A. M'r Andrews.

1536 Q. 454. Have you not employed counsel in the Duncan & Elliot suits to contest the priority of the Tennessee substitution liens?

(Objected to as immaterial.)

Q. 455. Will you answer?

A. I have.

Q. 456. Have you paid such counsel?

(Same objection.)

A. That I am informed I need not answer.

Q. 457. Have you promised to pay such counsel?

A. I am informed I need not answer.

Q. 458. Why have you not any confidence in the decision of the court in the Duncan & Elliott suit?

A. I never said so.

Q. 459. Have you any want of confidence in that judgment?

A. I prefer to have another suit.

Q. 460. Do you prefer to have another court?

A. I preferred it in the same court.

Q. 461. Why did you begin two suits to litigate the same question?

A. I shall not answer; if I prefer to have two suits, I think I can.

Q. 462 Why do you desire to have two suits?

(Objected to as already answered.)

A. If I choose to have two suits I think I can have them—because I prefer it.

Q. 463. Why do you prefer it?

A. Because I have the rights of an American citizen, and can exercise them without asking M'r Bangs.

Q. 464. Have you been advised to that effect—haven't you been advised that it was not necessary to get the permission of M'r Bangs?

A. No.

Q. 465. I am waiting for you to inform us why you have chosen to bring two suits to litigate one question?

A. Because I desired to protect my interests and those of my friends.

Q. 466. What caused you to bring two suits to litigate one question?

A. I don't think it is material.

Q. 467. Do you think it is the interest of your friends to have delay?

A. No, sir; I desire to hasten it as much as possible.

Q. 468. Why are you not content with the evidence in the Duncan & Elliot suit, and why are you not content to submit that suit to the decision of the court?

A. Because I chose to do otherwise.

Q. 469. Are you controlled by reason or arbitrary will; and if you have any reason, give it to us.

A. If reasons were as plenty as blackberries, I don't think I am bound to answer—I will not answer.

Q. 470. Will you give an answer to the court?

A. If it orders me.

Q. 471. Do you refuse to inform the court why you have instituted two suits to litigate one question?

A. It is all in the bills themselves; they state the reasons.

Q. 472. What reasons have you stated in the Ziegler case as the reason for having brought two suits instead of one?

(Objected to as requiring the contents of the paper, and as immaterial.)

1537 A. I refer to the bills.

Q. 473. Will you give any other answer?

A. No, sir.

Q. 474. Did you procure witnesses recently to attend on an examination before M'r Edward L. Owen, United States commissioner, in the Duncan & Elliot suit, concerning the coupons?

(Objected to as immaterial.)

A. The whole facts are in the examination.

Q. 475. Will you answer?

A. I did; yes.

Q. 476. Did you pay the expenses of that proceeding?

(Same objection.)

A. I am not bound to answer that question.

Q. 477. If you did, how much expense did you pay?

(Mr. Blandy advises the witness that he is not bound to answer.)

Q. 478. I mean to the commissioner?

A. I believe I am not bound to answer that.

Q. 479. Did you not pay that commissioner the sum of $578 for the expenses of that testimony?

A. I have nothing to say on that subject.

Q. 480. You won't say you did not pay him that?

A. I have nothing to say on that subject; I decline to answer the question.

Q. 481. Do you decline to name the amount you paid the commissioner?

A. I decline to reply.

Q. 482. Did you pay the whole of the five hundred dollars?

A. I decline to reply.

Q. 483. Did anybody else contribute towards the five hundred dollars?

A. I decline to reply to the question.

Q. 484. Have you promoted a motion or proceeding to prevent the Duncan & Elliot suit from being brought to a hearing, and the rights of the parties determined in June?

(Objected to as immaterial.)

A. All the proceedings in the court are in evidence; I have promoted all the proceedings I have instituted.

Q. 485. What is your reason for desiring to prevent the Duncan & Elliot suit from being brought to a hearing and determined in June?

(Objected to as already asked and answered at least twenty times, and as immaterial.)

A. I have answered it fully before; I have answered all the answer necessary.

Q. 486. What objection have you to the Duncan & Elliot suit being brought to a hearing in June?

A. I do not think it can be brought.

Q. 487. Is that the reason you want to prevent it being brought to a hearing?

A. I do not know that I have; I want to have every question decided as rapidly as possible.

Q. 488. Have you brought the Ziegler suit to have it settled as soon as possible?

A. Yes; I have in writing offered those gentlemen to prevent all delays, and to hasten every suit connected with the question.

Q. 489. By that writing do you refer to the bill in the Ziegler suit?

1538 A. By a letter in writing to one of the trustees of the substitution bonds.

Q. 490. That was at the same time that you were promoting the Ketchum suit?

A. Yes.

Q. 491. The same time you were promoting the Ziegler suit?

A. The same time I was instituting the Ziegler suit.

Q. 492. What, according to your information, prevents the Duncan & Elliot suit from being heard in June?

A. That requires no answer.

Q. 493. What does require an answer?

A. I decline to answer.

Q. 494. Will you answer?

A. I decline to answer.

Q. 495. Do you think the coupon question can be raised any better in the Ziegler suit than in the Duncan & Elliot suit?

(Objected to as calling for a conclusion of the witness's mind.)

Q. 496. It has been alleged by M'r Du Puy, M'r Pierson, and M'r Hays, that your object in bringing the Ziegler suit is to force them to a settlement of the demands you make for money and other concessions?

A. I know nothing of the allegation.

Q. 497. Is it true?

A. I think that requires no answer.

Q. 498. Do you refuse to answer?

A. I give an answer—That is false.

Q. 499. Then what is your object in bringing that suit, if you do not expect to gain money or anything else?

(Objected to.)

A. I mean to protect my money-interest.

Q. 500. You bring it to get money?

A. To get my rights. I bring it to get my monied rights.

Q. 501. Arising on your claim as a bondholder?

A. Yes.

Q. 502. How much more money do you expect to get in that suit by bringing it than in the Duncan & Elliot suit?

(Objected to.)

A. I decline to answer.

Q. 503. How much more protection from the United States circuit court for the southern district of Alabama do you expect to obtain in the Ziegler suit than you expect to obtain in the Duncan & Elliot or in the Ketchum suit?

A. I cannot answer.

Q. 504. Do you mean you will not answer?

A. I decline to answer.

Q. 505. Do you expect to get the full face of your bonds in the Ziegler suit?

A. I decline to answer.

Q. 506. Do you expect to get the full face of your bonds in the Ketchum suit?

A. I decline to answer.

Q. 507. Do you expect to get the full face of your bonds in the Duncan & Elliot suit?

A. Of course I don't. I expect to defeat them in all of the suits.

Q. 508. You expect to defeat them in the Duncan & Elliot suit as well as the Ziegler suit?

A. No.

Q. 509. What is the difference between the two suits?

A. I prefer one to the other.

1539 Q. 510. How do you expect to get off any cheaper, as far as the coupons are concerned, in the Ziegler suit than in the Duncan & Elliot suit?

A. I decline to answer.

Q. 511. Are you going to employ the same counsel?

A. I decline to answer.

Q. 512. Are you going to call the same witnesses; will you not answer that?

A. I decline to answer that. I am going to give the same answer all the way through to such questions.

Q. 513. What do you expect to gain in the way of money, or other substantial gain, in the Ziegler suit, that you cannot gain in the Ketchum suit?

A. I decline to answer.

Q. 514. What better protection against the claim of the coupons do you expect to obtain in the Ziegler suit than you do in the Ketchum suit?

A. I decline to answer.

Q. 515. How do you expect to obtain any greater advantage in the Ziegler suit on the bonds of yourself and friends than in the Ketchum suit?

A. I decline to answer.

Q. 516. What means do you mean to resort to in the Ziegler suit in regard to the Tennessee substitution lien more than in the Ketchum suit?

A. I decline to answer.

Q. 517. Why do you prefer proceeding in the Ziegler suit to going on in the Duncan & Elliott suit, in which orders of reference have already been made and proofs taken before the master?

A. I decline to answer.

Q. 518. Is it not to gain money?

A. I decline to answer.

Q. 519. Will you say it is not to gain money?

A. I decline to answer.

Q. 520. Knowing that such charges have been made against you, do you decline to answer?

A. I have answered.

Q. 521. What was the answer you gave?

A. The stenographer has it.

Q. 522. Is that all the answer you will give to that question?

A. Yes.

Q. 523. That is, your object in bringing the suit is not to get money, is it?

A. I decline to answer.

Q. 524. Do you want to get the land, will you answer that?

A. I decline to answer that.

Q. 524. What made you prove your bonds in the Duncan and Elliot suit?

(Objected to as incompetent and immaterial, and as calling for the reasoning of witness's mind.)

Q. 526. Were you living here in 1860?

A. Yes.

Q. 527. In New York?

A. Part of the time.

Q. 528. Did you remain here all through the war?

A. Yes, sir.

Q. 529. Were you not South during the war at any time?

A. No, sir.

Q. 530. In the Ziegler suit you have sworn that there were some acts
of the Confederate Congress, and of the legislature of Alabama,
1540 which provided that the paper money of the rebel government
should be a good discharge of the debts due to the trustees under the mortgages and deeds of trust; what acts do you refer to?

A. I do not know the special act.

Q. 531. Have you ever seen any such acts?

A. No, sir.

Q. 532. Who told you there were any such acts?

A. It was notorious that the Confederate money was legal tender in the South.

Q. 533. You state you think it was notorious that there were such acts?

A. Yes.

Q. 534. You don't know of any such acts?

A. No, sir.

Q. 535. You don't know of any such special acts making Confederate money the legal tender for notes and mortgages, etc.?

A. No, sir.

Q. 536. Who told you so?

A. It is perfectly immaterial.

Q. 537. Do you mean to say that your understanding of a trust mortgage is that the trustees may receive payment of the bonds?

(Objected to as calling for the conclusion of the witness's mind.)

A. I never said such a thing.

Q. 538. Are you sure you never said such a thing?

A. I never said such a thing.

Q. 539 Is that your understanding that the trustee can collect the bonds?

(Same objection.)

A. I understand the trustee has nothing to do with the collecting of bonds.

Q. 540. You understand that the bonds have got to be paid to the bondholders?

(Same objection.)

A. I mean simply that I do not understand what your question is.

Q. 541. Don't you understand that when the bonds are paid, the payment must be made to the people who hold the bonds, and not the trustees?

(Same objection.)

A. I have not said anything like that; I so understood.

Q. 542. You lived here through the war?

A. Yes.

Q. 543. You never had any impression that they could make you take Coefederate money for the bonds?

A. No; but there is nothing sworn like that there.

Q. 544. You are ready to answer those questions, are you; then will you be good enough to state what object you expect to accomplish by the Ziegler suit, in respect to the coupons, that you cannot accomplish in the Ketchum or Duncan and Elliot suit?

(Objected to as before, and the witness advised not to answer.)

Q. 545. You still adhere to your refusal to answer those questions, do you?

A. Yes, sir.

Q. 546. You were never under any apprehension that you or your friends in Switzerland or Germany would be compelled to accept Confederate money?

A. No, sir.

Q. 547. What made you swear so in your bill?

A. I did not swear to that in my bill, or anywhere in my life, no way.

1541 Q. 548. What did you mean by swearing to this in your bill: "The said acts, besides their hostility to the United States, had the effect of impairing the obligation of the contract between the Mobile & Ohio Railroad Company and Morris Ketchum, as surviving trustee of the first-mortgage bondholders. Under those circumstances the sole protection of the first-mortgage bondholders, both in the United States and in Europe, and the means by which the trust-lien might be preserved from satisfaction by a sale for the paper money of the Confederate States, was by enforcing the trust vested in Morris Ketchum"?

(Objected to on the ground, first, that the language is plain and not technical, and the answer speaks for itself; second, that it is cross-examination of his own witness.)

A. That all relates to the acceptance of Confederate moneys in payment of the lands that were to be sold by the trustees appointed by the Confederate court.

Q. 549. How could the lands be sold if the bonds were not there to pay for them?

A. I do not know.

Q. 550. What made you swear that the means by which the plaintiffs' land might be preserved from satisfaction of and sale for the paper money of the Confederate States——

A. (Witness interrupting.) Because I am informed that they have sold some of those lands and did accept Confederate moneys for them.

Q. 551. By what means did you understand that the lands might be sold by the trustees for Confederate moneys, and the bondholders in

Switzerland, Ireland, England, and Germany be compelled to accept Confederate money?

(Objected to as hearsay.)

Q. 552. What sale of lands do you know of having been made during the war for Confederate money?

A. My counsel and M'r Morris Ketchum told me.

Q. 553. Did you ever read Morris Ketchum's bill?

(Objected to as immaterial.)

A. I am not sure whether I read it or not.

Q. 554. Do you know how much Ziegler's suit differs from it?

A. No, not exactly.

Q. 555. Don't you know that it is the exact contrary to the bill sworn to in Morris Ketchum's suit?

A. I do not know.

Q. 556. You did not compare yours with Morris Ketchum's?

A. I did not.

Q. 557. What do you mean by saying that no transfers of estate by M'r Morris Ketchum to any citizen of the rebel State could be valid by the sale of the Mobile & Ohio in the situation of its affairs, for the worthless and illegal paper money issued by the authorities?

1542 (Objected to as calling for the opinion of the witness, and as cross-examining his own witness.)

A. I do not understand the words as you read them.

(The commissioner is requested to repeat from the bill what has just been read to the witness, which the commissioner does, and the witness says:)

A. There is something wrong there; think some words are left out or misread.

Q. 558. You don't remember having sworn to any words of that kind?

A. No; I would not swear to it.

Q. 559. You swore to it knowingly?

A. I would not swear to it, because I don't remember it; you certainly did make one mistake, and I desire to state that you did not read it correctly; as I understood it, the counsel did not read it as the commissioner did; I think there was a difference in one word.

Q. 560. You understood the counsel to say, "the company to so transfer"?

A. Yes.

Q. 561. And you understood the counsel to say transfer or transferred?

A. Yes.

Q. 562. And the commissioner to say transference?

A. Yes, sir.

Q. 563. And the bill says transference?

A. Yes.

Q. 564. And you understand it is transference?

A. Yes, sir.

Q. 565. Will you explain what it means?

A. It means transference.

Q. 566. What does the sentence mean?

A. I told you that is the one word; the sentence you read to me does make sense.

Q. 567. It is not true?

A. How can I tell with a thing I don't comprehend; it is not so in the bill, I think.

Q. 568. It does not have any sense?

A. Not at all.

Q. 569. It is not true, is it?

(Objected to as already answered.)

Q. 570. Your bill states that on certain alleged false and fraudulent statements the directors sought to deprive the bondholders of their contract rights; what do you mean by that?

(Objected to as calling for the conclusion of the witness's mind; second, as cross-examination of his own witness; and third, the language speaks for itself.)

A. I should have to read the whole context to know.

Q. 571. Don't you know what that means?

A. No, I do not; separated so, I do not.

Q. 572. Don't you know what contract-rights of the bondholders were?

A. I do not know what they were.

Q. 573. Do you know what they were?

A. I suppose I do.

Q. 574. How does anybody undertake to deprive them of their rights?

A. I do not understand that.

Q. 575. Do you know of anybody trying to deprive them of the contract-rights?

A. Yes.

Q. 576. Who?

A. The parties who are trying to put the substitution bonds ahead.

Q. 577. That is what you refer to?

1543 A. I do not say that; I say nothing of the kind.

Q. 578. Your bill alleges that certain copies of Confederate orders are annexed; what do you mean by Confederate orders?

A. Orders by the court; I suppose issued by the court.

Q. 579. You mean orders issued by the court are Confederate orders?

A. I do not know.

Q. 580. Don't you know what you mean?

A. I don't know what that means when you read those few words.

Q. 581. What do you mean by Confederate orders? is the question.

A. I suppose orders of the Confederate courts.

Q. 582. What Confederate court do you know of that made any order on the subject?

A. I believe they made orders in regard to dispossessing Mr. Ketchum.

Q. 583. What Confederate court?

A. I don't know.

Q. 584. Don't you know it was a State court of Alabama?

A. It may have been a State court; I believe it was a State court.

Q. 585. Why do you call that a Confederate court?

A. It was a Confederate court, wasn't it?

Q. 586. It was not.

A. I supposed it was; I supposed it was a Confederate court; I believe there were none but State courts; I never knew there was any Confederate courts but State courts.

Q. 587. What portion of the land grant was sold according to the allegations of your bill for Confederate currency?

A. I do not know the amount.

Q. 588. Do you know the locality?

A. No.

Q. 589. How do you get knowledge of it?

A. A. I was informed of it.

Q. 590. Who told you so?

A. M'r Ketchum.

Q. 591. Did he specify the portions?

A. No.

Q. 592. Do you know the proceeds?

A. No.

Q. 593. Don't you know that Confederate money was just as useful for paying other people's debts as it was for paying the debts of the Mobile and Ohio Railroad Company?

A. I don't know anything about it; I suppose it was.

Q. 594. It was current if the directors of the company received it; it was current for supplies and other purposes?

A. I suppose so; I do not know anything about it; I have sworn nothing about it whether it was current or not.

Q. 595. Your bill alleges that no notice of these sales of land was given to the first mortgage bondholders; if that was so how do you understand that the land was cleared of the lien of the mortgage?

A. I don't so suppose.

Q. 596. You suppose the sales were inoperative?

A. Yes.

Q. 597. Do you say you believe the bondholders were held by that?

A. If they could have legally done so.

Q. 598. You mean to imply that they failed to succeed?

1544 A. I think so.

Q. 599. No harm was done?

A. The intent was evident.

Q. 600. Was any harm done?

(Objected to as calling for the conclusion of the witness's mind.)

Q. 601. Do you know of any harm having been done by it?

A. No; because we should contest the titles in the court, if such sales were made, as I understand they have been.

Q. 602. What do you know about the Mobile & Ohio Railroad Company not having paid coupons on its first-mortgage bonds which fell due during the war; was that so?

A. I suppose so.

Q. 603. Then it defaulted long before 1874?

A. Yes, sir.

Q. 604. How do you know that?

A. Because I was a bondholder.

Q. 605. Did you every consult M'r Morris Ketchum about it?

A. No, sir.

Q. 606. Why didn't you go to the trustees?

A. Because there was no use; because the plan came forward.

Q. 607. What plan came forward?

A. The coupons that became due during the war up to the time of the reorganization arrangement; and we took the interest bonds.

Q. 608. Was that done without consultation with the trustees?

A. Yes; because it was between the bondholders and the officers.

Q. 609. Don't you know Morris Ketchum was a bondholder?

A. No, I don't know he was.

Q. 610. Did you not have a conversation with him about that?

A. No.

Q. 611. Hasn't M'r Ketchum told you he was a holder of some bonds for which there was a default of the company?

A. He never told me.

Q. 612. How could the bonds have been issued without the signature of the trustees; they were issued on the security of the—witness interrupting.

A. They were not.

Q. 613. Did not the new bonds have the signature of the trustees?

A. No; the officers of the company signed them.

Q. 614. Who negotiated between the bondholders and the company?

A. I forgot.

Q. 615. You knew at the time?

A. Certainly.

Q 616. Wasn't it Walsh, Jackson & Young?

A. I do not know any of those men; I probably did nothing in it until it was accomplished; and then I went to the Union Trust Company and exchanged my coupon for bonds.

Q. 617. You speak of a conference of bondholders being held?

A. That is another thing; it was held while I was in Europe recently, on the recent default.

Q. 618. No; you say yourself the Mobile & Ohio Railroad Company
did not pay the coupons on its first-mortgage bonds which fell due dur-
ing the civil war in the United States; and some time after the
1545 termination of hostilities the bondholders consulted as to the
course to be pursued in reference to their interest; were you pres-
ent?

A. No.

Q. 619. How do you know there was such a consultation?

A. It was notorious at the time.

Q. 620. Do you state this on the point of notoriety?

A. Yes.

Q. 621. Upon no other basis?

A. No other basis except the information a man acquires from being in active business.

Q. 622. That is the kind of knowledge you have that the coupons were not paid—the kind of knowledge that a man gets in active business?

A. What coupons?

Q. 623. The coupons that fell due during the war?

A. I was a bondholder and did not get my coupons paid.

Q. 624. And this was a matter of notoriety?

A. Yes; I talked about it. I do not remember exactly how it was done; it was a matter of notoriety; it is not disputed.

Q. 625. Do you remember talking with M'r Duncan about it?

A. I do not remember, though probably I did.

Q. 626. What made you say you did?

A. I probably did.

Q. 627. What made you say you did?

A. I suppose I did.

Q. 628. You are not speaking from memory?

A. I do not know.

Q. 629. Do you remember talking about that funding?

A. I do not remember talking with him; I say, I very probably did.

Q. 630. What made you say that; why did you say that you very probably consulted with M'r Duncan?

A. Well, just strike out that, as if I did not say so.

Q. 631. Why did you say so?

A. That requires no answer.

Q. 632. Why did you say so?

A. I decline to answer, as it is an impertinent question.

Q. 633. It is no more impertinent than your answer. Have you employed Judge Grandin as counsel in the Ketchum suit?

A. No.

Q. 634. In the Ketchum suit?

A. No; I did not employ any counsel in the Ketchum suit.

Q. 635. Have you not employed and paid Judge Grandin to prosecute the Ketchum suit?

A. I have not.

Q. 636. Are you aware that an injunction has been issued in the State court of Mobile restraining M'r Ketchum from going on with his suit?

A. I am not.

Q. 637. What kind of proceedings were you informed of?

A. Some proceedings similar to what you instituted in the city of New York; I did not see the proceedings.

Q. 638. You know of a motion in the Ketchum suit, by Grandin, to restrain Duncan from going on with their suit?

A. I have heard so from M'r Andrews.

Q. 639. Where?

A. In New York.

Q. 640. Did he say he had instituted the proceedings?

1546 **A. Mr. Grandin, I believe, is counsel of the second mortgage bondholders; M'r Andrews is the one who did.**

Q. 641. M'r Andrews is the one who is held responsible for the violation of the injunction of the Mobile court?

A. I do not know.

Q. 641½. M'r Moran, you have proved some bonds belonging to yourself in the Duncan and Elliot suit?

A. Yes, sir.

Q. 642. Why did you not prove Jump's?

A. I think he did not own them at the time; they were proved by Moran Bro's, as agents.

Q. 643. Jump's bonds are among those proved in the Duncan and Elliot suit?

A. Yes.

Q. Why didn't you prove De Watteville's bonds in the Duncan and Elliot suit?

A. I did prove them, probably.

Q. 645. Why do you say probably?

A. I say I proved ninety-seven. I did not prove them, I was in Europe.

Q. 646. You understand that ninety-seven of the De Watteville bonds have been proved in the Duncan and Elliot suit?

A. Yes; I am not sure whether the three others were.

Q. 647. Why didn't you prove Dorelli Ziegler's bonds in the Duncan and Elliot suit, if they are not proved?

A. I am not sure whether they are proved.

Q. 648. Dorelli Zeigler's bonds have been proved at the time when the master was here?

A. Yes; I believe so.

Q. 649. Through your house?

A. Yes.

Q. 650. At what place?

A. I can ascertain; I don't know.

Q. 650½. The other man, Masson Chavannes, have his bonds been proved in the Duncan and Elliot suit?

A. I think all in that case; I am not sure; I can give you accurately if you desire.

Q. 651. How do you know, as stated in your bill, that prior to May, 1875, Duncan, Sherman & Company had been acquiring and purchasing claims against the railroad company?

A. I only heard so from general information.

Q. 652. From whom did you hear it?

A. I thought they did, as I believe they have always been the financial agents of the company.

Q. 653. On what information did you make that statement?

A. General information.

Q. 654. What do you mean by general information?

A. Got it from various parties.

Q. 655. What parties?

A. Well, the information I probably got mostly through Ketchum and M'r Andrews.

Q. 656. When did you get it?

A. After the commencement of that suit.

Q. 657. Then your counsel brought you more information in this suit than you brought your counsel?

A. He did in many instances.

Q. 658. Did you employ him to get information?

A. I certainly did; though a great deal of it was obtained long
1547 before I employed him, as he happened to have been in M'r Ketchum's suit ever since months before.

Adjourned to M'r Gutman's office, 29 Nassau street, at ten and a half a. m., April 28, 1877.

NEW YORK, *April 28th*, 1877.

Examination of CHARLES MORAN continued by M'r Bangs.

M'r Moran produced a copy of the authority of Henry Jump, together with the circular of November 24th, 1876, to which it is attached.

Q. 1. Have not Mess'r's D'Orelli Ziegler placed some of these securities in the hands of Hays, Pierson, and Du Puy?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. Not to my knowledge.

Q. 2. Have you received from various other parties documents like this one subscribed by Henry Jump?

A. I have some others; not many. You are speaking, now, of our own correspondents?

Q. 3. Yes; of your own correspondents.

A. Generally, whatever the instructions were, were given in a letter.

Q. 4. Have you received instructions from any of the parties who gave you such so-called powers of attorney to put their bonds into the Hays, Pierson, and Du Puy scheme?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. I have.

Q. 5. Which parties?

A. None of those mentioned.

Q. 6. None of the plaintiffs?

A. None of the plaintiffs.

Q. 7. I ask you who they were; who are they who have so instructed you?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

The WITNESS. I suppose I am not bound to answer that.

M'r BLANDY. I advise you that you are not bound to answer that.

Q. 8. Do you refuse to answer that?

A. I refuse to answer that.

Q. 9. Have you complied with the directions so given you?

(Objected to by M'r Blandy; taken subject to objection.)

A. I have not.

Q. 10. Why not?

(Objected to by M'r Blandy; taken subject to objection.)

A. I did not think it to their interest to do so.

Q. 11. You think, then, that you are entitled to overrule the positive directions of your correspondents, do you?

A. I constantly do so.

Q. 12. You violate the instructions of your principals constantly?

A. Whenever I think it their interest to do so; and they have always approved of it.

Q. 13. Who has approved of your violation of his instructions?

1548 A. That is unnecessary for me to answer; that is, I prefer not to answer.

Q. 14. Do you decline to answer?

A. I decline to answer.

Q. 15. I suppose that the fact is that whenever you have proved, in the Duncan and Elliott suit, bonds belonging to any of your correspondents or principals, you have proved them in your own name, have you not?

A. I have, as agent, or as holder.

Q. 16. Do you remember how many bonds you have proved in the Duncan and Elliot suit for Rudolph Merian?

A. I could give you that; I don't remember; I could get it at the office.

Q. 17. You have a record of it?

A. Yes, sir.

Q. 18. Of the numbers and amounts?

A. Yes, sir.

Q. 19. And is the case the same with Alfred Renevier and Eugene Renevier and Charles Carrard?

A. Yes, sir.

Q. 20. And Cephise Chuffard?

A. Yes, sir.

Q. 21. Their bonds, when proved, were proved in your name, were they?

A. They were proved in ours, I think. I was not here when they were proved.

Q. 22. You know they were all proved?

A. They were proved.

Q. 23. They were proved by Moran Bro's, for yourself and as agents of others?

A. Yes, sir.

Q. 24. Then you have not received any bonds but what you have proved them in the Duncan and Elliot suit?

A. I think I have some.

Q. 25. Received recently?

A. Since the proving; at the time we proved.

Q. 26. Since the master was here last summer?

A. Yes, sir; all that we had then we proved.

Q. 27. You have received some few since, which you have not proved?

A. I don't think we have proved them; some of them may have been bonds that we purchased, but I am not sure.

Q. 28. Have you purchased any bonds recently?

A. Yes, sir; since I came from Europe we have purchased a few.

Q. 29. You refer to your return from Europe; when was that?

A. Towards, I think, the 30th of October.

Q. 30. How long had you been in Europe?

A. I left here the 20th of May.

Q. 31. Before you left had you heard anything about a decree having been obtained on the Tennessee substitution lien?

A. No, sir.

Q. 32. Are you sure of that?

A. Yes, sir. I swore last evening, you remember, that the first knowledge I had of it was through my son, when I was in Europe.

Q. 33. Did he not tell you that he had learned it from M'r Duncan?

(M'r Blandy—Objected to, as hearsay; taken subject to objection.)

A. I can t remember whether he told me or not from what source. He may have told me. It was a thing of no importance; I make no
1549 note of things of that kind. He said that such things had been done.

Q. 34. Did you receive a letter last September from M'r Duncan?

A. No, sir; I——

Q. 35. (Interposing.) Or have you seen any such letter?

A. I very probably have; I don't know what you allude to.

Q. 36. About the decree?

A. The one which you questioned me about yesterday?

Q. 37. No.

A. About the Tennessee decree?

Q. 38. About the Tennessee decree.

A. He may have written a letter to my house; yes, sir.

Mr. BANGS. I shall have to trouble you to look for a letter from M'r Duncan on the 16th of September last, addressed to your firm.

The WITNESS. If M'r Duncan has a copy of the letter, by reading it and refreshing my recollection, I may remember to have seen it.

(Copy of letter shown to the witness.)

The WITNESS. I haven't the slightest recollection of having seen such a letter; I won't say positively that I never had such a letter, but I don't recollect it; we will look diligently in the office; it is very strange that I should have no recollection of it at all; I remember other letters; there will be only one letter of that date, I suppose.

Q. 39. Did you call and see M'r Duncan on your return from Europe?

A. I did.

Q. 40. On the subject of the Tennessee decree?

A. Nothing in particular about any one thing; I went to see him on the general position of the M. & O. affairs.

Q. 41. Did you have any conversation about the Tennessee decree?

A. I had a conversation.

Q. 42. Did he not tell you that he had been taken by surprised by the entry of that decree, and that he was trying to set it aside?

(M'r Blandy—Objected to as hearsay; taken subject to objection.)

A. Yes, sir.

Q. 43. Why, in framing your bill in the Ziegler case, did you not state the fact that you had requested Duncan and Elliott to take possession as trustees; why did you omit that fact?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. I did not suppose it was necessary.

Q. 43½. Did you suppose it would hurt you if you stated the fact?

(M'r Blandy—Objected to as immaterial, and as calling for a conclusion of the witness's mind; taken subject to objection.)

A. I am ready to admit the fact at any time.

Q. 44. Why did you not admit it in this bill?

(M'r Blandy—Objected to as immaterial, and as calling for a conclusion of the witness's mind.)

Q. 45. You knew, in May, 1875, that the mortgage provided for three months' grace after default, did you not?

1550 (M'r Blandy—Objected to as immaterial, and as calling for a conclusion of the witness's mind; taken subject to objection.)

A. I don't remember whether I paid any attention to it or not.

Q. 46. I did not ask you that; did you know it?

A. I don't remember.

Q. 47. When did you first find it out, if you did not know it then?

A. I found it out after the bills were drawn.

Q. 48. After the Ziegler bill was drawn?

A. Any of these bills. While you mention it, that might have attracted my atnention; I may have known it before, but it made no impression upon my mind; I probably did, because I had read the mortgage several times.

Q. 49. You had read the mortgage long before May, 1875?

A. Yes.

Q. 50. Do you mean to say that you read it with so little intelligence that you did not know that three months' grace was allowed after default?

A. Exactly so.

Q. 51. You were so wanting in intelligence?

A. So wanting in intelligence.

M'r Bangs. I do not wonder, then, that M'r Blandy objects to the conclusion of your mind.

(This is put down at M'r Blandy's request.)

Q. 52. What do you mean by stating in your bill that Duncan, Sherman & Co. made an assignment within less than three months from the date of the default of the Mobile & Ohio Railroad Company?

(M'r Blandy—Objected to upon the ground that the language speaks for itself, and as immaterial, and as calling for a conclusion of the witness's mind; taken subject to objection.)

M'r Bangs. M'r Moran is cautioned not to state any conclusion of his mind.

A. I meant exactly what I said.

Q. 53. What do you refer to as the date of the default?

A. The 1st of May, 1875.

Q. 54. When did you first find out that Duncan, Sherman & Co. had made an assignment?

(M'r Blandy—objected to as immaterial; taken subject to objection.)

A. When it was published in the papers.

Q. 55. Was it in July, 1875?

A. I am not positive as to the date.

Q. 56. What did you mean by swearing in your bill that it was within three months after the 1st of May?

A. I so believed it.

Q. 57. Do you believe it now?

A. Yes, sir.

Q. 58. Then it was in July, 1875, was it not?

A. It may have been; May and June would be two months.

Q. 59. And July would be three months?

A. Yes, sir.

Q. 60. That is a conclusion of your mind, observe?

A. That is it.

Q. 61. Did you mean that they made an assignment before the end of July, 1875?

A. I suppose that must be the date; I am not sure of the date.

Q. 62. You knew it at the time?

1551 A. I didn't know the exact date.

Q. 63. You knew it about the time?

A. Yes, sir.

Q. 64. Within a few days of the time?

A. I paid no particular attention to it.

Q. 65. You knew it?

A. I don't know what you mean by knowing it; I could not swear to the date.

Q. 66. You knew about the end of July, 1875, that Duncan, Sherman & Co. had made an assignment, did you not?

A. I knew it when it was published in the papers; that is all I can say.

Q. 67. When was it published in the papers?

A. I have no recollection.

Q. 68. Was it not published in July, 1875?

A. I don't know.

Q. 69. You knew it long before March, 1876, did you not?

A. Yes, sir.

Q. 70. In May, 1875, you knew that the November interest had not been paid, did you not?

A. No, I did not.

Q. 71. Did you not know it?

A. No.

Q. 72. When did you first find that out?

A. I didn't find it out until after those Duncan suits were brought.

Q. 73. When was that?

A. That was after the failure, I think; I don't know.

M'r Blandy. You refer to Duncan, Sherman & Co.

Q. 74. Did you not see the report for 1874 of the company?

A. I saw the report.

Q. 75. Did you read it?

A. Yes, sir.

Q. 76. Read the whole of it?

A. I read the whole of it; yes, sir.

Q. 77. When did you read it?

A. I don't know; shortly after it was issued.

Q. 78. When was it issued?

A. The report for 1874?

Q. Yes.

A. I think it was in the middle of 1875; I am not sure.

Q. 81. In the middle of 1875?

A. I don't know; I am not sure.

Q. 82. Repeated.

A. They were usually very dilatory in their reports; M'r Duncan can tell you.

Q. 83. I do not want you to refer me to anybody else.

A. I don't know when it was.

Q. 84. Was it in the middle of 1875?

A. I don't know the date; if I remembered it I would give it to you with the greatest pleasure.

Q. 85. As you understood it in May, 1875, when Duncan & Elliot filed their bill, Duncan, Sherman & Co. were bondholders, were they not?

A. I was led to understand from conversations with M'r Duncan that they and their friends were large bondholders.

Q. 86. You have not understood to the contrary since, have you?

A. I have understood since that they had very few.

Q. 87. At that time?

A. Very few first-mortgage bonds.

Q. 88. You understood they had some?

A. I don't know that they had any, in fact; if they had, it must have been very few.

Q. 89. What do you say that for?

1552 A. Because none appeared in their statement of their assets.

Q. 90. I am talking about May, 1875. Did they make any statement of their assets in May, 1875?

A. Oh, no; I was led to believe they had first-mortgage bonds, but only from conversation with M'r Duncan.

Q. 91. He told you?

A. He told me that he and his friends were largely interested in them—him and his friends. He didn't separate it exactly.

Q. 92. Whom?

A. He and his friends.

Q. 93. That is all he told you?

A. He said that he represented the first mortgage as trustee, and he would defend it. That is the reason that I co-operated in everything that he desired me to do.

Q. 94. What have they done in hostility to your interest in the first-mortgage bonds since that, that you complain of?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. I have stated it in full.

Q. 96. No; you have not. What have they done in hostility to your interests, or to prevent you from getting your share?

A. Indeed, I don't know.

M'r Blandy. I advise you that you need not answer that question.

Q. 96. Do you refuse to state what grievance you have against Duncan & Elliot?

A. Yes, sir.

Q. 97. You refuse to?

A. Yes, sir.

Q. 98. Have you any?

A. I have.

Q. 99. Will you specify them?

A. It is not necessary.

Q. 100. You are not the judge of that.

A. I decline simply for the reason that I do not want to go through one hundred interrogatories where I have to repeat the same answer.

Q. 101. I am not asking you to repeat anything you have stated before. I want to know what wrong Duncan & Elliot have done you as a bondholder, or what they have done to prevent you getting your full share of the proceeds of the property?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. I will answer that. M'r Duncan promised me that he would permit nothing to be done to establish a priority of substitution bonds without giving Moran Bro's due notice, so that they might appear and defend it; and after I was in Europe he got up this plan of reorganization by which the substitution bonds were given a much greater percentage of the new first mortgage to be issued than the first-mortgage bonds, while we held that they had no mortgage lien, and I told him repeatedly

that I would defend the interest of the first-mortgage bonds; and then this claim came, which I knew nothing of at the time, of $735,000 coupons put in which had been considered as paid, which he claimed
1553 as not being paid; and he had made arrangements, through personal solicitations, and he is the main man in the reorganization, which is most ruinous.

Q. 102. How does that plan involve any wrong to you? Will not the property sell for just as much under that plan as any other?

A. I decline to answer, because I am the judge of my interests.

Q. 103. I want to know how the reorganization scheme tends to prevent you from getting your legal rights or the property from bringing its value.

A. I decline to answer.

Q. 104. You will not state?

A. No, sir.

Q. 105. Are you mad because certain persons have got up a scheme for their own protection without consulting you?

A. No; I never get angry for people doing what is for their own interests.

Q. 106. You are not mad about that?

A. No, sir.

Q. 107. Did you consult M'r Duncan in regard to your plan of reorganization?

A. No, sir.

Q. 108. M'r Alexander Duncan?

No, sir.

Q. 109. The Tennessee bondholders?

A. No; some of them I did.

Q. 110. Whom did you consult?

(M'r Blandy—Objected to as immaterial. Taken subject to objection.)

A. I consulted with other parties.

Q. 111. Whom did you consult with?

(M'r Blandy—Objected to as immaterial. Taken subject to objection.)

A. I decline to answer.

Q. 112. You want to have Duncan and Elliot removed, do you, because certain parties have got up a scheme for the reorganization of the road?

A. No, sir.

Q. 113. Then, what is the reason?

(M'r Blandy—Objected to as immaterial. I advise you that you are not bound to answer it. Taken subject to objection.)

A. I decline to answer.

Q. 114. You decline to tell why you want to have Duncan and Elliot removed?

A. Yes, sir.

Q. 115. Is it not because you want to defeat the reorganization scheme and think that you can defeat it by having them removed?

(Mr. Blandy—Objected to as leading and immaterial. Taken subject to objection.)

The WITNESS. I decline to answer.

Q. 116. Haven't you had a chance to defend against the Tennessee substitution lien, M'r Moran?

A. I can't answer that because I am not a lawyer.

Q. 117. Were you a lawyer when you told me you wanted a chance to defend?

A. No, sir.

Q. 118. What did you mean when you told me you wanted a chance to defend?

(M'r Blandy—Objected to as incompetent. Taken subject to objection.)

The WITNESS. I decline to answer.

Q. 119. You refuse to answer that?

A. I refuse to answer that.

Q. 120. Did you mean you wanted an opportunity to employ a lawyer?

A. I refuse to answer that.

Q. 121. Did you mean you wanted an opportunity to set up the grounds on which you claim that the Tennessee lien was not an incumbrance?

(M'r Blandy—Objected to as leading; taken subject to objection.)

The WITNESS. I refuse to answer.

Q. 122. Have you not had an opportunity to employ a lawyer as against the Tennessee substitution lien?

(Objected to by M'r Blandy; taken subject to objection.)

The WITNESS. I decline to answer.

Q. 122½. Have you not had an opportunity to employ a lawyer as against the Tennessee substitution?

(Objected to by M'r Blandy; taken subject to objection.)

The WITNESS. I decline to answer.

Q. 123. Have you not had a chance to resist the claim pending under the coupons?

A. I decline to answer.

Q. 124. Have you not employed a lawyer to defend against the claim on the coupons?

A. I decline to answer.

Q. 125. Were you not in attendance before Commissioner Owen, on a contest and examination of witnesses about the coupons?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. I was.

Q. 126. Were you examined as a witness?

(Objected to by M'r Blandy; taken subject to objection.)

A. No, sir.

Q. 127. Why did you not offer yourself as a witness?

(M'r Blandy—Objected to as immaterial and calling for a conclusion of the witness's mind; taken subject to objection.)

A. It was not necessary; I was not asked.

Q. 128. You were not asked by whom?

A. By any one.

Q. 129. Why did you not offer yourself without being asked?

A. I didn't think it proper.

Q. 130. You did not know anything that you could testify to that tended to defeat the claim on the coupons?

A. I didn't think that was the place where the defence was to be made.

Q. 131. Why did you call those witnesses there for if you did not think that was the place?

A. To establish some facts.

Q. 132. But you say you thought that was not the place to establish the facts?

A. I decline to answer.

Q. 133. You decline to answer what?

A. These are comments of yours; they are not questions.

Q. 134. Did you think that was the proper place for the production of testimony in opposition to the coupons?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. Yes, sir; such testimony as I thought would be available and just.

Q. 135. You did not know of any testimony of your own that would be advantageous or available, did you? 1555

A. Yes, sir; I gave it in another form.

Q. 136. What was it?

A. I gave it in affidavits.

Q. 137. What affidavits?

A. Various ones.

Q. 138. Where?

A. On record in that suit.

Q. 139. Whereabouts on record?

A. I decline to answer; I don't know, in fact, where they are.

Q. 140. How do you know they are of record?

A. Because I executed them for the purpose of being entered.

Q. 141. How recently have you sworn to any such affidavit?

A. I don't remember the date.

Q. 142. Within two or three weeks?

A. Yes.

Q. 143. Within three or four days?

A. I don't remember the date.

Q. 144. Within three or four days is the question?

A. I don't remember the date.

Q. 145. I ask you if it was within three or four days?

A. I don't remember.

Q. 146. Have you informed any of the plaintiffs in this suit that you brought this suit?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. Yes, sir.

Q. 147. You have informed them?

A. Yes, sir.

Q. 148. When did you inform them?

A. I don't remember.

Q. 149. How did you inform them?

A. By letter.

Q. 150. It was yesterday, was it not?

A. I decline to answer.

Q. 151. It was not before yesterday, was it?

A. I decline to answer.

Q. 152. Are the plaintiffs in this Ziegler suit incurring the expense of the suit, or are you incurring it?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

The WITNESS. I decline to answer.

Q. 153. On what terms have you employed counsel to conduct the Ziegler suit?

(M'r Blandy—Objected to, first, on the ground that it is already asked and answered, and second, as incompetent, and third, as privileged; taken subject to objection.)

The WITNESS. I decline to answer.

Q. 154. Have you not employed them upon a contingent and speculative fee?

(Same objection by M'r Blandy; taken subject to objection.)

The WITNESS. I decline to answer.

Q. 155. What do you mean by stating in your bill that Duncan and Elliot allege that the Tennessee substitution bonds are secured by a valid and permanent lien on 118 miles of the road in Tennessee? Will you point out that part of their bill to which you refer in that language?

(M'r Blandy—Objected to as calling for a conclusion, and second, that the language speaks for itself.)

Q. 156. Will you point out that part of the bill which you refer to?

(Same objection by M'r Blandy; taken subject to objection.)

A. Need I answer that question?

1556 (By M'r Blandy:)

Q. 157. Have you got the bill to point out?

A. I haven't the bill.

By M'r Bangs:

Q. 158. Can you tell from memory what part of the bill states any such thing as you have averred?

A. I cannot; the bill speaks for itself.

Q. 159. In what particular has the administration of the property been designed and shaped to further the said object, and collect the claim above described adversely to the rights and interests of the first-mortgage bondholders?

A. I don't know how I can answer that.

Q. 160. You do not know any such particular, do you?

A. Yes, sir.

Q. 161. Name it, then; how has the administration been designed and shaped adversely to the rights and interests of the first-mortgage bondholders?

A. I think that the road has not been administered with due economy.

Q. 162. In what respect?

A. The general mode.

Q. 163. Can you specify anything?

A. The general mode of administering it.

Q. 164. Is that the best you can do?

A. Yes, sir.

Q. 165. Have you received the receiver's reports regularly?

A. I have received them; yes, sir.

Q. 166. And studied them.

A. No; not particularly.

Q. 167. You have read them carefully?

A. Read them.

Q. 168. With a little feeling of hostility to Duncan and Elliot?

A. No hostility to those gentlemen.

Q. 169. No hostility at all?

A. No, sir.

Q. 170. In what respect do you complain of any want of economy, then?

A. Because the expenses are very heavy.

Q. 171. What expenses?

A. The expenses of administering the road generally.

Q. 172. How much ought they to be?

A. I can't say.

Q. 173. How can you say they are very heavy?

A. Then I can't say, if you say so; I can't say; it is my opinion.

Q. 174. Who suggested that answer to you?

A. My son.

Q. 175. Be good enough not to accept any suggestions of your son.

how much would you expect the expenses of such a road to be per annum?

A. I can't say.

Q. 176. What is the smallest sum it could be run for per annum?

A. I can't say.

Q. 177. What has it been run for per annum?

A. I don't remember.

Q. 178. Do you know E. D. Standiford?

A. No, sir.

Q. 179. President of the Louisville & Nashville Railroad?

A. I do not.

Q. 180. Do you know his general character and reputation?

A. I do not.

Q. 181. Do you know Thomas Allen, of the S't Louis, Iron Mountain & Southern Railway Company?

A. No, sir.

Q. 182. Do you know his reputation?

1557 A. No, sir.

Q. 183. Do you know J. C. Clarke, of the New Orleans, S't Louis & Chicago Railroad Company?

A. Not at all.

Q. 184. Do you know his reputation?

A. No, sir.

Q. 185. Do you know James A. Raynor, trustee of the New Orleans & Mobile Railroad Company?

A. No, sir.

Q. 186. Do you know William M. Evarts by reputation?

A. Yes, sir.

Q. 187. Is his reputation good?

A. Yes, sir.

Q. 188. See if you know these gentlemen, by reputation or otherwise: Robert G. Ralston, John J. Cisco & Son, Robert Lenox Kennedy, Levi P. Morton, Samuel Sloan, August Belmont, Henry F. Vail; do you know these gentlemen?

A. Yes, sir.

Q. 189. You know them all personally?

A. Nearly all.

Q. 190. Do you know them by reputation?

A. Yes, sir.

Q. 191. Are they not men of high character and reputation in New York?

(Objected to by M'r Blandy; taken subject to objection.)

A. Yes, sir.

Q. 192. Do you know Edwin D. Morgan?

A. Yes.

Q. 193. Is he a man of high character and reputation?

A. Yes, sir.

Q. 194. Do the judgments of such men have any influence with you?

(M'r Blandy.—Objected to as immaterial, and calling for a conclusion; taken subject to objection.)

A. On some things they would and on others they would not.

Q. 195. Do you have any better railroad men than M'r Standiford, or M'r Clarke, or M'r Raynor?

A. As I don't know them, I make no comparison with them.

Q. 196. Do you think you are any better railroad man than Samuel Sloan?

(M'r Blandy.—Objected to as incompetent; taken subject to objection.)

A. If I said yes, or if I said no, one would be as ridiculous as the other; there is no comparison between the two men.

Q. 197. M'r Moran, you have had experience in railroading, have you not?

A. I think I have.

Q. 198. You were president of the Erie Railway Company?

A. I was.

Q. 199. For how long?

A. For two years.

Q. 200. When was that?

A. 1857 to 1859.

Q. 201. Did you resign?

A. I did.

Q. 202. Voluntarily?

A. Voluntarily.

Q. 203. What other railroads have you had experience in?

A. I have not been connected directly with them; never would be connected with them.

Q. 204. Never was a manager or officer of a railroad company except the Erie Railroad?

A. Yes, sir.

Q. 205. Twenty years ago, before the deluge?

A. Before the deluge.

Q. 206. Do you apply to the transactions of the present day the ideas you got then?

1558 A. I certainly make use of the information I got in the past.

Q. 207. Your experience does not enable you to say what would be a proper sum to allow for the annual expenses of the Mobile & Ohio Railroad?

A. No, sir; because there are no two roads in the whole world which you can compare accurately.

Q. 208. Then, what would you compare the Mobile & Ohio Railroad with?

A. I compare it with nothing specially.

Q. 309. Then, why do you say that the management have been extravagant?

A. Because that was my opinion.

Q. 210. What was it founded on?

A. Founded on general information.

Q. 211. What kind of information?

A. If you want to know one, for example?

Q. 212. Yes.

A. I am told that since M'r Duncan became receiver there has been placed on the road a directors' car, which never was before; a thing that I never had on the Erie Railroad, and a thing I don't think proper on any railroad.

Q. 213. What do you mean by "directors' car"?

A. Used exclusively for the directors to go over the road, and receivers.

Q. 214. To do what?

A. To inspect the road. I have heard that that car has been used on other roads besides being used on the Mobile & Ohio.

Q. 215. Who told you that?

A. I was informed so.

Q. 216. Who told you that?

A. My counsel told me that he was so informed down South.

Q. 217. Then you got your information from your counsel?

A. On that particular point.

Q. 218. You have seen the car?

A. No; I have been so informed by letters that I have received.

Q. 219. Who did you receive them from?

A. I forget who was the person in particular.

Q. 220. Was it Guesnard?

A. It may have been.

Q. 221. Was it not?

A. I am not sure.

Q. 222. Will you say it was not?

A. I am not sure.

Q. 223. Was it Flemming?

A. I have had several letters complaining of it.

Q. 224. Complaining of the directors' car?

A. Complaining of the general management.

Q. 225. The directors' car I am speaking of?

A. One or two spoke of it besides my counsel.

Q. 226. Your counsel told you?

A. Yes, sir.

Q. 227. He felt aggrieved by it?

A. He gave it as a part of the information that he obtained down South.

Q. 228. Did you send him down to get it?

A. I sent him down to attend to all my interests in regard to it.

Q. 229. What is there peculiar about this directors' car?

A. I don't know; I never saw it.

Q. 230. Did not your counsel tell you?

A. He told me that it was a handsome car for the directors.

Q. 231. Did he feel aggrieved by that?

1559 A. He did not express.

Q. 232. (Interposing.) Did he not tell you that he tried to ride dead-head in it?

A. He never told me so.

Q. 233. Did he not tell you that it cost $40,000?

A. He said nothing about the cost.

Q. 234. Did he not tell you anything about the cost?

A. No, sir.

Q. 235. You feel aggrieved by this, do you?

A. I think it is an indication of what might be expected in other things.

Q. 236. What other things do you know of beside the directors' car?

A. It is nothing that I can specify in particular, but it is the general information that I have received.

Q. 237. Received from your counsel?

A. From various sources.

Q. 238. How long since you have been on the road?

A. I have not been on the road.

Q. 239. Do you consider yourself a perfectly good judge and adviser for the railroad?

A. I consider that I can form some opinion.

Q. 240. Without going on it?

A. Without going on it.

Q. 241. And you are a safe adviser of people abroad without going on the road or having been on it?

A. It is not customary for persons who hold securities of a road to go over it.

Q. 242. How do you know it is not?

A. It is my opinion; I have never done it.

Q. 243. Which do you think has the best means of judging, you or the officers of the connecting lines?

A. I don't know; I don't know whether the officers of connecting lines know anything about it.

Q. 244. I will read this letter, and ask what you think about M'r Standiford:

L. & N. R. R. Co.,
OFFICE OF PRESIDENT,
Louisville, Feb. 11th, 1877.

W. BUTLER DUNCAN, Esq.,
Trustee and Receiver:

DEAR SIR: It gives me great pleasure to state that I consider the present management of the Mobile & Ohio Railroad superior to any that it has had within my knowledge. All reports from the road sustain this view, and all the relations of the management with that of our own have been marked with true business principles.

Were I interested in the road, I should deplore any movement having for its object the removal of the present management, as I believe with that the best results obtainable can be reached.

Yours very truly,
(Signed) E. D. STANDIFORD,
Pres't.

1560 Q. Which do you think is the most reliable, your judgment, never having been over the road, or the judgment of the president of a connecting road, who has been over it frequently?

(M'r Blandy—Objected to as incompetent and immaterial, and calling for a conclusion, and as cross-examination of his own witness; taken subject to objection.)

A. I have nothing to say against or in favor of it; I know nothing of what M'r Standiford bases his opinion on.

Q. 245. Which do you think is the best judge, a man acquainted with the road, or a man not?

(Same objection; taken subject to objection.)

A. I think a man acquainted with the road.

Q. 246. I will read you this from a letter of James A. Raynor, trustee:

"DEAR SIR: Your esteemed favor of the 8th inst. is received, requesting me to state in reply in what estimation the administration of the trustees and receivers of the Mobile & Ohio Railroad is held by the management of this road. Without reserve or qualification of any kind whatever, we regard it as by far the best the Mobile & Ohio Railroad has had at any time since the completion of our line hence to Mobile."

Do you know anything to the contrary of that?

(Same objection; taken subject to objection.)

A. I know nothing that induced him to write that.

Q. 247. Do you know anything to the contrary of that?

A. I know nothing to the contrary of any knowledge that he acquired.

Q. 248. The question is have you any knowledge to the contrary of that?

(Same objection; taken subject to objection.)

A. I don't know what you mean by that. I have no knowledge; no, sir.

Q. 249. You cannot contradict that, can you?

A. I cannot contradict that, because I haven't been on the road.

Q. 250. Do you know that M'r Raynor is the co-trustee of Gov. Morgan on that road?

A. I believe I have seen his name, but I didn't know at all.

Q. 251. You say you have not been a railroad director in twenty years?

A. Yes, sir; I have been a director in a road in Ohio, but it is a nominal position.

Q. 252. Were you ever over the road?

A. Not since I have been director.

Q. 253. Did you ever see it?

A. Yes, sir.

Q. 254. Before you were a director?

A. Before I was a director I went over it.

Q. 255. How long have you been a director?

A. I think four years.

Q. 256. You think it consistent with your duty to be a director of a road that you never saw, do you?

1561 A. It is a leased road, and——

Q. 257. You think it is your duty to be director of a road that you never saw?

A. I do in this case, because it is a leased road, which I have nothing to do with the running of.

Q. 258. Do you know of any road, anywhere, that does not have a car to enable its superintendent to go over and inspect a road which is 400 miles long?

A. It has never been the case when I have had anything to do with it.

Q. 259. Has the Hudson railroad any car of that kind?

A. I don't know.

Q. 260. Has the New Haven road any such car?

A. I don't know.

Q. 261. Has the Erie?

A. I don't know.

Q. 262. Has the Pennsylvania Central?

A. I don't know.

Q. 263. Has the New Jersey Central?

A. I don't know.

Q. 264. Do you not know that they all, every one of them, have cars used for that purpose specially, and not for the carriage of passengers generally?

A. I believe on the Pennsylvania Central they have such a car, but to my own knowledge I don't know of any others.

Q. 265. You have heard of the others having such cars?

A. I don't remember; I may have heard it casually.

Q. 266. What harm is there in there being a car to carry the directors up and down the road, to inspect the road and do their duty?

A. I consider it improper.

Q. 267. Would you insist that they should walk up and down the road?

A. No, sir.

Q. 268. How could they go?

A. They could take any ordinary train and do it just as well.

Q. 269. How do you know that this does not go on ordinary trains?

A. They are generally very expensive.

Q. 270. I am not asking you about generally; how do you know that this car does not go with other cars on a train?

A. I don't know it.

Q. 271. You do not know but what it goes with the other cars on the train, do you?

A. I don't know.

Q. 272. Do you think the directors ought to have mules, or what; tell us how you think the directors ought to travel?

A. In the most economical mode possible.

Q. 273. You think they ought to go cheaper than other passengers?

A. If possible, yes.

Q. 274. You think they ought to have an inferior car, do you?

A. I went constantly in the caboose attached to a freight train when I wanted to see the road.

Q. 275. Do you think the directors ought to travel in a caboose?

A. If they felt as I do, they would, rather than have an extra train put on.

Q. 276. Do you think the directors ought to travel in a caboose?

A. Not necessarily.

Q. 277. You would give them the same privilege as other passengers? 1562

A. Certainly.

Q. 278. Do you think they ought to be obliged to pay their fare?

A. No; I think not.

Q. 279. Do you think there is any harm in having a water-closet in the director's car, or an ice-pitcher, or pitcher of ice-water?

A. No.

Q. 280. What is the harm about a directors' car that you complain of?

A. If you were as much of a railroad man as I am, you would know, I suppose.

Q. 281. I am; I am a good deal more, in my judgment.

A. In my opinion it is a source of great cost to every railroad where it is run.

Q. 282. How do you know that?

A. In my opinion it is a wastage.

Q. 283. What is your opinion founded on?

A. It is a question that is impossible to give——

Q. 284. (Interposing.) It is not founded on anything but your personal hostility, is it, to Duncan & Elliot; is it founded on anything else? How much did this car cost?

A. I have no personal hostility to M'r Duncan and M'r Elliot whatever.

Q. 285. What did you bring a suit to remove them for?

(M'r Blandy objected on the ground that the suit speaks for itself.)

Q. 286. After you requested them to act, and after you had approved their claims in the suit?

A. Because I considered it my duty and my interest.

Q. 287. How much more money will you get by the Ziegler suit than you will in the other?

A. It is immaterial if I get more or less, if I establish my proper rights.

Q. 288. Have you brought it to get more money, or less money?

A. I brought it to protect fully the rights of the first-mortgage bondholders.

Q. 289. What rights?

A. Their rights.

Q. 290. What rights?

A. All their rights, whatever they are.

Q. 291. Their rights to share the money?

A. All their rights.

Q. 292. Have you brought the suit to protect the interest of Hays, Pierson, & Du Puy?

A. Just as much as mine.

Q. 293. Is that your object?

A. To protect all the first-mortgage bondholders.

Q. 294. You think the bondholders to the amount of $145,000 can protect the interests of three and a half million bondholders better than the three and a half million can themselves?

A. I have carried on this suit on the general principle that I hold the minority has the same rights as the majority before the courts.

Q. 295. But you said you brought the suits for the protection of the interests of all?

A. I allow them to share in all the benefits that may accrue to the first-mortgage bondholders, if any.

Q. 296. What benefits do you expect to accrue?

1563 A. I should have them put in their proper position as first-mortgage bondholders.

Q. 297. How can you accomplish that any better in the Ziegler suit than in the Ketchum suit?

A. It is my opinion that they can be.

Q. 298. How?

A. I don't care about answering that.

M'r Bangs. But the court cares to have that answered; the court has sent up here to get your answer to that.

The Witness. The court will decide, I suppose.

M'r Bangs. The court has sent up here to get your answer.

M'r Blandy. I advise you not to answer that.

The Witness. I decline.

Q. 299. What is the cost of this directors' car?

A. I don't know.

Q. 300. Is that the only extravagance you know of; do you know of any other extravagance?

A. General charges received from various persons in the South, that the road is extravagantly run.

Q. 301. Who do you mean?

A. Correspondents.

Q. 302. Who are they?

A. I don't remember the names exactly.

Q. 303. Have you got their letters?

A. I think it is very-possible.

Q. 304. Will you produce them?

M'r Blandy. I advise you that you are not bound to or to give their names.

Q. 305. What particular extravagance, besides this directors' car, do you know of?

A. I decline to specify.

Q. 306. You know M'r Guesnard, do you not?

A. I do not.

Q. 307. You know him by correspondence ?

A. He has written me.

Q. 308. Do you know he was removed from the office of ticket-seller of the road and thereupon became hostile ?

A. No, sir.

Q. 309. You never heard of that ?

A. No, sir.

Q. 310. Are you influenced by M'r Guesnard ?

A. No, sir.

Q. 311. Are you influenced by M'r Fleming ?

A. No, sir.

Q. 312. You will not specify any other particular of extravagance, then ?

A. No, sir.

Q. 313. Is that because you cannot ?

A. I don't think it necessary.

Q. 314. The court does; the court sent word up to M'r Gutman to get your opinion on that subject particularly; now, will you give the court the benefit of what you know on the subject of extravagance ?

A. I decline to reply to that.

Q. 317. Your bill says "$300,000 has been disbursed for advances considered to be extraordinary in character;" what do you mean by that ?

A. They are items that appeared in the report.

Q. 318. What are they ?

A. They are general.

Q. 319. Is that all you can say about it ?

A. Yes, sir.

Q. 320. How do you mean extraordinary in character ?

A. So considered.

Q. 321. Who considers them so ?

A. I do.

1564 Q. 322. What are they for, then ; how are they extraordinary ?

A. I decline to answer.

Q. 323. You will not tell the court ?

A. No.

Q. 324. You refuse to tell the court ?

A. I refuse to reply to Mr. Bangs' cross-examination.

Q. 325. You refuse to send word to the court what they are ?

A. I refuse to answer the question.

Q. 326. I give you another opportunity; I ask you to answer that question.

A. I refuse to answer.

Q. 327. You say that considerable amounts of the trust fund have been used by them for their own personal gratification; what do you mean by that ?

A. The expense of going up and down the road, and one thing or another.

Q. 328. How much has been used for expenses going up and down the road, and one thing and another ?

A. I can't say.

Q. 329. Where did you get the information ?

A. I won't reply to that.

Q. 330. You won't reply to that ?

A. No.

Q. 331. Did you get it from the reports ?

A. Partially.

Q. 332. What report?

A. Of the receivers.

Q. 333. Then the receivers' report stated that they had spent money for their personal gratifications, did it?

A. No; not under that item.

Q. 334. There was no concealment about it?

A. How do you mean concealment?

Q. 335. It was not concealed or omitted from the report?

A. I suppose that they put all of their expenses in it.

Q. 336. You say they have spent money for their personal gratification, and that it appears by the report; is that what you mean, or did you get the information somewhere else?

A. I cannot specify.

Q. 337. You cannot specify what?

A. What you ask.

Q. 338. Where did you get that information, is the question?

A. The analysis of the report will show.

Q. 339. Who made the analysis?

A. I did.

Q. 340. How much did you find they had spent for their personal gratification?

A. I made no analysis of what they did, but I considered as personal gratification as going up and down in the car, not only on this road, but on other roads, where I am informed the directors' car has gone.

Q. 341. Who told you that?

A. I heard it.

Q. 342. Who?

A. From persons in the South.

Q. 343. Who were they?

A. I decline to give their names.

Q. 344. How much has been spent for their personal gratification?

A. I don't know.

Q. 345. Do you think the stockholders of the New York Central road
have a right to complain of M'r Vanderbilt for going in a car provided
for the purpose, going to Chicago and connecting roads, for the
1565 purpose of attending to the business of the road?

A. I don't know the business of the New York Central; I should if I was a director.

Q. 346. You would complain of the directors attending to their business in a directors' car?

A. I certainly would.

Q. 347. The stockholders of the Erie road complained of the same thing in you, did they?

A. I never did such a thing.

Q. 348. Did they not make the complaint of you?

A. I never did it.

Q. 349. You never attended to the business?

A. I attended to the business.

Q. 350. Did the stockholders complain of it?

A. No.

Q. 351. They did not complain of your going over the road, did they?

A. No.

Q. 352. It didn't hurt the road?

A. No.

Q. 353. Do you know whether the directors going over the road hurts it?

A. No; I do not.

Q. 354. What kind of personal gratification do you refer to?

A. The general expense attending these excursions.

Q. 355. What personal gratification do they derive from going over the road?

A. I don't know.

Q. 356. What?

A. I don't know.

Q. 357. What did you swear to it for?

A. They are general allegations, as you see there.

Q. 358. I want to make them particular; now, what personal gratification has Duncan and Elliot derived from the funds of the road?

A. I can't say.

Q. 359. You don't know of any, do you?

A. No, not directly.

Q. 360. What do you mean by directly?

A. I don't know of my own knowledge.

Q. 361. Have you had information?

A. Yes, sir.

Q. 362. Who gave it to you?

A. I told you from Southern correspondents.

Q. 363. What did they tell you as to the personal gratification Duncan and Elliot derived from the funds?

(M'r Blandy—Objected to as immaterial and calling for hearsay evidence; taken subject to objection.)

A. The shortest way is, I decline to answer.

Q. 364. You refuse to answer?

A. Yes, sir.

Q. 365. I show you Duncan & Elliot's bill of complaint. I want you to tell me what you meant when you said that they alleged that certain claims to the amount of $1,685,000 were secured by a valid and permanent lien on one hundred and eighteen miles of the road?

(M'r Blandy—Objected to on the ground, first, that the bill states for itself, and as calling for a conclusion, and as in cross-examination of their own witness; taken subject to objection.)

Q. 366. What do you refer to?

A. I refer to that as a recognition of priority.

Q. 367. This is a part of it?

A. That is a part of it, but it is partly elsewhere; in the judge's
1566 decision, also, or the decree, it may be said that that is admitted.

Q. 368. I am asking you about the bill of complaint—what part of the bill of complaint you refer to. This is the part, is it?

A. That is the part.

Q. 369. As follows (reads): "Your orators further show that at the date of the execution of the deed of trust hereinbefore described the State of Tennessee, by act of the legislature, had advanced and loaned to the said Mobile & Ohio Railroad Company, or had pledged itself so to do, the bonds of the said State to the extent of $1,684,800, or thereabouts, and by statute had retained for its security a first lien upon the entire road of the said company in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chains, and the whole superstructure and equipments, and all the property owned by said company, as incident to or necessary for its use, lying within the limits of said State, with power in said State to seize and sell, as in the nature of a mortgage lien, the same in default of payment by said company of said principal loan. This right and lien in said State of Tennessee was recognized in the said deed of mortgage hereinbefore described, and said deed was executed subject to said lien and right, as appears by reference thereto, of which a copy is made part of this bill"?

The WITNESS. That is not all.

M'r BANGS. Find the rest.

The WITNESS. Was there not——

M'r BANGS. Do not ask me; we decline to answer; we refuse to answer.

The WITNESS. Was there not a part——

M'r BANGS. We refuse to answer.

The WITNESS. Will you let me see it?

Q. 370. The question is, Is there any other part of the bill to which you refer?

A. That is the part I mean—not what you have read there.

Q. 371. You refer to another part, do you?

A. I was in error, then, admitting the other part. This is the part; allow me to read it.

M'r BANGS. Certainly.

The WITNESS. It is that part, also, or rather that is the main point.

M'r BANGS (reading): "Your orators further show to your honors that after the issue of said bonds by the State of Tennessee, the said State, by a general act of its legislature, passed for that purpose, to wit, on the 25th of February, in the year 1869, authorized the several railroad companies which had received aid from the State by a loan of its bonds under said former legislation to obtain a release of the State upon its property by the delivery
1567 to the State of an equivalent amount of bonds issued by the
State. To enable this to be accomplished, the said State agreed to transfer to the holders of such Tennessee bonds as, with the consent of said railroad companies, might so surrender their bonds, in consideration of mortgage bonds to be executed by such railroad company, its lien upon the property in Tennessee, so that thereafter such bonds of said railroad companies, so issued for that purpose, should be held and taken as standing in the room and stead of said bonds originally loaned, and should be secured by the lien originally reserved for the protection of said State bonds, being the same continuing liability and date of such railroad company, but differing only in its form. Your orators show that the said Mobile & Ohio Railroad Company accepted these proposals, and issued its bonds for that purpose to the amount of $1,685,000, or thereabouts, bearing date the 1st July, 1871, and payable thirty years thereafter, and bearing interest at the rate of seven per cent. per annum, payable semi-annually, in July and January, in gold coin, in New York, each bond being for the sum of one thousand dollars, or two hundred and five pounds sterling; and the said bonds, less $34,000 which have been paid, are now held by sundry persons, who are unknown to you orators, under the terms of this settlement, in the place and stead of the bonds originally issued by said State of Tennessee, and are secured by a lien upon the property, as hereinbefore stated, of the said company, in the State of Tennessee, and for whose benefit the said lien was declared to be a continuing lien upon said property. Your orators show that for the protection of these bonds and the preservation of said lien, Adrian Iselin and Richard T. Wilson, who are both citizens of the State of New York, together with your orator,

William Butler Duncan, were appointed trustees. These bonds so issued are known as 'Tennessee substitution bonds.'" That is the part you refer to.

Q. 372. Is there anything in that that is not true?

(M'r Blandy—Objected to, as calling for a conclusion; taken subject to objection.)

A. I don't know that there is.

Q. 373. Do you not know that every word of it is true as you understood it?

(Same objection; taken subject to objection.)

A. Yes, sir; I believe it is.

1568 Q. 374. Do you not know that the floating creditors did not get any money appropriated to the payment of their debts?

A. Yes, sir; I know that they did not.

Q. 375. You know that they made the attempt, and failed?

A. Yes, sir.

Q. 376. Why did you not state that fact in your bill?

A. I did state it.

Q. 377. Where did you state it?

A. If I didn't in that I did in some others.

Q. 378. Why did you not state it in this?

A. It is, I think, in there.

Q. 379. Which of the first mortgage bondholders opposed the application of the floating creditors?

A. M'r Morris Ketchum.

Q. 380. Is he a bondholder?

A. M'r Belloni.

Q. 381. Were you there?

A. I was not.

Q. 382. How do you know Duncan and Elliot did not oppose it?

A. I was told so.

Q. 383. Don't you know an order of reference was made to a master?

A. Yes, sir; I was told so.

Q. 384. Who told you Duncan and Elliot did not oppose it?

A. My counsel.

Q. 385. Who do you mean?

A. M'r Andrews.

Q. 386. I thought M'r Grandin was your counsel?

A. No, sir; I said yesterday he was not.

Q. 387. His name was signed to this bill; is not he your counsel?

A. If he is, he has been employed by M'r Andrews.

Q. 388. Is he or not?

A. I don't know.

Q. 389. You mean you never employed M'r Grandin?

A. I never employed M'r Grandin; M'r Andrews may have employed him.

Q. 390. Have you not paid M'r Grandin?

A. I haven't paid him a cent.

Q. 391. Have you paid his drafts?

(M'r Blandy—Objected to as immaterial; taken subject to objection.)

A. I would rather answer—no; I don't want to.

Q. 392. How is it that M'r Grandin is able to negotiate drafts on you in Mobile, then?

A. He has never drawn a draft.

Q. 393. Has he been payee of a draft on you—the drawee?

A. No, sir.

Q. 394. Haven't you paid drafts to his order?

A. To his order?

Q. 395. Yes.

A. Oh, I don't know; I have no recollection; still there may have been; I would not say; but he has never drawn any.

Q. 396. Why did you not state in this bill that the order of reference was obtained on the application of the floating creditors?

A. Because my counsel did not think it necessary to put it in, I suppose; he didn't put it in.

Q. 397. Why did you not put it in?

A. Because I didn't draw the bill; it is not customary for a layman to draw a bill.

Q. 398. It is customary for laymen to read them and see if they are true?

A. Yes, sir.

Q. 399. Why did you not see that this was true?

A. I believed that everything in it was true.

1569 Q. 400. Do you think that telling half the truth is telling the whole truth?

Q. 401. Why did you not read it over and tell the whole truth?

A. I signed it as my counsel drew it.

Q. 402. Did not you and he talk about it?

A. I had no talk about it.

Q. 403. Do you object to the receiver's spending money for legal expenses?

A. Not if it is unavoidable.

Q. 404. How do you know that those legal expenses mentioned in your bill were not unavoidable?

A. I don't know.

Q. 405. What were these legal expenses for?

A. I don't recollect.

Q. 406. What complaint have you to make about them?

A. Simply that they were larger than they had been previously.

Q. 407. Do you not know that they have had more litigation than they had before?

A. I don't know.

Q. 408. You don't know?

A. No.

Q. 409. How many suits have you brought yourself?

A. I don't know.

Q. 410. You have brought several?

A. Yes, sir.

Q. 411. Against the receivers?

A. Yes.

Q. 412. Did you expect them not to employ lawyers?

(M'r Blandy. Objected to, as calling for a conclusion; taken subject to objection.)

A. I didn't expect anything about it.

Q. 413. Did you suppose that when you sued them they were going to let you have your own way?

(Same objection; taken subject to objection.)

A. No.

Q. 414. How much of these legal expenses have you caused yourself?

(Same objection; taken subject to objection.)

A. I don't know.

Q. 415. The whole of it, have you not?

A. I don't know.

Q. 416. Has there been any litigation except what you have instigated?

A. I don't know.

Q. 417. You do not know of any but what you have instigated, do you?

A. I don't know.

Q. 418. You have instigated a great deal, have you not?

A. I have instigated several suits.

Q. 419. You have instigated a suit in Kentucky?

A. Yes, sir.

Q. 420. And in Tennessee?

A. Yes, sir.

Q. 421. And in Alabama?

A. Yes, sir.

Q. 422. And in Mississippi?

A. Yes, sir.

Q. 423. All in your own name?

A. Yes, sir; the firm name, I believe.

Q. 424. Then you instigated the Ziegler suit?

A. Yes, sir.

Q. 425. Then you have joined in applications to remove Duncan & Elliot?

A. Yes, sir.

Q. 426. And then you have joined in the contest against the coupons?

A. Yes, sir.

Q. 427. And then you have instituted other proceedings besides, have you not?

A. I don't remember.

1570 Q. 428. Did you suppose that they were going to go without defence against your complaint?

(Same objection; taken subject to objection.)

A. I didn't suppose anything about it.

Q. 429. Did you suppose that there was going to be no expense involved in those suits?

(Same objection.)

Q. 431. Did you suppose they were going to get along as cheaply as you did?

A. No; I didn't suppose anything about it.

Q. 432. How much of this expense has been caused by litigation started by Moran Bro's?

A. I don't know.

Q. 433. Has there not been at least $25,000?

A. I don't know anything at all about it.

Q. 434. And are you not enjoying the advantage of them in this, that while they are obliged to pay their lawyers (leaving out any reference to M'r Blandy), M'r Grandin and M'r Andrews have worked for you upon speculation; have you not that advantage over the receivers?

(M'r Blandy. Objected to, upon the ground that there is no evidence of the fact that M'r Andrews is working upon speculation; taken subject to objection.)

Q. 435. Have you not that advantage over the receivers, that they have to pay their lawyers, and you do not?

A. I have no such advantage that I am aware of.

Q. 436. Do you have pay to your lawyers?

A. Certainly.

Q. 437. Have you paid your lawyers upwards of $2,500?

A. I decline to reply.

Q. 438. Will you, or will you not state that your expenses in this litigation have exceeded $2,500?

A. I decline to reply.

Q. 439. Have you employed anybody besides M'r Andrews, M'r Grandin, and M'r Hoadly in Alabama?

A. I decline to reply.

Q. 440. What has been the amount of legal expense incurred by the receivers in this litigation, compared with amount incurred by you?

A. I don't know.

Q. 441. You have spent as much as they have, have you not?

A. I don't know.

Q. 442. You know how much they have spent, do you not?

A. I don't know.

Q. 442½. Your bill says what they have spent; do you not know what your bill says?

A. The bill shows they have spent $100,000.

Q. 443. Then you swear to that?

A. Yes, sir.

Q. 444. You believe that?

A. Yes.

Q. 445. It has cost you that much, has it not?

A. I decline to reply.

Q. 446. That is no larger expenditure than you have incurred, is it?

A. I decline to reply.

Q. 447. Do you not know that the receivers have litigation in Mississippi, and in the Supreme Court of the United States, affecting the interests of the property?

1571 A. In the Supreme Court of the United States?

Q. 448. Yes; did you not know it?

A. No.

Q. 449. Did they not have litigation in Mississippi?

A. I don't know of any litigation in Mississippi.

Q. 450. You do not know that?

A. Except such as I——

Q. 451. (Interposing.) Except such as you have instituted?

A. Yes, sir.

Q. 452. Do you know of any in Tennessee?

A. I do not.

Q. 453. Beside what you have instigated?

A. Yes, sir; there is one—the substitution bonds.

Q. 454. Have these receivers instigated that?

A. M'r Duncan's name appears as plaintiff and defendant.

Q. 455. Why do you not bring your suit in Tennessee to a hearing?

A. I am not aware that we have interposed any delay.

Q. 456. I did not say you had; have you interposed any quickness?

A. We have done all we could to bring it to a hearing.

Q. 457. What has prevented your bringing it to a hearing?

A. I don't know.

Q. 458. Why have not your lawyers brought it to a hearing?

A. I don't know.

Q. 459. Why do you not bring your suit in Alabama to a hearing?

A. I don't know.

Q. 460. Why do you not bring your suit in Kentucky to a hearing?

A. I don't know.

Q. 461. Why do you not bring your suit in Mississippi to a hearing?

A. I don't know; I am desirous to have every point tested as rapidly and as soon as possible.

Q. 462. Do you think you can bring the Ziegler suit to a hearing quicker than the Duncan & Elliot suit?

(M'r Blandy—Objected to, as it is already answered; taken subject to objection.)

A. I don't know.

Q. 463. What was your answer?

A. I don't know.

Q. 464. You don't know whether you can or not?

A. I don't know.

Q. 465. How can you reconcile that with your statement that you are desirous of bringing everything to a hearing quickly?

A. I can't see any inconsistency in it.

Q. 466. Can you bring the coupon suit to a hearing in the Duncan & Elliot suit?

A. I suppose it might be done; I don't know.

Q. 467. In June?

A. I don't know.

Q. 468. Can you bring the Tennessee substitution lien to a hearing in June, in the Duncan & Elliot suit?

A. I don't know; but I will say that I would much rather have it decided in June than any later period.

Q. 469. What did you bring the Ziegler suit for?

A. For the protection of my rights and my correspondents.

Q. 470. Then you did not bring it for the purpose of a quick hearing?

A. I did; for the protection of my own rights and my correspondents.

Q. 471. (Repeated.)

1572 A. It was not for that object; it was for the purpose of protecting their rights.

Q. 472. By delay?

A. Not for that purpose.

Q. 473. Why did you want to postpone the Duncan and Elliot suit, and bring the Ziegler suit?

A. I never asked it to be postponed, except for a short period.

Q. 474. Are you willing that the Duncan-Elliot suit should be brought to a hearing in June?

A. I am not a proper person to reply to that.

Q. 475. Oh, yes, you are.

A. I am desirous of having the whole question decided in June, if possible.

Q. 476. Personally, are you willing to have the Duncan-Elliot suit tried in June?

A. Certainly, if it will protect my interests and my correspondents.

Q. 477. Your interests are represented in that suit?

A. Not particularly, I think.

Q. 478. Have you got counsel in the suit?

A. I have not the counsel who is managing those things here.

Q. 479. Have you not got counsel in the Duncan and Elliot suit?

A. I have M'r Andrews; yes, sir.

Q. 480. Haven't you confidence in him, that he can protect your interests in the Duncan and Elliot suit?

A. Now, really, I ought not to go and discuss the questions that I am not competent to answer; this is a question of the management of the suit; I can't discuss it here; I am not competent.

Q. 481. What difficulty is there in the way of your rights?

A. I can't answer that.

Q. 482. Have you been informed of any difficulty?

A. Certainly, or I would have preferred June.

Q. 483. What difficulty have you been informed of to a just hearing and determination of all points in June?

M'r BLANDY. I advise you, you are not bound to answer that.

The WITNESS. It is not necessary; I decline to answer.

Q. 484. Have you been informed of any?

The WITNESS. I simply do not want to get into these interminable discussions with M'r Bangs; if there is anything that I have misstated or been in error, show it up, and I will tell you at once; yes, sir.

Q. 485. Answer yes or no to this, as you like; do you know of any difficulties about bringing the Duncan and Elliot suit to a just determination in June?

A. I am informed by my counsel that there are many objections.

Q. 486. What are they?

The WITNESS. I decline to answer.

Q. 487. Do they grow out of the constitution of the court?

The WITNESS. I decline to reply.

Q. Do they involve any want of confidence in the judge?

The WITNESS. I decline to reply.

Q. 488. Do they involve any distrust of the law?

The WITNESS. I decline to reply.

1573 M'r BANGS. That is just as good as if you answered.

The WITNESS. I am perfectly willing to answer, I again repeat here, if safely to the interests of my correspondents and myself; you can place it on the list, and have it tried in June. I will forego everything else, and have it tried in June.

Q. 489. What is that?

A. I repeat, that if I can properly protect the interests of myself and my friends, I would much rather have it tried in June than any day later.

M'r BANGS. I do not understand you.

The WITNESS. It is as plain as I can express myself.

M'r BANGS. I did not quite understand it.

The WITNESS. I can repeat it.

M'r BANGS. Do so.

The WITNESS. If I can properly have my rights, and those of my correspondents protected, I should prefer to have it tried in June than any later period. I am for hastening it as much as possible.

Q. 490. And any attempt at delay would be against your wishes?

A. Against my wishes.

Q. 491. And your instructions?

A. And against my instruction.

M'r BANGS. Now I understand you.

The WITNESS. I have given evidence on that a dozen times.

Q. 492. Have you been advised that as long as this claim on the coupons of 1874 is outstanding, Duncan & Elliot have a right to apply the money in their hands to the payment of the coupons of 1875; have you been so advised?

A. No; I have not.

Q. 493. Do you so believe?

A. No; I do not.

Q. 494. Why do you complain of them that they do not pay the coupons of 1875, and that they keep the money in their hands?

A. I have not complained of it.

Q. 495. You say this: "And so it was; that the most feasible method whereby Duncan & Elliot could secure the satisfaction of this claim of Alexander Duncan, of more than $700,000, was by using, and in a great part exceeding, the revenues of the property in the course of their administration, instead of applying them to the next accruing coupon interest." How could they apply it as long as those coupons of 1874 were out?

A. They could not, I suppose, pay anything without the order of the court.

Q. 496. Do you think you are the only person who has a right to submit his claims to the court?

A. I admit equal right to every man.

Q. 497. Do you think that Alexander Duncan, if he believes he is entitled to these coupons, does any wrong in saying so?

A. Not at all.

Q. 498. Do you think that his claim is that the receivers are bound to pay coupons which matured afterwards?

A. No.

1574 Q. 499. What did you put this in your complaint for afterwards?

A. It is an allegation on inference.

Q. 500. It is intended to be a mere slur, is it not?

A. It is a mere allegation.

Q. 501. It is a mere slur, is it not?

A. I don't know what you mean by "slur."

Q. 502. It is a mere attempt to throw mud, is it not?

A. I don't know what you mean.

Q. 503. It is a mere attempt to blacken the character of Duncan & Elliot, is it not?

A. No, it is not.

Q. 504. What did you put it in for?

A. I put it because the appearance was that they designed not to have too large a surplus on hand.

Q. 505. You complained of them that they did not pay the next accruing coupon interest; did you mean that as a reflection on them?

A. No, sir; because it was not in their power.

Q. 506. Did you mean it as a cause of complaint against them?

A. That requires no reply.

M'r BANGS. It does require a reply.

The WITNESS. I decline.

M'r BANGS. The court asks you for a reply.

The WITNESS. I decline to reply.

M'r BANGS. You will not comply with the request of the court?

The WITNESS. I decline to comply.

Q. 507. How much money have Duncan & Elliot got on hand?

A. I don't know.

Q. 508. What is your opinion?

A. I don't know.

Q. 509. Have you not been informed?

A. No, sir.

Q. 510. Have you not been informed that they had on hand $750,000?

A. I have not.

Q. 511. What have you been informed on the subject?

A. I have not been informed the amount they have on hand.

Q. 512. Have you read their reports?

A. I have seen no reports saying they had $700,000.

Q. 513. What do the reports say they had on hand?

A. I don't remember.

Q. 514. Was it $300,000?

A. I don't remember.

Q. 515. Can you tell how much they had?

A. I don't remember.

Q. 516. What do you mean by saying that they have sought to procure the adoption by the bondholders of an agreement, and so forth?

A. Because M'r Duncan has personally solicited, I believe, everybody that he knew.

Q. 517. Did he do that in the interest of the bondholders?

A. I don't know.

Q. 518. Has he solicited you?

A. Yes, sir.

Q. 519. He did not prevail, did he?

A. He did not.

Q. 520. Do you think there is any harm in that?

A. He could do whatever he desired.

Q. 521. You solicited people, did you not?

A. I have not solicited a single man; they came to me.

Q. 522. You sent out this circular?

A. So far as that is concerned, yes, sir.

1575 Q. 523. You have not asked a single man?

A. No, sir; I have not gone to a single man.

Q. 524. Did you ever read this order of reference March 6, 1876, made by Judge Woods?

The WITNESS. If you will let me see it?

M'r BANGS. He says this: "The master is at liberty to consider a plan for the reorganization of the corporation, should the creditors of the same agree thereto. Any plan for that purpose presented by three-fourths of the creditors owning the different classes of debt, and supported by a corresponding portion of the holders of the stock, he may report with his opinion thereon." Did you ever read that?

The WITNESS. Let me see it. Yes, I have seen it.

Q. 225. Why do you object to the trustees advising creditors to reorganize?

A. I do not object to that.

Q. 526. What did you put it in your bill for?

A. Because I had an understanding with M'r Duncan that he was to do nothing in attempting to give an advantage to the substitution bonds, which I told him I intended to contest.

Q. 527. Do you regard his advising bondholders to enter into an agreement with the Tennessee creditors as a breach of his agreement with you?

A. Yes; certainly.

Q. 528. Did he say that he would not advise the bondholders to come to an agreement as to the Tennessee substitution?

A. No, sir.

Q. 529. Then he said, as trustee, he would not do anything to favor anybody, did he?

A. I think, as trustee, he certainly did do——

Q. 530. (Interposing.) Did he not say that, as trustee, he would not do anything to favor any one?

A. He did not add those words; he may have meant to do that.

Q. 531. Did you understand him to mean so?

A. No, I did not; I always understood that he was interested in the first-mortgage bonds, until afterwards; I was in that opinion till I went to Europe, that his own interest was in the first-mortgage bonds.

Q. 532. Do you know of his having any interest in the Tennessee bonds?

A. No, I did not; that is why I was so astonished that he should go in favor of it.

Q. 533. What do you mean?

A. He has done everything he could to give them a priority over ours, by his personal influence.

Q. 534. He has not done anything in the conduct of the suit, has he?

A. I consider that what he has done is certainly intended that way.

Q. 535. In the conduct of the suit?

A. Yes, sir.

Q. 536. What has he done?

A. I decline to answer that question; there is no use of going into a discussion of the steps.

1576 Q. 537. Are you on anybody's bond? Are you surety for anybody?

A. No, sir.

Q. 538. Were you ever?

A. I don't think I ever was; I don't remember.

Q. 539. You constantly refuse to go on bonds, do you not?

A. Yes, sir; I have been hardly ever applied to.

Q. 540. Who told you that S. L. M. Barlow and W. W. McFarland are not able to respond to their liabilities?

A. I said in my opinion they were not.

Q. 541. You say "your orator is informed and believes that they are not able to respond"?

A. Over and above all——

Q. 542. (Interposing.) Who told you that?

A. I knew it myself when I heard the amounts.

Q. 543. What do you know about M'r Barlow's property?

A. I don't know positively what he is worth.

Q. 544. What is M'r McFarland worth?

A. I don't know.

Q. 545. For all you know he is worth a million, is he not?

A. I don't know anything about it.

Q. 546. And for aught you know, M'r Barlow is worth a million?

A. I don't know to the contrary.

Q. 547. Upon what ground did you put in this spiteful charge that they were not able to respond to their liabilities?

A. I said over and above all their obligations as endorsers.

Q. 548. What is their liability on the bond of the receivers?

A. I don't know; one hundred or one hundred and fifty thousand.

Q. 549. Do you not believe they are worth one hundred and fifty thousand dollars?

The WITNESS. How much are they on all these other bonds?

M'r BANGS. Well, $500,000.

The WITNESS. Are they not for a much larger amount. I have been told that the amount is much larger.

M'r BANGS. Your complaint says that M'r Barlow is on Judge Shipman's bond for $500,000, and you say he is on M'r Duncan's bond for $150,000.

The WITNESS. That is six hundred and fifty; how many others is he on?

Q. 550. How do you know he is not worth $650,000?

A. I don't know.

Q. 551. What did you swear that for?

A. I swore in my opinion I didn't believe he was.

Q. 552. What is your opinion founded on?

A. That I mean that he has a large amount of liabilities, and he has assets; I don't know——

Q. 553. (Interposing.) You swear that you did not believe he was worth——

A. (Interrupting.) Exactly; that is what I believe.

Q. 554. What is that founded upon?

A. General information.

Q. 555. You have no information of any kind, have you?

A. No special information; it is a matter of opinion.

Q. 556. Did M'r Andrews tell you to put that in?

A. M' Andrews drew that complaint.

Q. 557. Did he tell you to put that in or did you tell him to put it in?

1577 A. I did not tell him.

Q. 558. Who made the first suggestion?

A. He did.

Q. 559. Who gave you this opinion of Judge Earle which you have put in your bill of complaint; where did you get it?

A. From my counsel.

Q. 560. Do you mean M'r Andrews?

A. Yes, sir.

Q. 561. Where did he get it?

A. I don't know.

Q. 562. What did you put it in for?

A. I put it in because it would have weight in having the receivership changed.

Q. 563. You wanted to have them removed, did you?

A. Yes, sir.

Q. 564. Who did you want to have appointed?

A. I don't care who, if they are only persons who will properly administer the thing.

Q. 565. You don't care who?

A. If they will properly administer the property.

Q. 566. Did you apply to have one of your own family appointed receiver?

A. I did not.

Q. 567. Did you?

A. No, sir—never.

Q. 568. Did you not apply to have M'r D. C. Moran appointed receiver?

A. Never.

Q. 569. Do you not know of such an application being made?

A. Never.

Q. 570. Do you swear that?

A. I swear that I never made any such application.

Q. 571. Did you authorize any such application to be made?

A. Never.

Q. 572. Then if it was made it was unauthorized?

A. Entirely unknown and unauthorized.

Q. 573. Why did you not put into your bill Judge Wood's opinion on the application to remove the receivers?

A. Because my counsel did not think it necessary.

Q. 574. Did you talk about it with him?

A. No.

Q. 575. How do you know he did not think it necessary?

A. Because he would have put it in, I suppose.

Q. 576. I ask you why you did not put it in?

A. Because I did not draw it.

Q. 577. You told him to draw it, did you not?

A. I told him to draw the bill.

Q. 578. Did you not tell him what to put in?

A. No; I did not.

Q. 579. Did you not tell him what was the matter with you that you wanted a bill drawn?

A. Yes, sir; I told him what was the matter with me.

Q. 580. Why did you not tell him that part of it?

A. This requires no answer.

Q. 581. You will not answer?

A. It is a thing of evidence in the court.

Q. 582. What did you put in Judge Bruce's opinion for?

A. Because I suppose he thought it was right to put it in.

Q. 583. Why did you not think it proper to put in Judge Wood s opinion?

A. Because my counsel did not think it necessary to put it in; he did not think it proper.

Q. 584. Then he did not want to tell the court——

A. I don't know.

1578 Q. 585. Do you think there is any legal trustee of the mortgage?

The WITNESS. What do you mean?

M'r BANGS. Do you think there is any legal trustee of the mortgage?

A. I believe M'r Ketchum to be the legal trustee.

Q. 586. What did you swear that you did not know there was any legal trustee of the mortgage for?

A. Because it is brought in doubt between the two parties.

Q. 587. Do you now say that you believe M'r Ketchum to be the legal trustee?

A. I believe Judge Bruce's decision establishes him to be the legal trustee.

Q. 588. Were you not informed by M'r Andrews and M'r Grandin, after Judge Bruce's decision, that a decree had been rendered declaring M'r Ketchum to be the legal trustee?

A. Yes, sir.

Q. 589. You were so informed?

A. Yes, sir; the only one entitled to be trustee.

Q. 590. You were informed that there had been a decree entered to that effect?

A. An opinion.

Q. 591. Were you not informed that a decree had been rendered to that effect, and entered in court?

A. He did not inform me; he sent me an opinion.

Q. 591. Did he not tell you that a decree had been entered?

A. I think not.

Q. 592. Did you not publish that fact?

A. I think not; I may have done so, but I think not; I may, however, have called it a decree upon some occasion, but I am not positive.

Q. 594. You say that some of the first-mortgage bondholders are now engaged at great trouble and expense in ridding the trust of the pro confesso decree in Tennessee; which first-mortgage bondholders do you refer to?

A. Those that I represent, and those that I know, and others.

Q. 595. Name them.

The Witness. What do you mean?

M'r Bangs. Name the first-mortgage bondholders that you refer to.

A. Quite a number.

M'r Bangs. I did not say enumerate them; I said name them.

A. H. Amy & Co.

Q. 596. Who else?

A. Ourselves.

Q. 597. Who else?

A. All our correspondents.

Q. 598. Are they all plaintiffs in the proceeding?

A. Not in that Ziegler suit.

Q. 599. You say "at great trouble and expense"?

The Witness. Do you mean in Tennessee?

M'r Bangs. Yes; you say "at great trouble and expense."

A. Yes, sir.

Q. 600. How much expense?

A. I decline to answer.

Q. 601. Have you incurred any expense?

A. I decline to answer.

Q. 602. Is not the whole thing a speculation in Tennessee?

A. I decline to reply.

Q. 603. Have you not filed a petition in the Duncan & Elliot suit, to be made parties defendant?

1579 A. I believe it was done; yes, sir.

Q. 604. Have not Rudolph Merian, Alfred Renevier, Eugene Renevier, Charles Carrard, and Cephise Chuffard filed a similar petition under your direction?

A. Yes, sir.

Q. 605. What do you want to be made parties in the Duncan & Elliot suit for?

The Witness. Why do I want to?

M'r Bangs. Yes.

The Witness. I don't know what you mean.

Q. 606. What do you want to be made a party defendant in the Duncan & Elliot suit for?

A. To defend my rights, of course, and those of my correspondents.

Q. 607. What do those other people want to be defendants for?

The Witness. Need I reply why he did it?

M'r Bangs. Yes.

The Witness. It is a mere legal protection.

M'r Blandy. I advise you that you are not bound to answer it.

A. I decline to answer.

Q. 608. You say the first-mortgage bondholders are now engaged, at great trouble and expense, in ridding the trust of the pro confesso decree in Tennessee; give the particulars of that trouble and expense.

A. I decline to.

Q. 609. You refuse?

A. I refuse.

Q. 610. Do you not know that that Tennessee decree has been opened?

A. I know nothing but what M'r Duncan has said.

Q. 611. Has M'r Duncan told you it has been opened?

A. M'r Duncan sent me a copy of the proposed order, I believe; that is all I know about it.

Q. 612. Have you got it?

A. I have not.

Q. 613. You got that before this Ziegler bill was sworn to, did you not?

A. Yes, sir; I don't know whether I did before; about the time.

Q. 614. Did not that provide an opportunity for Duncan & Elliot themselves to resist the substitution claim?

M'r **Blandy**. That is objected to, upon the ground that the paper is the best evidence. Taken subject to objection.

A. We did not consider it judicious to go on with them, to carry on the suit.

Q. 615. Why did you not go into that Tennessee substitution suit yourself, and ask to be made a defendant yourself?

M'r **Blandy**. You are not bound to answer that.

A. I decline to reply.

Q. 616. You refuse?

A. Yes, sir.

Q. 617. What business is it of yours what agreements other bondholders enter into; how does it concern you?

A. So far as it affects our interests, it is my concern.

Q. 618. How does it affect you?

A. By attempting to force us to take what we deem not good for us.

Q. 619. How does it attempt to force you?

A. I am to be the judge of that.

1580 Q. 620. No, you are not; you have brought a suit here complaining about this scheme; do you deny the right of the bondholders to form a partnership to purchase property, if they wish to?

A. No.

Q. 621. What complaint have you against them?

A. I claim that they are unjustly attacking our rights, and not giving us our rights.

Q. 622. What rights are those bondholders depriving you of; have you not as good a chance to buy as they have?

A. I decline to answer.

Q. 623. I want to know if you have not just as good a right to buy as they have?

The **Witness**. Haven't they published everywhere that unless we accept their terms we are to be shut out?

M'r **Bangs**. No, they have not.

The **Witness**. They have.

Q. 624. I want to know if you have not just as good a right to form a partnership and buy as they have—have they deprived you of that right?

A. I decline to answer.

Q. 625. This suit is brought to break up that scheme, is it not?

A. No, sir; it is to obtain our rights irrespective of that scheme.

Q. 626. What right?

A. Our legal rights.

Q. 627. Legal right to what?

A. Our legal rights.

Q. 628. To what?

A. To what we are entitled to in the property.

Q. 629. How does the scheme prevent you from getting your legal rights?

A. I decline to answer, because it leads to an endless discussion that has nothing to do with the matter.

Q. 630. I will not discuss it with you; I take your answers; your refusals lead to discussions. I want to know what you complain of in that scheme?

A. I decline to answer.

Q. 631. Your suit is brought to force them, is it not?

A. I can't force them by the suit; I don't know how I can.

Q. 632. How can they force you?

A. I don't know.

Q. 633. You do not generally admit partners into your house, except on your terms, do you?

A. No.

Q. 634. You do not let people come in and make their own terms with you, do you?

A. No.

Q. 635. But you think you ought to be allowed to make your terms with Hays, Pierson and Du Puy, do you?

A. I never tried to make any terms with them; they tried to force me to their terms.

Q. 636. That has been tried on you pretty often in the making of bargains in other cases, has it not?

A. I don't know what you mean?

Q. 637. You have been in the habit of making bargains?

A. Yes, sir.

Q. 638. Have not people tried to bring you to their terms?

A. Yes, sir.

Q. 639. And they never yet succeeded, did they?

A. Oh, yes, sir.

Q. 640. Did they succeed in the Selma, Rome and Dalton road?

A. They did not.

1581 Q. 641. And you did not either, did you; and the consequence was the whole property went to wreck?

A. No, sir.

Q. 642. What is the property worth now, compared to what it was when you began?

M'r Blandy. I object to that as immaterial. (Taken subject to objection.)

A. I decline to answer.

Q. 643. Your bill says that the revenues of the road should be applied to keeping down the mortgage interest. Did you mean by that the coupons of 1874?

A. No; I did not.

Q. 644. What did you mean?

A. I mean the coupons due from 1875.

Q. 645. You do not think Alexander Duncan's entitled to a hearing, do you?

A. Yes, sir, he is entitled to a hearing.

Q. 646. You do not think it ought to be applied to the coupons of 1875 until it is determined that he has no claim, do you?

A. I believe the court will decide all those matters.

Q. 647. Do you think that the coupons of 1875 ought to be paid before Alexander Duncan's claim is determined?

M'r Blandy. That is objected as calling for a conclusion and as immaterial. (Taken subject to objection.)

Q. 648. What do you think on that subject?

A. I decline to reply.

Q. 649. The court requests an answer from you to that question; will you give it?

A. I decline to reply.

Q. 650. Do you know that a proposition has been made to M'r Morris Ketchum that he should go into the Duncan and Elliot suit as a defendant?

M'r BLANDY. That is objected to as immaterial. (Taken subject to objection.)

A. I believe something was done.

Q. 651. Did you oppose it?

A. I did not.

Q. 652. Did you advise him not to accept it?

A. I did not.

Q. 653. Did you advise him not to agree to it?

A. I did not.

Q. 654. Are you willing that he should agree to it?

M'r BLANDY. That is objected to as immaterial. (Taken subject to objection.)

A. If my rights are properly protected, yes.

Q. 655. Are you willing that he should agree to it?

A. Yes, sir; anything that would bring a solution of the question of protecting my rights.

Q. 656. What do you mean by saying that the continued possession of the road and its equipment and resources by Duncan & Elliot is a daily injury to the resources of the property?

M'r BLANDY. That is objected to on the ground that the language speaks for itself, and that the question calls for a conclusion. (Taken subject to exception.)

A. Because I believe that better persons could be put in.

Q. 657. What injury do they do every day?

A. You have my reply.

Q. 658. What injury did they do to-day?

A. I don't know.

Q. 659. What injury did they do yesterday?

1582 A. I don't know.

Q. 660. What injury did they do for ten days before you swore to this bill?

A. I don't know.

Q. 661. You speak of Judge Bruce; whom do you refer to?

A. Judge Bruce—the district judge.

By M'r Blandy:

Q. 662. Of where?

A. Of Alabama, the southern district of Alabama.

By M'r Bangs:

Q. 663. You cannot give the particulars of this daily injury that you speak of, can you?

A. No, sir.

Q. 664. Do you know anything more in this suit of benefit or advantage to Charles Moran? If you do, please state the same as freely and particularly as if you were now thereunto specially interrogated.

A. I really don't know; I don't understand the question.

Q. 665. Do you know anything more of benefit or advantage in this suit to Charles Moran besides what you have already stated?

The WITNESS. What suit?

M'r BANGS. The Ziegler suit.

A. Nothing but what I have stated.

Q. 666. There is nothing that you can state for the benefit of the Moran Brothers?

A. I know of nothing.

Q. 667. Or M'r Moran?

A. I know of nothing.

Q. 668. Or M'r Ziegler and his co-plaintiffs, besides what you have already stated?

A. I don't know of anything but what I have stated.

Cross-examination by M'r Blandy:

Q. 669. You were asked by the gentleman on the other side a number of questions tending to inquire as to your authority to represent the different plaintiffs in this suit, and you produced a number of papers, so-called powers of attorney, and a number of letters from different gentlemen, extracts from which letters you have given; before you received these powers of attorney, and before you received these letters from the different parties, had you acted as the American agent, or had your firm acted as the American agent, for these gentlemen?

A. Yes, sir,

Q. 670. For how many years?

A. Different lengths for different ones; but some of them—M'r De Watteville for twenty years; M'r D'Orelli Ziegler also.

Q. 671. Had you been in communication with them prior to those letters upon the subject of these bonds, and prior to the receipt of the power of attorney?

A. Merely keeping them advised about what was occurring.

Q. 672. Had you had personal interview with any of those gentlemen while you were in Europe?

A. Yes, sir.

Q. 673. And had you then discussed the question of these bonds?

A. Oh, yes, sir.

Q. 674. Do your firm hold securities belonging to these gentlemen?

A. We do.

1583 Q. 675. What are the instructions your firm have in reference to, in the securities it holds for those gentlemen?

A. My general instructions are——

M'r BANGS. We object to that; the instructions are in writing.

Q. 676. Were the instructions in writing, or were they oral instructions?

A. Both; but mostly the consequence of correspondence for such a number of years, by which we were always considered to be authorized to do anything we deemed for their advantage without waiting for instructions; and they have always approved what we did.

Q. 677. The various steps that you have taken, or that have been taken, from time to time, in this suit, have been reported to them by mail, have they?

A. All those that I deemed of any importance. I never troubled them with the little petty details.

Q. 678. You have kept them advised of the principal steps that were taken; have you?

A. Yes, sir.

Q. 679. Have they ratified your action?

A. Fully.

Q. 680. You have been asked a number of questions as to why you have not inserted in the bill in this suit matters respecting which the gentleman on the other side has interrogated you; when you consulted M'r Andrews, your counsel, did you authorize him to take such steps and insert such matters in that bill as, in his judgment, were necessary for the protection of your rights and the protection of those whom you represent?

A. Of course; certainly.

Q. 681. I understand that a number of charges and allegations set out in that bill are founded upon information and belief?

A. Yes, sir.

Q. 682. Others are within your own personal knowledge?

A. Yes, sir.

Q. 683. Are those matters which are predicated upon information and belief, derived, some, from public records?

A. From a multitude of little things, which you can never detail what they are; they are the result of your actual contact of the passing occurrences of the day.

Q. 684. But derived by you in your daily intercourse in business?

A. The daily intercourse in business; reading the newspapers and reading documents; multitudes of things; I could not trace the things to any particular thing.

Q. 685. Were the various steps that have been taken by your counsel, in your name and in the name of the plaintiffs in this suit, done in good faith, and to protect your interest and the interests of those you represent?

A. Wholly and solely. For no other object whatever.

Q. 686. The bonds, I understood you to say, the number of which you gave, are in the safe of your firm?

1584 A. In the Deposit Co.

Q. 687. Under your control?

A. Under our control.

Q. 688. And the different steps which you have opposed, and the different proceedings in which you have interpleaded and sought to oppose the measures that were advanced by your opponents, were taken by you under the advice of counsel, and for the same object that you instituted the Zeigler suit?

A. After consultation.

Q. 689. To protect the interests of those you represented?

A. Wholly and solely.

Q. 690. And on the advice of counsel?

A. On the advice of counsel, after consultation.

Q. 691. The gentleman on the other side referred to a letter dated July 21, 1860, that forms a part of the proceedings in the suit of Hays against Ketchum, instituted in the court of common pleas, and read extracts from other letters; I understand you to have no personal knowledge of the truth or falsity of the allegations in those letters?

A. None whatever.

Q. 692. You speak about the possibility of your having signed certain legal papers, and sworn to certain legal papers wherein there might have been a blank left; if you did that, did you know the printed matter that was intended to be inserted within the space that was left blank?

A. Yes, sir.

Q. 693. But your custom has been to subscribe to no paper without knowing precisely what you were signing your name to?

A. Probably more so than most any man in the community, for I am exceedingly particular.

(M'r Bangs—That answer is objected to on the ground that it is not competent for M'r Moran to compare himself with other men in the community, and give the result of the comparison; and he is advised to refuse to answer that question.)

The WITNESS. I am a very crotchety man, as you probably infer, and I object to signing anything with blanks, but sometimes I have to trust to a counsel to fill up what is not at hand to do it with when we are hurried by time.

Q. 694. I understood you to have said last evening that at one time you signed a recommendation to the court to retain Duncan and Elliot; at that time were you informed of all the facts that you are now possessed of?

A. No, sir; no idea of them.

Q. 695. After the signing of that recommendation did you learn of certain facts which changed your ideas?

A. Yes; which I deemed very important?

1585 Q. 696. And in consequence of what you learned since you signed that recommendation, did you believe it in the interest of those whom you represented to take a different course?

A. I deemed it very necessary, and the only way to defend our interest.

Q. 697. And that was what caused you to change?

A. That was it?

Q. 698. Can you state from memory now the names of all the plaintiffs in the suit.

A. In the Ziegler suit?

Q. 699. Yes.

A. D'Orelli Ziegler, Bernard De Watteville, Masson Chevannes, and Henry Jump; I believe that is all.

Q. 700. When you were served with a subpœna to produce your authority to represent these different parties, did you suppose those names to contain all the plaintiffs in this suit?

A. I did.

Q. 701. Have you any knowledge to the contrary now?

A. No; shall I tell you why?

Q. 702. Yes.

A. I found the number of bonds that I allege in the bill to possess exactly represented the amount of bonds which are on our books opposite those four names.

Q. 703. Then, when you produced the different authorities last evening, did you suppose you were producing the authorities authorizing you to represent all the plaintiffs in the action?

A. I did; if there are any others, I am ready to furnish it if I know it.

Q. 704. As soon as you know the names of any other plaintiffs?

A. Yes, sir.

Q. 705. (By M'r Bangs.) Have you since last night read the papers in the Ziegler suit?

A. I have not.

Q. 706. Why do you say, then, that the persons you have named are the only plaintiffs?

A. Because I read a copy of the Ziegler suit before I came here; after being subpœn'ed I went and got a copy of the bill of the counsel and read it, and found those four names, and the amount of bonds which I swore they held we held for them.

Q. 707. Do you not know that the bill has been amended since so as to make Rudolph Merian and the other parties plaintiffs?

A. It has slipped my memory if it has.

Q. 708. Do you not know it is so?

A. It may be so, but I am not positive.

Q. 709. Do you not know that you swore to an amended bill?

A. Yes, sir.

Q. 710. They have all proved their claims through Moran Brothers?

A. Yes, sir.

Q. 711. In the Duncan and Elliot suit?

A. Yes, sir; do you want me to bring anything about the other two; as they are amended, I can bring their authority.

Q. 712. The bonds held by Ziegler, by De Watteville, by Chevannes, by Jump, by Carrard, by Merian, by Renevier, and Chuffard, have all been proven in the Duncan and Elliot suit through Moran Brothers, have they not?

A. Yes, sir; with slight exceptions.

1586 Q. 713. What exceptions?

A. All we had on the day we proved.

Q. 714. Then they have all been proved except the bonds belonging to Jump?

A. And De Watteville.

Q. 715. They were proved by you after your return last fall, were they not?

A. No, sir; it was during my absence.

Q. 716. Did not De Watteville tell you he did not want any litigation?

A. He did not.

Q. 717. Did not any of those parties tell you they did not want litigation?

A. None of those parties; they had all said they would rather not have litigation, of course.

Q. 718. Have you told them that you brought this suit?

A. I have.

Q. 719. When?

A. I decline to answer.

Q. 720. How did you tell them?

A. I decline to answer.

Q. 721. Why do you decline to answer?

A. I think it is not necessary for me to answer. It is my private business.

Q. 722. These bonds were proved after you had had personal interviews with those parties in Europe, were they not?

A. Oh yes, sir; about some; I don't know the date.

Q. 723. Since you recommended the retention of Duncan and Elliot as receivers, you have learned other facts?

A. Yes, sir.

Q. 724. Who did you learn them from?

A. From various sources.

Q. 725. Name them.

A. I decline to answer.

Q. 726. Did you learn any from M'r Andrews?

A. Yes, sir.

Q. 727. What did you learn from him?

A. He showed me various legal points.

Q. 728. What did he say to you?

A. First, the position of M'r Ketchum; what was the cause of his removal, and other things.

Q. 729. What else did he show you?

A. I don't remember all of the facts.

Q. 730. You made your recommendation after the answer in the Ketchum suit, did you not?

A. I had never seen M'r Ketchum when I signed the recommendation.

Q. 731. You made your recommendation after Ketchum had commenced suit?

A. I signed a recommendation, not in the suit, but at the request of M'r Duncan, to be used, I believe, in that suit.

Q. 732. To be used in the Ketchum suit?

A. Yes, sir.

Q. 733. You knew that Ketchum was moving for a removal?

A. The great error I made is in not informing myself what M'r Ketchum claimed. I should probably have taken entirely different steps.

Q. 734. All that is objected to. Nobody asked you that. You read the paper that you signed, did you not?

A. Yes, sir.

Q. 735. That is one of the occasions on which you read the paper?

A. I always read the papers.

1587 Q. 736. You read the amendments to the bill in this case, in which Renevier and his co-petitioners are made plaintiffs.

A. Yes, sir; I did.

Q. 737. And swore to it?

A. Yes, sir.

Q. 738. And you also read carefully that bill that you filed in Mississippi and swore to, did you not?

A. Yes, sir.

Q. 739. And the like one which you read and swore to filed in Kentucky?

A. I did; every bill I have signed I have read.

Q. 740. Who besides M'r Andrews has informed you of facts which you have learned since you recommended the retention of Duncan and Elliot?

M'r BLANDY. I advise you that you are not bound to answer that question.

The WITNESS. I decline to reply.

Q. 741. You decline to answer?

A. I do.

Q. 742. What facts have you learned from other parties?

A. I decline to reply.

Q. 743. Since November last, or since your return from Europe, have you increased the interest in those particular investments for these parties for whom you have been interested so long?

A. I believe for one or two; but I cannot say from memory.

Q. 744. Which one?

A. I must not say, because I might err.

Q. 745. Have you bought bonds for Jump?

A. Since I——

Q. 746. (Interrupting.) Since last fall—since you returned from Europe?

A. I ought not to say, because those matters of business I don't charge my mind with after I quit the office.

Q. 747. You will swear you bought for some of these parties?

A. Yes, sir.

Q. 748. To what extent?

A. I will give the statement if you desire.

Q. 749. To what extent?

A. Very moderate sums.

Q. 750. What do you mean by moderate?

A. From $5,000 to $10,000.

Q. 751. You have bought from $5,000 to $10,000?

A. I don't say it is the sum; you forced me to answer when I ought not to answer.

Q. 752. What do you say was the sum?

A. I will give the statement if you desire me to.

Q. 753. I don't take it by compulsion; don't consider yourself forced; can I coax you to remember?

A. I don't remember.

Q. 754. Can I not coax you to answer?

A. I never withhold an answer if I can answer.

Q. 755. You do withhold it now.

A. I don't know it.

Q. 756. You bought them during the receivership of Duncan & Elliot?

A. Yes, sir.

Q. 757. And since the Hays and Pierson and Du Puy scheme was brought up?

A. Yes, sir.

Q. 758. What made you buy them?

(M'r Blandy—That is objected to as immaterial, and as calling for a conclusion; I advise you not to answer.)

1588 The **Witness**. I will answer that because it is so simple; because I had instructions to do so.

Q. 759. Have you bought for yourself besides since last fall?

A. Not one.

Q. 760. Have you bought none?

A. Not one.

Q. 761. Have you sold?

A. Not one.

Q. 762. What is your interest?

A. I don't remember; I have got a certain amount; but I don't remember.

Q. 763. You must remember something.

A. I don't remember.

Q. 764. Is it $1,000?

A. Yes, sir.

Q. 765. $2,000?

A. $40,000 or $50,000.

Q. 766. Is that the outside?

A. I don't remember the exact figures.

Q. 767. Is that the outside?

A. I don't know; it may be more.

Q. 768. You say more; may it be?

A. I can't say.

Q. 769. Are they all first-mortgage bonds?

A. All first-mortgage bonds.

Q. 770. All first-mortgage bonds?

A. Or interest; first mortgage and interest bonds.

Q. 771. They stand on the same level, do they not?

A. They do in our scheme, but they don't in M'r Duncan's scheme.

Q. 772. I mean they are secured by the same instrument, are they not?

A. Yes, sir; I believe so; I have none but first mortgage myself.

Q. 773. What are they worth?

(M'r Blandy—That is objected to as immaterial; taken subject to objection.)

A. I don't know exactly.

Q. 774. Among your $40,000 or $50,000 you count the interest bonds?

A. I count the interest bonds.

Q. 775. What are they worth?

A. I don't know what the interest bonds are worth.

Q. 776. What is your personal investment worth?

A. It depends upon the court. I don't remember the amount I have.

Q. 777. What percentage of the face is it worth?

A. I don't know what the interest bonds are worth. I believe the other bonds are worth somewhere about 40, or a little below. I don't know exactly the market price.

Q. 778. Have you bought any at that price?

A. I have not.

Q. 779. Have you sold any at that price?

A. I have not bought or sold any on my own account.

Q. 780. Have you sold for account of others?

A. I may have sold two or three; some trifling sums. It made no impression on me. When I get these little orders I pay no attention to them.

M'r Bangs. Please furnish a complete list of the numbers of the bonds held by Rudolph Merian, Alfred Renevier, Eugene Renevier, Charles Carrard, and Cephise Chuffard.

The following is a copy of the list referred to:

1589 Rud. Meriam.—4823, 5792, 2839, 2841, 2844, 3251, 3337, 3519, 3520. 1st m'tg'e bonds. 9 bonds of £225 st'g each.

Eugene Renevier.—4501, 4502, 4503, 4535, 2691. 5 1st-mortgage bonds of £225 each.

Alfred Renevier.—3354, 1472, 1473, 1474, 1475, 1476. Six 1st-mortgage bonds of £225 each.

Charles Carrard.—703 to 705, 3883 to 3886, 3817, 5916, 1854, 5069, 4849. Twelve 1st-m'tg'e bonds of £225 each.

Cephise Chuffard.—953, 1298, 2215, 3491, 4054, 4193 to 4196, 4514, 4518, 4520, 4640, 4894. Fourteen 1st-m'tg'e bonds of £225 each.

CH. MORAN.

Subscribed and sworn to before me this 5th day of May, A. D. 1877.

JOSEPH GUTMAN,
United States Commissioner, S. D. N. Y.

D. Comyn Moran, a witness, produced, sworn, and examined on behalf of the defendants.

By M'r Bangs:

Q. 1. You are a member of the firm of Moran Bro's, are you?

A. I am.

Q. 2. You were here in attendance upon business last summer while your father, M'r Charles Moran, was in Europe?

A. I was, jointly with my brother.

Q. 3. You had communications during that summer with M'r William Butler Duncan about the affairs of the Mobile & Ohio Railroad?

A. Personal communications; I don't remember of any others.

Q. 4. What were they about?

(M'r **Blandy**. That is objected to as hearsay evidence, and is immaterial.)

The **Witness**. Do you oblige me to answer?

M'r **Blandy**. Yes, sir; you must answer, subject to objection.

Q. 5. Did M'r William Butler Duncan give you any information last summer about the affairs of the Mobile & Ohio Railroad?

(Same objection; taken subject to objection.)

A. I saw in the papers—I can't recollect what paper it was in—the fact of some decision having been made in Memphis; then I went to M'r Duncan and asked M'r Duncan what it meant. M'r Duncan told me he didn't know, but if I would return later he thought he could
1590 tell me; and when I returned M'r Duncan said that this thing had
been done without his knowledge, and probably in the course of a day or two he might tell me, so that was all I had in that interview; then I returned in a day or two afterwards and he told me the fact of the judgment having been entered; that is as near as I can recall it. I won't say "judgment entered."

Q. 6. (Interrupting.) Did he tell you how it had been entered?

A. No, sir.

Q. 7. Did he tell you it had been entered without his consent?

(Same objection by M'r Blandy; taken subject to objection.)

A. Yes, sir.

Q. 8. Did he not tell you that he was going to try to open it and contest it?

(Same objection by M'r Blandy; taken subject to objection.)

A. I believe he did.

Q. 9. Did he not keep in communication with you from that time?

A. I can't say; I saw him on three or four occasions, but not more.

Q. 10. Did he not direct you to Judge Campbell?

(Same objection by M'r Blandy; taken subject to objection.)

A. Yes, sir.

Q. 11. Here in this building?

(Same objection by M'r Blandy; taken subject to objection.)

A. Yes, sir.

Q. 12. What was it about, and who was Judge Campbell, and what was his relation to M'r Duncan?

A. I believe M'r Duncan told me he was his counsel in the suit.

Q. 13. You had an interview with Judge Campbell, did you not?

A. I spoke to Judge Campbell for a few minutes.

Q. 14. Did not Judge Campbell tell you that he meant to see that everybody had his rights and his day in court?

(Same objection by M'r Blandy.)

Q. 15. And that no such judgment should be taken?

(Same objection by M'r Blandy; taken subject to objection.)

A. I believe he did say that, to the best of my knowledge.

Q. 16. Did you not ask M'r Duncan to send you a letter so that you could send it to your father?

A. I do not remember it.

Q. 17. Did you not send a letter to M'r Duncan?

A. I don't remember. All the information that M'r Duncan imparted to me was in personal interviews, but in regard to all these matters I devoted very little time, for the reason that I had my department in the business, and I have not followed the Mobile and Ohio matter closely. I knew the main facts, but did not charge my memory with the details.

Q. 18. Look at this paper, and state whether you did not receive this letter from M'r Duncan, or a letter of which this is a copy?

A. I cannot recall any such letter at all; and as I said before in explanation, I have not followed this matter closely as I have other
1591 matters. I have the general correspondence of the concern, and
attend to my father's real estate and all those things.

Q. 19. You do or do not remember receiving it?

A. I don't remember it.

Q. 20. You know who the plaintiffs in this Zieglersuit are; you know, as correspondents of your house, of Moran Bro's, D'Orelli Zeigler, Bernard De Watteville, Henry Jump, and M. Chevannes, the two Reneviers, Carrard, and Chuffard?

A. In what way do you mean I know them?

Q. 21. You know them as correspondents of your house?

A. To be correspondents of our house?

Q. 22. Yes.

A. Yes, sir; I do.

Q. 23. You know that your house, as their agents, hold bonds belonging to them of the Mobile & Ohio Railroad Company?

A. I believe that we do for all of them; I can't say the exact amount; it is a thing I could not say without looking at the records; I believe we do hold securities for all of them.

Q. 34. Did you prove the bonds for all of them before the master here in New York?

A. I did not.

Q. 25. Who did prove them?

A. My brother. I don't think I proved any; I think I saw the master in regard to the arrangements about doing it, but I didn't personally do it.

Q. 26. Those were among the parties for whom Moran Bro's proved bonds, were they not?

A. They must have been, because we proved everybody's that we had on hand at that time, to the best of my knowledge.

Q. 27. But at that time you had the bonds on hand?

A. I believe so, to the best of my knowledge; but I could not swear to it positively without having reference to our records.

Q 28. What records?

A. Our books; to see whether we had them on hand for these people. My general belief is that we had.

Q. 29. You have proved all the bonds you had?

A. I believe we proved all the bonds we had at the time the master was in New York.

Q. 30. Have you not proved those you have received since?

A. I can't say.

Q. 31. Can you tell what you have received since?

A. I presume I can.

Q. 32. What?

A. I can't remember; I can't charge my memory with those facts.

Q. 33. Will you give us the number of the bonds held by Renevier and those people?

A. My father said, as senior member of the firm, he would, and I am bound by everything he says.

Cross-examined by M'r Blandy:

Q. 34. When did you see this copy of the letter shown you, purporting to come from M'r Duncan, dated the 16th September, 1876, first?

1592 A. To the best of my knowledge, I saw it this morning for the first time.

Q. 35. Have you, since this supposed copy was shown to you, looked for the supposed original among the papers of your firm?

A. I went back this morning and I looked for it among our correspondence, and I can't find it.

Q. 36. And you have no recollection of having received it?

A. I have not.

D. COMYN MORAN.

Subscribed and sworn to before me, this 5th day of May, 1877.
[SEAL.] JOSEPH GUTMAN, J'R,
U. S. Commissioner, S. D. N. Y.

AMEDEE D. MORAN, a witness produced, sworn, and examined on behalf of the defendant.

By M'r Bangs:

Q. 1. Are you a member of the firm of Moran Brothers?

A. I am.

Q. 2. Did you act for that firm last fall in proving before James Gillette, special master in the Duncan & Elliott suit, a quantity of bonds held by your firm?

A. I did.

Q. 3. You proved them in the name of Moran Brothers, for themselves and as agents of others, did you not?

A. That is, to the best of my recollection, the way I proved them.

Q. 4. Among those bonds did you prove the bonds held by Ziegler?

(M'r Blandy. That is objected to as secondary evidence.)

Q. 5. Well, among your principals, the persons for whom you held the bonds which your proof embraced, were there any bonds which belonged to D'Orelli Ziegler?

(Same objection by M'r Blandy; taken subject to objection.)

A. There were; belonged to his firm. I don't know whether they belonged to him personally.

Q. 6. They belonged to the firm of Pestalozzi au Thlahof?

A. I proved bonds belonging to the firm of Pestalozzi au Thalhof.

Q. 7. Were those bonds in the possession of your house at that time?

A. They were in our safe.

Q. 8. You produced them actually before the master, did you not?

A. Yes, sir; produced them actually.

Q. 9. In giving the numbers of the bonds which you proved before the master, and which are embraced in your proof, did you take Ziegler's bonds to get the numbers to incorporate in the list?

A. Yes, sir.

Q. 10. You made up your list partly from Ziegler's bonds?

A. Partly from his bonds.

Q. 11. Did you make up your list also partly from bonds belonging to De Watteville?

A. I did.

1593 Q. 12. Were all the bonds belonging to De Watteville enumerated in that list?

(Mr. Blandy. That is objected to as secondary evidence; taken subject to objection.)

A. I think we've bought one or two since; very few; we bought one or two.

Q. 13. The list was partially made up from De Watteville's bond, was it not?

A. They were made up from all the bonds we had on hand at that time.

Q. 14. Then you had ninety-seven of De Watteville's bonds, had you not?

A. Ninety-seven, to the best of my knowledge.

Q. 15. Did you also then have on hand some of Chavannes' bonds?

A. I think so.

Q. 16. That is your recollection, is it?

A. That is my recollection.

Q. 17. Have you bought any for Chavannes since?

A. We have, I think. I have not looked at the books. I think we have.

Q. 18. Had you then on hand Henry Jump's bonds?

A. I went three or four times to prove them, and one of the times I had Jump's bonds; not as Moran Brothers' agents, I don't think; yes, I did as Moran Brothers' agents.

Q. 19. You had Jump's bonds on hand at that time?

A. Yes, sir.

Q. 20. You have already stated that the proof you put in enumerated all the bonds you then had on hand?

A. Yes, sir.

Q. 21. And you then had them on hand and since?

A. Yes, sir; we have sent them back since; that is the reason I hesitated; we have only his power now.

Q. 22. When did you send them back?

A. Immediately after proof; we did not want the risk of keeping them here.

Q. 23. And did you then have on hand the bonds of Renevier?

A. Yes, sir.

Q. 24. The two Reneviers?

A. The two Reneviers.

Q. 25. And Chuffard?

A. I think so.

Q. 26. And Carrard?

A. Yes, sir.

Q. 27. Do you remember seeing a letter of which a copy is now shown you?

A. To the best of my recollection, I believe I have seen the original.

Q. 28. The original of that letter reached your firm, did it not?

A. I think so.

Q. 29. Do you know what became of it?

A. I do not.

Q. 30. Is your recollection perfectly distinct about it?

A. My recollection is pretty distinct; yes, sir, that I saw that letter. The following is a copy of the letter:

(Copy.)

SEPTEMBER 10TH, 1876.

Messrs. MORAN BRO'S, *New York:*

DEAR SIRS: For your information, I beg to advise you that the proceedings to set aside the decree of May 20th, in the circuit court
1594 of the United States, at Memphis, were promptly taken by my counsel; the hearing of which was, by order of the court, set for

the 15th day of September. The counsel for the Tenn. trustees (Wilson & Iselin), and my counsel, have since had a conference, and the time for the objectors to file their pleadings has been extended to the 15th October, with the understanding that the cause shall not be heard before the 4th Monday in November, before Judge Emmons, the circuit judge.

Yours, truly,

W. BUTLER DUNCAN, *T. & R.*

Q. 31. You say you have a recollection of seeing that letter?

A. Yes, sir; I have a recollection of seeing that letter, I think.

Cross-examined by M'r Blandy:

Q. 32. Do you know what you did with the original?

A. I do not.

Q. 33. Have you searched?

A. We cannot find it in the office.

Q. 34. You have searched for it?

A. I searched for it this morning all over; it may have been destroyed; it may be with some papers; I don't know, but I cannot find it.

Q. 35. Is your recollection sufficiently clear to enable you to swear positively that you did receive the original?

A. No.

Q. 36. Have you seen this copy of this letter before this morning?

A. Yes, sir.

Q. 37. When?

A. At the office; it was brought around there to see if we could find the original, by my brother, M'r D. Comyn Moran.

Q. 38. That was this morning, but about an hour ago?

A. Yes, sir.

Q. 39. Is it possible that the perusal of this copy when it was brought around to the office this morning may have led you to suppose that you had received the original of which this purports to be a copy, in September, 1876?

A. No, sir; it is not seeing that which makes me think that; it brings back a recollection that we had some kind of a letter from M'r Duncan, I think; but I can't remember what time it was received, or the exact words.

Q. 40. A letter of this character?

A. Of that character; yes, sir.

Q. 41. But you do not swear positively that you did receive the original of which this is a copy?

A. No, I do not swear positively.

Q. 42. If you had received the original of this would you be likely to have communicated it to your father?

A. I would.

Q. 43. And would you be likely to show it to your brother?

A. I would.

1595 Q. 44. Have you heard your father and your brother say that they have no recollection of seeing the original of this?

(Objected to by M'r Bangs; taken subject to objection.)

A. No, sir; I heard no questions.

A. D. MORAN.

Subscribed and sworn to before me this 28th day of April, 1876.

[L. S.] JOSEPH GUTMAN, J'R,
United States Commissioner, S. D. N. Y.

M'r Bangs asked for an adjournment to Monday next, at 3 o'clock.

M'r **Blandy**. I object to an adjournment upon the ground that the counsel for the defendants has announced the fact that he has no more witnesses to examine, and that nothing remains to be done but to transcribe the notes and have them read over by the witnesses; and that can be done without an adjournment.

M'r **Bangs**. I ask for an adjournment.

M'r **Blandy**. I put the question to M'r Bangs, counsel for the defendants, whether he desires to examine any more witnesses?

M'r **Bangs**. I decline to say anything upon the subject; I ask for an adjournment to 3 o'clock on Monday, on the special ground that as much matter has been already taken down as can be reduced to writing by 3 o'clock on Monday.

M'r **Blandy**. You mean by that that it would take until then to transcribe the notes?

M'r **Bangs**. I do mean that.

M'r **Blandy**. Do you concede that you do not desire to examine any more witnesses?

M'r **Bangs**. I do not concede anything of the sort; I ask an adjournment, and ask to have that hour fixed, on the ground that it would take until then to write out the minutes.

M'r **Blandy**. Without offering any opposition to the adjournment, I now insist that the balance of this day, it being now 2 o'clock, may be consumed in the examination of any other witnesses you may desire to call.

M'r **Bangs**. The effect of that would be that we would have to ask for an adjournment until Wednesday or Thursday, for the purpose of transcribing the additional minutes.

M'r **Blandy**. Then will you say whether you desire to examine any other witnesses?

M'r **Bangs**. I shall not say anything of the sort; I understand that the commissioner is willing to adjourn it until Monday, at 3 o'clock.

The **Commissioner**. Yes, sir.

Adjourned to Monday, April 30, 1877, at 3 o'clock p. m.

1596 *Motion for appointment of receiver, &c.*

D'ORELLI ZIEGLER & ALS.
vs.
THE MOBILE & OHIO RAILROAD CO. & ALS. } In equity. On bill, &c.

Take notice that the complainants herein will, on the first Monday of June next, at Mobile, or as soon after said date as the court will hear the motion, bring on for hearing a motion, and the rule to show cause heretofore granted herein for the appointment in this suit of an impartial and fit person as receiver of the Mobile and Ohio Railroad Company and of all the property covered by the first mortgage thereof, and for an order enjoining all persons from interfering with the occupation and possession of the said property by such receiver, and for an order of injunction restraining all the defendants herein claiming as trustees of the Mobile and Ohio Railroad Company from initiating any suits as such trustees, and from proceeding further with any litigations which

1597 they have instituted in that capacity, and for such other and further and different relief as may be just.

May 25th, 1877.
(S'gn'd) E. H. GRANDIN,
Sol'r of Complainants.

R. Co., & A. McKinstry, Esqr.
To Messrs. HAMILTON, *Sol'rs of W'm Butler Duncan & A. Foster Elliot*, and GEORGE N. STEWART, *Esqr., Sol'r of the Mobile and Ohio R.*

1598 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

Consolidated causes. In equity.

W'M B. DUNCAN & A. FOSTER ELLIOT, TRUSTEES, &c.,
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET ALS.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY ET ALS.

D'ORELLI ZIEGLER ET ALS.
vs.
THE MOBILE AND OHIO RAILROAD COMPANY ET ALS.

I, N. W. Trimble, clerk of the above-entitled court, hereby certify the foregoing pages, numbered from 1 to 1597, both included, to be a 1599 true and correct transcript of the papers enumerated in the writ of certiorari issued out of the Supreme Court of the United States on the 25th day of February, A. D. 1878; said writ is hereto attached and returned; which papers, proceedings, and record were filed in my office in the above-entitled causes, and as they now remain on file and of record in my office.

"Interrogatories filed December 9th, 1876," and "Cross-interrogatories filed December 29th, 1876," and numbered "8" and "9," respectively, in said writ of certiorari, are not on file, and cannot be found in my office, the same having been issued (on the day of , 187) with a commission to take testimony, and never returned.

In witness whereof I hereunto subscribe my name and cause the seal of the said circuit court to be affixed this 27th day of March, A. D. 1878.

[SEAL.] N. W. TRIMBLE,
Clerk U. S. Cir. C't Sou. Dist. of Ala.

Field

6 Ott. 659.

Oct. 7. 1877

OCTOBER TERM, 1877.

IN THE
SUPREME COURT OF THE UNITED STATES.
No. 879.

MORRIS KETCHUM ET AL., APPELLANTS,

VS.

WILLIAM BUTLER DUNCAN ET AL., APPELLEES.

Brief for Hays, Pierson and Dupuy.

UNITED STATES SUPREME COURT.

No. 879.

MORRIS KETCHUM, ET AL., APPELLANTS,

VS.

WILLIAM BUTLER DUNCAN, ET AL., APPELLEES.

From the time when this appeal was taken, up to a recent period, it was supposed by the appellees that the principal, if not the sole, point in dispute was, the continuing obligation and lien of the coupons of 1874; but in a brief recently filed by the appellants on a motion, an assignment of errors was inserted, which made no mention of that subject. The assignment reads thus:

"Assignment of Errors."

"Against terms of sale as ordered in the Alabama decree.

"*First.* That the Masters should not have been directed to receive on the sale any commodity, such as bonds, in lieu of lawful money, except by consent of all the *cestuis que trust* represented before the Court, or *for the equal benefit of all the bondholders*, according to their holdings.

"That the Masters should have been directed not to receive the bond bid, except for the amount of the foreclosing mortgage or some other reasonable amount, as a minimum upset price, in order that the bondholders not desirous of becoming purchasers of the property might not be deprived of all substantial share of the proceeds of the sale by a nominal bid, under the terms of this decree.

"That the Master should have been directed not to receive bonds, in lieu of cash, for any greater value than the dividend such bonds would be entitled to receive from the proceeds of sale. They should not have been directed to be received at their face value under the decree allowing the use of bonds as bid-money.

"That a trustee should have been ordered to bid for the property for the benefit of all the bondholders alike.

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"That a trustee should have been ordered to bid for the property for the benefit of all the bondholders alike.

"That the time for participation by all the first-mortgage bondholders in the bond-bid should not have been limited to a shorter period than the time which is necessary to prosecute an appeal to the Supreme Court, so that the appellants might not, by exercising their right of appeal, lose even those equities secured to them by the decree, in order to provide for their unquestioned interests in the property.'

If no addition is now made to this assignment by introducing the subject of those coupons, a great amount of labor will be saved to the parties and the court; otherwise, as nearly as can be now anticipated, the matters to which attention must be given involve

(**A.**) The rights declared by the decree to belong to the holders of the coupons which matured in May or November, 1874.

(**B.**) The remedy by sale given to the first mortgage creditors, including bondholders and couponholders.

(**C.**) The provision authorizing the commissioners appointed to make the sale to receive bonds and coupons as cash.

(**D.**) The omission of the decree to limit, more stringently than it did, the right of Hays, Pierson & Dupuy to become purchasers of the property, or to deprive them of that right altogether.

(A) The rights declared by the Decree to belong to the Holders of the Coupons which matured in May or November, 1874.

The adjudication of the decree in this respect was (*p.* 1041, *fol.* 1525), that the mortgage of 1853 was a valid security for the bonds therein set forth, and the interest thereon, including the coupons which became due in May and November, 1874, represented as owned by Alexander Duncan.

The course of the litigation which resulted in this portion of the decree was as follows:

Duncan & Elliott, in their bill, which was filed May 25, 1875, (*fol.* 102), alleged that default occurred in the payment of the coupons of May 1st, and of those of November 1st, 1874.

The debtor, in its answer, raised no issue upon this averment, but admitted its truth (*fol.* 116).

A trustee of a subordinate mortgage, by direction of or **stituents, The Rogers Locomotive and Machine Works, d**‹ **leged default (*p.* 73, *fol.* 137).**

On March 6, 1866, (*fol.* 152), an interlocutory decree directing a master to ascertain the amount due on the r receive proof of claims; to entertain objections; to take p against claims; and to report to the court.

Under this order, Alexander Duncan produced coupons May and November, 1874, to the aggregate amount of $ asked to have them allowed (Vol. 2 p. 98 to 199 - fol. 158 to

Hays, Pierson & Dupuy, afterwards, as assignees o Duncan, filed their claim upon the same coupons (Vol. 2. p. 9

Moran Brothers or Charles Moran availed themselves o by proving claims (Vol. 2. p. 84 to 97.

Cephise Chuffard, D'Orelli Ziegler, Rudolph Merian, H Bernard De Watteville, Masson Chavannes, Alfred Renevier Carrard proved no claims in their own names; but the cl by Moran in his name embraced the bonds and coupons l the last named parties (Depositions of the Messrs. Moran

Louis Belloni, Jr., proved six bonds (Vol. 2 P. 199. Q. 515).

He called upon Duncan & Elliott on November 10, 1876 object to the coupons of 1874. No other claimant made a Duncan & Elliott complied with this request (*pp.* 172, 173, 1

Belloni then made a specific statement of his objections pons (*pp.* 175, 176) in these words:

"*First.*—For that the said coupons of the first mortga bonds of the Mobile & Ohio Railroad Company were presen holders thereof on or about the first days of May and Nove at the usual and accustomed places where the coupons of the had been hitherto paid, and that the said coupons were then an to the parties so presenting them, and were surrendered by said the said coupons were received by the payers thereof, who l fore acted as agents of the said Mobile & Ohio Railroad C and about the payment of its coupons on its first mortga bonds. And the matters above recited in reference to sai transpired in the case of the coupons of the bonds held by t or; and no notice or claim was made at or before the time ment aforesaid of any purchase of said coupons by any one w and no such claim or notice came to this objector's knowled the same in any way called to his attention. But, on the co published notices in the newspapers, at the said times, annou the signature of Duncan, Sherman & Co., from whom the ab Alexander Duncan claims title, that the aforesaid coupons paid on presentation. And it was in pursuance of such noti ment that this objector presented his coupons and received thereof. And the said coupons, after said payment, became i as a claim against said company, or a lien upon any of its pro

"*Second.*—To the admission of said coupons by the master herein as a claim or lien upon or against the property of the said Mobile & Ohio Railroad Company, or to a claim or lien of equal rank with the first mortgage sterling bonds, or to any report of said master in favor of the admission or validity of said coupons or claims, or secured by liens as aforesaid."

To these objections Alexander Duncan filed an answer as follows (*p.* 183):

"He, the said Alexander Duncan, was, at the time of the filing of the said detached coupons issued by the Mobile & Ohio Railroad Company, which he has laid before the said special master, and of which he has made due proof, as is shown by the record of this reference, the true and legal owner and holder of said coupons, from thence has so continued, and still is the lawful holder and bearer of the same, and is lawfully entitled to payment thereof by said railroad company and of each of them, and that he is justly entitled, and insists, that the same be reported on this reference as due to him with the mortgage liens of the bonds to which they respectively appertain and with which they were issued; and he further saith, that he became the lawful holder of the same for full value paid by him for the same as his property; and he further says that said coupons have not been paid by the said Mobile & Ohio Railroad Company according to the tenor or effect of said coupons, nor either of them, nor any part of either of them, and he says that they, and each of them, stand in full force and effect as valid and lawful obligations of said company due to him, this respondent, with all the liens appertaining to the bonds of which they respectively formed part; and this defendant denies the allegations of the said contestant in this behalf to be true as alleged and set forth in the said petition."

The issues raised by these objections are the following. The objector alleged:

1. That the coupons of May and November, 1874, were presented at the usual and accustomed places where the coupons had been theretofore paid.

2. That the coupons were then and there paid to the parties so presenting them.

3. That they were surrendered by such parties and received by the payers thereof.

4. That these allegations applied to the coupons held by the objector, Belloni.

5. That at or before the time of such payment, no claim or notice

6. That published notices, in the newspapers, announced over the signature of Duncan, Sherman & Co., from whom Alexander Duncan claims title, that the coupons would be paid on presentation.

7. That it was in pursuance of such notice of payment that the objector presented his coupons and received payment thereof.

Moran Brothers filed objections to claims propounded before the master; but their objections did not apply to the coupons in question (*pp.* 176 to 181).

Upon the issues raised by the answer of the Trustee of the second mortgage, and by the objections of Belloni, and upon no other issues, proofs were taken in Mobile, New York and London, from December 5, 1876 to April 14, 1877 (*pp.* 185 to 806). During all this time neither Belloni nor Moran, nor any one whom Moran represented, was examined as a witness as to the coupons.

The master's report was in favor of the coupons (*fols* 324 to 327).

Exceptions was filed to his report upon that subject (*pp.* 813 to 817).

These exceptions were entitled and subscribed as having been taken on behalf of the Trustees of the second mortgage, and Belloni, and "Charles Moran and *als.* objecting creditors." Moran, however, had taken no objection to the coupons before the master.

During the pendency of these proceedings, Morris Ketchum became a litigant. He filed his bill on March 14th, 1876 (*p.* 838, *fol.* 1037). He claimed to be a Trustee of the first mortgage, but, not bringing suit on behalf of all who were or claimed to be, entitled to the benefit of that mortgage, he restricted his efforts to those who disputed the coupons of 1874, and opened war on Alexander Duncan, by an averment (*p.* 827, *fol.* 1017), that the latter's claims were fraudulent, and by an implied statement that the coupons had been paid "*in the ordinary and accustomed manner in which said coupons had been theretofore paid*" (*p.* 828, *fol.* 1019).

No issue of fact as to this charge had been joined upon this bill up to June, 1877.

On April 2d, 1877, Ziegler, DeWatteville, Chavannes and Jump, filed their bill (*pp.* 952 to 964). Their bonds had already been proved in the first suit in the names of Moran Brothers, but the members of the firm of Moran Brothers verified this Ziegler bill. The charge, in this bill, relating to the coupons in question was, that they were "*paid and surrendered in great part on and after they became due, without notice being brought to the knowledge of most of the bondholders, that any claim was set up to purchase them*" (*fol.* 1341). No issue had been joined on this bill up to June, 1877. Alexander Duncan was not made a party defendant to either the Ziegler or the Ketchum bill.

By an order made June 5th, 1877 (*fol.* 994), Merian, Renevier, Chuffard, and Carrard, whose claims had been already, in the names of Moran Brothers, proved in the Duncan & Elliott suit, were allowed to intervene as defendants in that suit and to answer. Their answer averred the payment of the coupons; that Alexander Duncan was estopped from claiming that they were not paid; that they were paid with funds and moneys provided by Duncan, Sherman & Co., in the usual manner, to the holders thereof, without any knowledge on their part that the same were not paid, and without any intention of selling the same, "at times when said" (W. B.) "Duncan was in full possession and control of all the income and assets of said company, and the same were pledged by the Board of Directors thereof to the payment of the interest upon said first mortgage bonds, and were placed in the hands of said Duncan, Sherman & Co., as such financial agents for that purpose, and were sufficient for that purpose."

On the same 5th day of June, the suit of Duncan & Elliott was consolidated by order with those of Ketchum and Ziegler, and by that order it was provided (*fol.* 1006), that all the proofs taken, orders made, and proceedings had in the Duncan & Elliott suit might be read on the hearing of the consolidated causes "in the same manner and with the same effect as if taken, made, and had, in all of said causes."

Thus the decretal order of March 6th, 1876, and the proceedings under it, including objections, proofs, exceptions, and omissions to except, were all translated to the two later suits.

Belloni has never appealed from the decree, nor have Moran Brothers, nor has Charles Moran.

The appellants, originally, were, Ketchum, Ziegler, de Watteville, Chavannes, Jump, Carrard, Chuffard, Renevier and Merian (*p.* 1044, *fol.* 1529). But on the 14th of January last, an order was made by this court as follows:

"Upon the petition of William H. Hays, William S. Pierson, T. Haskins DuPuy and William Butler Duncan, sworn to January 5th, 1878, and on motion of Mr. Merrick (counsel for the appellants, appearing and not opposing), it is, this 14th day of January, ordered by the court that this appeal, so far as it respects D'Orelli Ziegler and Bernard de Watteville, and so far as it respects the bonds formerly held by them, and so far as it respects the bonds formerly held by Cephise Chuffard, numbered respectively 953, 1208, 2215, 3491; 4054, 5193, 4194, 4195, 4196 and 5514 be, and the same is hereby discontinued; and that the names of the said Bernard de Watteville and D'Orelli Ziegler be stricken from the record as appellants on this appeal; and that a minute be made of record on this appeal, in this court, that said petitioners, Hays, Pierson and Dupuy, have succeeded to the rights of the said Bernard de Watteville and D'Orelli Ziegler, respectively, as creditors under said mortgage, and to the rights of the said Cephise Chuffard, as a creditor under said mortgage upon the said ten bonds last hereinabove mentioned."

Since that order was made, the court has been applied to, on behalf of Henry Jump, by Hays, Pierson and Dupuy, the assignees of his nineteen bonds, for leave to discontinue his appeal. It appeared by the papers submitted on that application that he had instructed his correspondents, Messrs. Moran Brothers, as long ago as in September last, to transfer his bonds to Hays, Pierson and Dupuy. It is not his fault that, since then, the prosecution of the appeal has been continued in his name.

By these proceedings the number of the appellants has now been reduced to six, namely: Ketchum, Renevier, Merrian, Chavannes, Carrard, and Chuffard. The first one of these, Ketchum, is not a creditor. The amount of claims held by the last five, altogether, is forty-seven thousand dollars ($47,000). They are not jointly interested. Each has a separate interest, the largest $17,000, the smallest $5,000.

The propositions insisted upon on this branch of the case (A) by the appellees are, therefore:

I.—The appeal should be dismissed for want of jurisdiction and other reasons.

II.—If the appeal is not dismissed, then, on the merits, we contend that the decree was right in adjudging that the coupons of 1874 constituted a part of the mortgage debt.

I.

The Appeal should be dismissed for want of Jurisdiction and for other reasons.

So far as Renevier, Carrard, Chuffard, Chavannes, and Merian are concerned, this point was decided by the court in our favor in its opinion delivered on February 25 last. It is only necessary, in regard to those parties, to refer to that opinion.

But, in the same opinion, the court reserved the question whether Ketchum, as representing Moran, or somehow otherwise, might not be entitled to appeal. We therefore now contend that Ketchum has no standing as an appellant in right of Moran or otherwise, because—

1. Moran was a party to the suit, in his own name, in the court below, before decree, and needed no representative. If the other appellants, who proved their bonds in Moran's name, can appeal in their own names, surely Moran, who proved his own bonds in his own name, needs not the *nom de guerre* of Ketchum.

2. An appeal by Moran in his own name could not have been sustained, because, before the Master, he took no objections to the coupons.

   5 *Wend.*, 673, *Woods* vs. *Young*.
   1 *How.*, 169, *Bell* vs. *Bruen*.
   8 *How.*, 402, *West* vs. *Smith*.
   18 *How.*, 289, *Kinsman* vs. *Parkhurst*.
   20 *How.*, 45, *Hudgins* vs. *Kemp*.

3. Moran would be prevented from questioning the validity of the coupons here, by any conduct of his in the court below, inconsistent with the theory of their invalidity; or by any other conduct on the faith of which another party acted, or by any conduct amounting to an estoppel.

   3 *Otto*, 39, *Terry* vs. *Abraham*.

Now, Moran did so conduct himself as to be estopped from questioning the validity of the coupons.

(*a*.) On May 4, 1875, he joined with other parties (*p.* 776, *fol.* 928), in requesting the Trustees under the mortgage to take possession of the mortgaged property. This request recited a default in the payment of interest four days previously. But Moran knew that a four days' default did not authorize the proceedings which he requested. By the terms of the mortgage (*p.* 52, *end of first paragraph*), possession was not to be taken except upon three months' default in payment of principal or interest. It was to Moran's interference and influence, therefore, that the beginning of the litigation was due. He knew in September, 1874, that the coupons were not expected to be paid. He then advised Mr. W. B. Duncan to be careful in purchasing them (*see his deposition, fol.* , *p.* , *q.* 282 *to* 288).

(*b.*) The Duncan and Elliott suit was founded on the theory that the coupons of 1874 were not paid. Moran availed himself of the benefit of that suit to prove his own claims, as did the appellants, except Ketchum. Duncan and Elliott having been appointed receivers in that suit, Moran on April 1, 1876 (*p.* 777, *fol.* 929, *Ex.* X 5), filed a written approval of such appointment, and a protest against their removal. This conduct estops him. See Vol. 2. p. 884 fol. 1128 to 1130 & p. 38

1 *Greenleaf on Evidence, sec.* 204.
6 *Benedict*, 464, *Cushing* vs. *Laird.*
2 *Woods*, 323, *Forbes* vs. *R. R. Co.*
Id., 628, *Anderson* vs. *R. R. Co.*
13 *Blatchford*, 312, *Stevens* vs. *R. R. Co.*

4. Ketchum, as a trustee, has no right to appeal on behalf of one set of claimants under the mortgage against another set.

3 *Otto*, 412, *Sage* vs. *R. R. Co.*

II,

The decree was right in adjudging that the coupons of 1874 constituted a part of the mortgage debt.

Alexander Duncan produced these coupons uncancelled, and proved them before the Master. He thus entitled himself to the benefit of the presumption which attaches to the possession of negotiable paper hat he became the holder of them, for value, at their date, in the usual course of business, without notice of anything to impeach his title.

4 *Otto*, 753, *Collins* vs. *Gilbert.*

The contestant showed, it is true, that Alexander Duncan acquired the coupons after their maturity, from Duncan, Sherman & Co., but the only effect of that showing was to give Duncan, Sherman & Co. the benefit of the same presumption. It then became the duty of the court to apply the evidence to the allegations and determine whether the proofs sustained the defenses which the objectors had assumed the burden of establishing.

Those defenses emanated, in part, from Belloni, in part from Ketchum, in part from Chavannes, and in part from Carrard and his associates.

But Belloni has not appealed, and therefore it is unnecessary to examine his allegations.

Moran, if he had appealed, had made no allegations, and, therefore, there is no defense, of his interposing, to be examined.

Ketchum and Chavannes interposed the legal defense of payment, as that defense would be pleaded to an action of assumpsit.

Carrard and his associates interposed the defenses of payment and estoppel.

These two defenses, payment and estoppel, are the matters to be considered, and they are to be considered upon the understanding that the burden of proof is upon the objectors. The proponents of the coupons are not bound to prove a purchase. That is presumed; and the presumption is to be overthrown by proof.

1. The Plea of Payment.

If "payment" means, the appropriation, by a debtor, of his own funds directly to the use of a creditor, in discharge of a money debt, in consideration of the debt, and with intent to extinguish it, it is only necessary to say that there is an absolute dearth of any evidence to support this defence, so far as any original coupon holder is concerned.

No witness proved that any original coupon holder received any money from the company, or that the company delivered any money to any such coupon holder. The coupons were payable at the office of George Peabody & Co. in London (*fols*. 36, 42, 44). Not one witness proved presentation or payment there, or at any substituted place, or at the debtors' place of business. One or two witnesses (*p*. 195), testified to some payment in May, 1874, but they were contradicted *Bull, Willoughby.)*

It is contended, however, that certain transactions had by the company with Duncan, Sherman & Co., which firm, in the first instance, supplied the money to the original coupon holders, constituted payment to Duncan, Sherman & Co., after the latter had acquired the coupons.

These transactions were evidenced chiefly by entries, not upon the books of Duncan, Sherman & Co., but upon those of the railroad company (*pp*. 286 to 291). These entries, of course, did not constitute evidence against Alexander Duncan, nor against Hays, Pierson & Dupuy; but if they did, they do not prove payment to Duncan, Sherman & Co.

It is necessary to refer somewhat to the relations between that firm and the company in and prior to May and November 1874. What was their character in March, 1874, is indicated by a letter of March 5, 1874, (on *pp*. 651 and 652, *fols*. 802 and 803), from W. B. Duncan to the president of the company. It states the fact that the company was indebted to Mr. Duncan and others, some $200,000, advanced to pay interest due in November, 1873, and January and March, 1874. The company had agreed to repay these advances out of earnings, and any other resources at their disposal, (*p.* 314, *No.* 5). By telegram from New York to the company, at Mobile, on April 28, 1874, Duncan informed the company that the coupons due on May 1st would be *purchased* by his firm (*p.* 313, *Nos.* 1 and 2). Such coupons were purchased for Duncan, Sherman & Co., by the Bank of Mobile in Mobile, by the Union Bank of London in London, and by Duncan, Sherman & Co., in New York. Neither of these parties then had any funds of the company in hand. They *intended* to purchase, and not to pay or extinguish the coupons. The money expended in Mobile and London for the purchase of the coupons was repaid by Duncan, Sherman & Co., (*p.* 207, *fol.* 363, *p.* 312, *p.* 394, *fol.* 546, Exh. A, *p.* 392, *p.* 208.) In October, 1874, Duncan, Sherman & Co., in a letter which was put in evidence, (Exh. K. 9, *pp.* 418, 419), speak of these transactions as purchases.

In November, 1874, Duncan, Sherman & Co. purchased some of the coupons directly in New York, some through the Credit Foncier of London, and some through the Bank of Mobile (*pp.* 418, 419 *to* 452, *pp.* 379 *to* 381, *Murdock's Deposition*, *p.* 398, *pp.* 208, 209, 210). All this evidence shows that they did not mean to risk their money on the general credit of the company, but on the credit of the mortgage. See particularly p. 408, fol. 560, where Duncan, Sherman & Co. say to the Credit Foncier, as an inducement to purchase: " *The security is unquestioned* as " *upon the demand of these coupons, the possession of the road can be entered* " *upon, if it should become necessary to adopt such a course.*"

These transactions were entered upon the books of Duncan, Sherman & Co., in an account called a "coupon purchase account' (*pp.* 325 *to* 339). The first item is dated April 28, 1874; the last in July, 1875. No receipts from the debtor are credited to the account.

The entries on the books of the railroad company, which, it is pretended, show receipts of money by Duncan, Sherman & Co., which should be construed as extinguishing the claim on the coupons, extend from April 30, 1874, to Jan. 5, 1875 (*pp.* 286 *to* 291). Treating them as evidence, they show that on April 30, 1874 (*p.* 286), the company was in debt to the firm $41,104.80. The total amount of the items credited by the company to Duncan, Sherman & Co., to December 31, 1874, was $901,208.18 (*p.* 288), while the total amount charged to Duncan, Sherman & Co., during the same period, is $852,517.00 (*p.* 291). There appears to have been no appropriation of money upon the coupons. Among the items credited to the firm on Dec. 31, 1874 (*p.* 288), are three demand notes, amounting together to $150,000. But by reference to p. 509, it will appear that this sum of $150,000 was the amount of a loan made by the firm to the company on Feb. 28, 1874, forming one item in an entire sum of $200,000 loaned by these parties to the company at that date, and *charged* to Duncan, Sherman & Co. by the railroad company as money received by the firm for the company.

Reference may also be made to Exhibit 1 to Wetton's testimony (*pp.* 277 *to* 285), for the purpose of showing that in 1874 interest coupons were paid to the amount of $157,970.70. This exhibit is an annual report published April 20, 1875. It constitutes no evidence against Alexander Duncan, or Hays, Pierson & Dupuy. But, assuming that it does, this item does not show that any interest was paid on mortgage after May 1, 1874. Interest on the Tennessee substitution mortgage matured in January, 1874, and on the second mortgage in March, 1874.

The observations of the learned Circuit Justice (*fol.* 1515, 1516, *p.* 1036) obviate the necessity of any further reply to the theory that the coupons bought in May and November, 1874, were paid by operation of law, contrary to the understanding of the parties, by the transactions between the company and Duncan, Sherman & Co.

2. The plea of Estoppel.

Estoppels must be mutual. There must be somebody to be estopped, and there must be some other body in whose favor the estoppel operates.

In this instance, the defence of estoppel emanates only from Meriam, Renevier, Carrard, and Chuffard, who are bondholders, now, to the amount of no more than $30,000.

They, by their answer (*fol.* 1001), designated Alexander Duncan, and Duncan, Sherman & Co., as the parties "*estopped to claim that said interest is unpaid.*"

They do not designate the parties as against whom Alexander Duncan, and Duncan, Sherman & Co., are so estopped. That is left to be guessed at, or spelled out, from the proofs.

But the proofs will not enable the court to supply the hiatus in the answer.

If there is any estoppel, it must be in favor of some bondholder, and it must arise from the fact that Duncan, Sherman & Co., by their conduct, induced some bondholder to believe that the railroad company was, in May and November, 1874, paying its coupons, *animo solvendi*.

By this means, and not otherwise, the case might be brought within that of *The Union Trust Company of New York* vs. *The Monticello and Port Jervis Railway Company*, 63 *N. Y.*, 311, which is a case on which the appellants rely. There, a stranger had furnished *to the mortgagor*, the means of paying interest, *under an agreement with the debtor to which the creditor was not a party*, that the coupons should be kept uncanceled, as continuing evidences of debt, for the security of the stranger. He was held by the court to be so estopped against claiming priority over, or equality with, those who supposed they were receiving payment.

To avail themselves of the principle stated in that case, Meriam, Renevier, Carrard and Chuffard should have shown that they had been misled by the conduct of Duncan, Sherman & Co. But this they utterly failed to show.

It would not do for them to show that some other bondholder had been so misled, because they could not avail themselves of the rights of such other bondholder in that respect. Those rights were personal, and might be waived, and were effectually waived, as is shown by the opinion of the learned Circuit justice (*fol.* 1520, p. 1039).

If the bondholders who were misled were those in whose name and behalf, to the extent of $3,931,000, Hays, Pierson and Dupuy filed a consent that the coupons might be allowed, and that they might have priority (*pp.* 1026 to 1033), then Meriam and his colleagues cannot reclaim the rights which those bondholders have abandoned.

If the witnesses who were examined in Mobile were misled, they alone can insist upon the estoppel which might ensue. But, *non constat* that they were bondholders at the time when suit was brought, or are so now. At all events, they have not pleaded any estoppel.

It was stated by the learned Circuit Justice in his opinion (*fol.* 1543), that, "in the administration by a Court of Equity of a common fund "subjected to the equal benefit of many creditors, if one creditor ob-"jects to the claim of another creditor, and succeeds in showing it to "be invalid, such claim does not stand good as against other creditors "who interpose no objection to it. The opposition of one enures to the "benefit of all." It is submitted that these remarks were intended to apply, and do apply, only to the defense of payment. They do not embrace the defense of estoppel.

Duncan, Sherman & Co. might have misled Charles Carrard, and so have subjected themselves to an estoppel in his favor, but it would not follow that they were estopped as against Rudolph Meriam, if he was not misled.

3. THE ARGUMENT OF THE APPELLANTS UPON THE SUBJECTS OF PAYMENT, PURCHASE AND ESTOPPEL.

Most of this argument answers itself. If the learned court will, in most instances, refer to the testimony cited, this will be obvious.

In other instances, however, some corrections and criticisms are necessary.

1. **The attempt which was made at the Circuit to show that the railroad company, the debtor, directly supplied funds to the creditors holding coupons, seems to be abandoned.**

2. The argument at Circuit, that Duncan, Sherman & Co. did not *intend* to purchase the coupons and keep them alive as secured debts, seems also to be abandoned ; as, indeed, it would have to be, in the face of the testimony.

See deposition of—

W. B. Duncan, *pp.* 308 to 317.
Mackintosh, *pp.* 317 to 320.
Walker, *pp.* 320 to 323.
Exhibits, *pp.* 325 to 339.
Hays, *pp.* 37 to 373.
Iselim, *pp.* 373 to 375.
Boomer, *pp.* 375 to 377.
Murdoch, 379 to 381.
Milford, 392 to 395.
Webster, 395 to 451.

3. The argument that Duncan, Sherman & Co., did not give notice of their intention to purchase, is reducible, again, into the plea of estoppel, and is based upon the theory that the holders of the coupons are bound to prove a purchase.

But, as above shown, that is an erroneous theory. The coupon holders start with the presumption that they are purchasers for value, and that presumption must be overthrown by the objector.

Want of notice of the intention to purchase is available only to those who plead and prove it. It amounts to, and is available as, an estoppel, but not otherwise. Now, not a single party who objects to the coupons, proves that he was misled, or that notice to him was lacking ; nor does he prove that anybody else was misled. If any bondholder was misled, it is his personal privilege to avail himself of it at his will. No one else can raise an outcry for him.

But notice was given.

On April 28th, 1874. Duncan telegraphed to the treasurer of the company : " *Sterling coupons payable on face in London* " *only; therefore, will be* PURCHASED *by us here or at Mobile, for our* " *account, at* $31.50, *gold, and collected.* OTHERWISE," (that is, if parties will not sell) " PARTIES CAN PRESENT IN LONDON AS AGREED ON COUPON. ***Certificate and interest forty dollar coupons are pay-***

able in Mobile when we telegraph funds are provided; would ask Bank of Mobile to buy them for our account, and draw on us for amount, sending coupons forward uncancelled. Does this meet approval" (*p.* 313, No. 1)

On the same day Duncan telegraphed to Walker, the President of the company: "*Ask Pratt if his bank will, if instructed,* "*arrange to purchase for our account coupons presented in Mobile,* "*value on us, forwarding coupons uncancelled*" (*p.* 313, No. 2).

On April 30th Duncan, Sherman & Co. telegraph to Pratt: "*Please purchase for account of whom it may concern coupons,* "*maturing May 1st, paying sterling coupons not exceeding* $32.50, "*or* $36.50, *currency.*"

"*Do better if you can, sending coupons uncancelled to us. Your drafts against same shall meet due honor*" (p. 314, No. 3).

Mr. Pratt replied on the same day by telegraph: "*Dispatch received. Will purchase May coupons and forward as directed.*" And, also on the same day, he gave a like assent, by mail, to the proposition (*p.* 207).

It may well be inquired whether, if the Bank of Mobile had failed to obtain reimbursement from Duncan, Sherman & Co. for the amount invested in the purchase of the coupons, that bank would have had to suffer the loss. *It* did not intend to pay the debt of the railroad company. *It* was the original purchaser. Duncan, Sherman & Co. acquired its rights.

Parties who presented coupons for payment at the Bank of Mobile did not receive payment. Their coupons were put in an envelope, and they were directed to go to the Bank of Mobile for their money. "*This was different from the former mode* "*of collecting the interest*" (*foot of p.* 248). It was equivalent to demand and refusal. If a creditor, at the request of a debtor, goes to a stranger, and obtains money, he must be presumed to have assented to the terms on which the stranger furnishes the money.

In New York, parties who presented coupons were informed that Duncan, Sherman & Co. were not paying them, but were purchasing them.

Boyd, *p.* 307.
Duncan, *p.* 311, *q.* 3.
Duncan, *p.* 315, *q.* 2.
Mackintosh, *p.* 470, *q.* 3.

On April 28th, 1874, Duncan telegraphed to the Union Bank of London: "Mobile Ohio coupons 1st May, pay ***for our ac-***

count, forwarding coupons uncancelled." *p.* , *Ex. A.*) The Union Bank had nothing to do with the railroad company. It advanced the money on account of Duncan, Sherman & Co., to whom alone it looked for reimbursement.

Here, again, it may be asked, if the Union Bank of London had failed to obtain reimbursement from Duncan, Sherman & Co., would that bank have had to suffer the loss. Would it not have stood in the place of the coupon holders, and do not Duncan, Sherman & Co., stand in its place?

No coupon holder claims to have been misled or deceived by the Union Bank of London.

On October 10, 1874, Duncan, Sherman & Co. wrote to the Credit Foncier of London, as stated on pp. 396 and 408.

See also telegrams, Nos. 4 and 5, on *p.* 314.

Notice of intention to purchase was publicly given by the Credit Foncier, p. 398, p. 418, Exhibit K, 9.

In October and November, 1874, the Bank of Mobile purchased the coupons then maturing, for Duncan, Sherman & Co.

(*Pratt*, pp. 208, 209, 210.)

Notice was publicly given that the company was not paying the coupons.

Hamilton, p. 249.
Willoughby, pp. 226, 232.
Bull, pp. 255, 256.

The testimony above referred to, relating to the purchase of coupons in New York, in May, 1874, applies to the purchases there in November, 1874.

Alexander Duncan and his assigns, as coupon holders, therefore sustain their claim upon:

1. Presumption of purchase.

2. Proof of intention to purchase.

3. Proof of notice of that intention.

Against this, there is nothing. There is not an atom of proof of dissent by coupon holders: nor of deception, fraud or any other circumstance constituting an estoppel.

The appellants still insist, however, that the transactions between the railroad company and Duncan, Sherman & Co., after May, 1874, have the effect of extinguishing the claim on the coupons.

They rely largely upon a resolution of the directors, passed April 28, 1874, pledging the net earnings of the company, *after payment of the current expenses,* to repayment of advances obtained by the President, W. B. Duncan, for the purpose of meeting the May interest.

Mr. Duncan was not at that time in Mobile. He was in New York, endavoring to induce various parties to unite with him in buying the coupons (*pp.* 371 to 380). He finally concluded that his own house of Duncan, Sherman & Co. would buy them, and he communicated that intention to the company at Mobile, as above shown. The intent of the resolution was, to protect parties who were expected to advance money *to the company.*

But no such advance was made. Mr. Duncan did not make the advance, nor did he accept, or act upon, the resolution.

Treating the accounts kept by the company as evidence, *pp.* 286 to 289, they show that from April 30, 1874, to December 31, 1874, the aggregate charge to the firm was $882,517. The payments of Duncan, Sherman & Co. during the same period were $921,590.15. There is no pretence that any of the money was embezzled, or that it was applied otherwise than lawfully to the use of the company. It was not *in fact* applied to the extinguishment of coupons, except some of the coupons of previous years. A large amount is for the current expenses mentioned in the resolution of April 28. Many of the items are not items of cash. Take, for instance, the item (on *p.* 286) May 30, where the firm is credited with $30,000 as for a note paid to Russell Sage. They are charged against this, on *p.* 290, with a renewal note to Russell Sage of $27,000. The total amount of notes credited to them as if paid by them is $287,682.61, but, on the other hand, the total amount charged to them against this, as renewed, is $352,072.65. There are many others of what are merely cross-entries.

Nothing more need be said in justification of these transactions than is said by the Circuit Court.

What is said in the appellants' brief respecting deposits in the Bank of Mobile is sufficiently answered by the brief itself, and by the proofs.

The bank kept a special "coupon account" to which it charged its purchases of coupons *Ex. A, pp.* 567. It credited to the account its drafts on Duncan, Sherman & Co. There was an intermediate balance on January 23, 1875, of $26,242.09, which the bank charged to the general account of Duncan, Sherman & Co. In the meantime, on November 13, 1875, it credited the account $45,885.85, which was transferred fromthe credit of Duncan, Sherman & Co.'s account. Mr. Pratt explains that this was an error which was corrected (*pp.* 564, 565, 566.)

(B.) The remedy by sale, given by the decree to the first mortgage creditors, including bondholders and coupon holders.

Duncan and Elliott, in their bill (*p.* 14), prayed a sale.

Ketchum, in his bill, prayed "that the said railroad, its appurte- " nances, rolling stock, lands, franchises, rights, credits, effects, and all " the lands of the said Mobile and Ohio Railroad Company, conveyed by " said mortgage, be sold, and the proceeds of said sale distributed among " the holders of the said bonds, according to their respective rights," &c. (*p.* 831, *fol.* 1025).

Ziegler and his co-plaintiffs, in their bill, prayed (*p.* 963, *fol.* 1350) that the defendants might be " barred of all equity of redemption in and " to the said railroad, its equipment, appurtenances, and lands, rights, " credits, franchises, and effects, and that the same may, by such final " decree, be sold, and that such other final and decretal orders as may " be requisite to accomplish the objects of this bill and the preceding " prayers, may be made and granted by this court."

The order of consolidation recited that it appeared to the court, and in fact all parties united in making it appear to the court, that the three " suits were instituted for the common purpose of securing a sale of the " Mobile and Ohio Railroad, and other property of the Mobile and Ohio " Railroad Company, under the first mortgage thereof" (*p.* 821, *fol.* 1006.

The bonds, to collect which the suit was brought, were all payable in money (*pp.* 33, 34).

Under these circumstances, it is submitted that it is now too late for the appellants to object to a conversion of the property into money, by sale, and to a distribution of the proceeds, in money, among creditors. They have effectually committed themselves to that object.

Even in the court below they could not have objected to that remedy if any creditor asked it. Every bondholder had a separate personal right to disengage and separate his claim from that of the others, and enjoy it severally in money.

It was not competent for the court to appoint a trustee to buy land for the bondholders and to compel bondholders to take undivided interests in land in satisfaction of demands payable in money. Each bondholder was *sui juris*, and capable of taking care of himself. None asked for the appointment of any trustee or guardian. The terms of the bonds or mortgage conferred no right upon any creditor or upon the debtor to ask the court to appoint a trustee to buy land against the will of the creditor.

If a trustee were appointed to buy, who would fix the price he should bid? Who would pass the local laws necessary to enable him to exercise his functions? Who would determine the terms of his trust? Who would arrange the time-tables, the tariff of freights, the rates of fare; the wages of employees, the endless details of operating a railroad through four States, under four different jurisdictions? Who would guard the trustee, and the fund in his hands, and the beneficiaries, against the chances of four partition suits? If such suits were brought, would a new trustee be appointed by decree to purchase the premises afresh, or would the matter then have reached a stage which entitled the beneficiaries who desired it, to transmute their shares into money?

The objections to the appointment of a trustee apply with equal force to a strict foreclosure. Are all the beneficiaries capable of holding lands in all the States in question? Are they to be tenants in common? If so, how long is the tenancy to endure? What one is to be the bailiff for the remainder? Can the tenancy not be dissolved? If the legal title is to be vested in one, who is to designate or elect that one? Are the shares to be personalty or realty? How are they to be transmitted from one to the other? Do the laws of Alabama, Mississippi, Tennessee and Kentucky, authorize the creation of an estate in land, to be held by an individual in trust for the purpose of operating a railroad?

Experience has demonstrated the impracticability of the device suggested. In the case of the Alabama and Chattanooga Railroad, I am informed that under the terms of the mortgage the court appointed a trustee to buy; but the scheme aborted, because of the refusal of bondholders to co-operate; and the beneficent intentions of the court were baffled, because it had made a decree which it could not enforce against the opposition, whether rational or irrational, of those on whose rights the decree was meant to bear. The road was finally sold for $300,000 cash, and the proceeds were insufficient to pay the Receiver's certificate.

In the case of the New York and Oswego Midland Railroad Company, in the Southern District of New York, the court put an upset-price of $2,000,000 on the property. It has been repeatedly offered for sale, but not a bid has been made, and the masters have ceased to advertise it.

In the State of New York, there is a statute authorizing mortgagees in trust, of railroads, to buy for their beneficiaries under a foreclosure decree. By virtue of that statute, The Farmers' Loan and Trust Co., as mortgagee of the New York and Boston Railroad, bought that road under a foreclosure, and issued its certificates to its bondholders as beneficiaries. Years have been spent in vain and costly attempts to harmonize the views of those beneficiaries. During that time the enterprise has rendered no private or public service. The property has gone, physically, to waste; and the franchise is about to expire.

These instances show the inutility of attempting to control the inherent laws of trade by the decree of a court, or even by an act of the Legislature. Nothing corporeal is exempt from the universal rule that the final test of its true value is furnished by a pecuniary standard, that is, a money measure.

(C.) The provision authorizing the Commissioners appointed to make the sale, to receive bonds and coupons as cash.

This is a qualified provision. It does not authorize the whole amount bid to be received in evidences of debt. The directions of the decree on the subject are these (*p.* 1042, *paragraphs* 6 *and* 7): After providing (*fol.* 1526, *paragraph* 6) that the Masters shall exact from the bidder $50,000 in money, for costs and expenses, and $100,000 in money or bonds on account of the debt, the direction is (*paragraph* 7, *fol.* 1527) that " the Masters may receive, from the highest and last bidder, bonds " and coupons which form a part of the first mortgage debt ascertained " to be due or owing by the Master in his report, and sustained by the " opinion of this court; *provided, however, that a sum sufficient to pay the " costs, charges and expenses of the trust as above mentioned, whether exceed- " ing the said cash deposit or not, and also to provide for the payment of the " pro rata dividend which shall be due or owing to the owners of other bonds " and coupons secured under the deed of trust, must be paid in money.*"

This direction in no way injures or aggrieves the appellants.

They will either become purchasers of the property or they will not. If they do, they can use their bonds as cash, but must pay the shares of the appellees in money. If they do not, and if the appellants become purchasers, then the appellants must pay the shares of the appellees in money. Their legal right to money is fully protected and recognized.

A certified check is cash, according to the current meaning of that word. So is a sight draft, if current as cash. So is a bond which is entitled to an immediate dividend in money out of a trust fund.

The provision in question actually enhances the chances of a high price, by making a large amount of bonds available in the purchase. It is not the duty of the court to exclude all but persons of moderate means from the competition.

There is nothing novel or noxious in the provision in question. There probably never was a decree of foreclosure in this country which did not provide that the mortgagee might become the purchaser; and then the well understood practice is, for the master to exact enough money to pay the expenses, and to take the mortgagee's receipt for the difference.

If it is suggested that the provision in question gives an advantage to any one who may be the holder of a large amount of bonds, we respectfully submit our dissent from the suggestion. The advantage which a bondholder to a large amount has, existed before the decree, and independently of it. Being entitled to a larger share of the proceeds of the sale of the property, he has more purchasing power, because, as of right, he, as a creditor, is to take out of the money which the sale produces, a large proportion of the sum which, as a purchaser, he put in. When he invested in the bonds, he, in effect, paid up so much of the purchase money. This advantage the decree recognizes and protects, but does not confer. It is certainly not the office of a decree to deprive the large bondholders of this advantage A large proprietor would have the same advantage at a partition sale, or a sale of the assets of a partnership. A first mortgagee has that advantage over a second mortgagee. A judgment creditor has it over a judgment debtor. Partition suits, foreclosure suits, creditors' suits, are brought on the advantage, and to get the benefit of it. Is it the duty of a court to take it away?

The provision complained of and assigned as error, is a mere labor saving device. It relieves the purchaser from the necessity of paying in money with one hand, and taking it out with another. It does not involve any question of right, but only a question of method. The appellees could get along without it, as well as with it; because the purchaser who is at the same time a creditor, could probably, without a decree, waive the collection of the money by the master, and offset what he owes as a bidder against what is due him as a bondholder.

It should not be overlooked that the appellees have already $11,000 000 in the mortgaged property. If it is worth only $4,000,000, then every additional outlay exacted of them is a hardship. The appellants have invested $47,000. The hardship—or to use a word of very vague and indefinite meaning, the "inequitable" result—of subordinating the interests and lawful rights of the "majority," so called, to those of the "minority" so called, need not be dwelt upon. If sentiment is to control, and its dictates are to be embodied in decrees of foreclosure, then the sentiment of pity for those who have already invested $11,000,000 in property worth $4,000,000, should have as much influence as the sentiment of sympathy for those who have invested only ouly $47,000, of which they are likely to lose not more than $20,000.

The constituents of my immediate clients, Hays, Pierson and Dupuy, do not necessarily belong to the class of "*bloated bondholders.*" Some of them are widows; some are orphans; some are married women; some are infirm, or *non compotes.* Of some, the bonds they held were their reliance for their daily bread. Singly, they had not the power to cope with the Swiss bankers whom, three thousand miles off, Moran represents. They do not think that because they have united for economy's sake, and for mutual protection, they ought to be sacrificed to a litigious few. They doubt the correctness of the observation which, on a recent motion in this cause, fell from the lips of one of the learned advocates for the appellants, that "*the court is counsel for the minority.*" If that were so, they would regret that they were under the ban of being in the majority, and were compelled to choose their counsel from the bar.

(D.) The omission of the decree to limit, more stringently than it did, the right of Hays, Pierson & Dupuy to become purchasers of the property, or to deprive them of that right altogether.

The decree directed (*fol.* 1529, *p.* 1042) "that if the mortgaged " property shall be bid off, directly or indirectly, by, for, or in behalf " of the bondholders and creditors who have or shall have entered " into and subscribed the agreement for the readjustment of the securi" ties of the said company, dated October 1, 1876, commonly called the " agreement of reorganization, then and in that case all and every bond" holder and creditor of said company, not having already entered into " and subscribed said agreement, who shall, on or before the first day " of September next, enter into and subscribe the same, and deposit " their securities with the Farmers' Loan and Trust Company in the " City of New York, or with the Bank of Mobile, in the City of Mobile, " as provided by said agreement, shall be, and they are hereby, allowed " to participate in said bid and purchase on the same terms, and on an " equal footing in all respects, according to the character of their claims " respectively, with the said bondholders and creditors who have hereto" fore entered into and signed said agreement."

It is assigned as error that bondholders who had not already signed the agreement here referred to, should not have been tied down to September 1, 1877, but should have been allowed until after an appeal to this court, or perhaps until after a sale, to claim its benefits.

The appellees contend that not only is there no legal or equitable rule or principle upon which Hays, Pierson & Dupuy could be subjected to the limitation upon their right of purchase proposed by the appellants, but there is none which justifies that which was actually imposed by the decree.

The ageerment in question appears in the record at pp. 340 to 369. It was introduced incidentally, in order to show in what character and upon what consideration Hays, Pierson & Dupuy had acquired the coupons. It was not produced for the purpose of having any adjudication upon the rights of the parties to it as against each other or as against the railroad company.

Upon examination it will be found by the court to be an agreement between the Mobile & Ohio Railroad Company and its creditors for a composition, reduction and extension of *all* the indebtedness of the company. It contemplated a discontinuance of the foreclosure suits and a restoration of the mortgaged property to the company (*foot of p.* 341, *and also p.* 343) and provided for a foreclosure and sale only in case of necessity (*p.* 354, *sixteenth paragraph*). It embraced in its provisions and benefits the holders of the coupons of 1874, the Tennessee bondholders, the First and Second Mortgage bondholders, judgment creditors, unsecured creditors, stockholders, and the corporation itself. All the parties, except the corporation, made mutual concessions of what they regarded as their legal rights, in order to avoid the expense and delay of litigation and the loss of valuable immunities and privileges which might be consequent upon a sale.

But the appellants, under the lead of Charles Moran, steadfastly refused to compromise. They, in substance, declared that the holders of the coupons of 1874, and of the Tennessee bonds, should have nothing but what the law allowed them, and that at the end of the law. The evidence of this is also in the record (*pp.* 524 *to* 529, *and deposition of Charles Moran, q*). They, too, devised a scheme of purchase, but they wholly excluded from it the Tennessee bondholders, and the holders of the coupons of 1874, because they denied to those creditors the possession of any legal rights. The enormous volume of the litigation which they incited is now obvious to the court. Its expense and hardship to large classes of meritorious claimants are matters of fair inference. The recusants refused to compromise. They proved their claims in one suit, but instituted two others to establish the same claims. They rejected the bounty offered by the court in the decree below, and elected to rely on an appeal. They object to a co-appellant, who has tried since September last to disconnect himself from them, being allowed to withdraw from the contest. They are here now to contend for their legal rights; but they stand ready to claim a share of the legal rights which they have denied to others, if those denied rights are established against them.

This statement of the relative attitude of the parties induces the appellees to contend with confidence that that portion of the decree in question should not be modified. And they rely upon the following considerations:

1. To deny to the appellees the privilege of purchasing the property, unless they share it, when purchased, with the appellants, upon the terms stated in the agreement of October, 1876, would be to impose an unauthorized, unlawful and one-sided encumbrance upon the appellee's own personal property and estate, and to abridge unduly their personal privileges. They have hitherto held their bonds and coupons free from any trust in favor of the appellants. If they should convert them into money, or invest them in other land, no equity in favor of the appellants, as against the appellees, would attach to the proceeds or the investment. By what process can such an equity be made to attach especially to the property of the Mobile & Ohio Railroad Company, when purchased by the appellees? Other property can be competed for and bought by the appellees the world over, free from the incubus of servitude to the appellants. How have the appellees come under any personal disability here?

2. No evidence was taken in the court below, upon the point whether it would be "equitable" or "inequitable" for the appellees to purchase the property for their own benefit. It not being supposed that that question could possibly arise, the proofs were not directed to its elucidation. Any judgment upon the point must, therefore, be the offspring of mere conjecture. But, incidentally, some matters have appeared which it may be proper to refer to. Hays, Pierson & Dupuy, or those whom they represent, have already invested $11,000,000 in the property. It is not worth half that amount. Whatever more money they have to pay, is money lost. Alexander Duncan's coupons cost him dollar for dollar. Moran's bonds may not have cost him forty cents on the dollar. Would it be "inequitable" for Mr. Duncan, having already diluted and divided his coupons under the agreement in question, so as to subject himself to a large loss, to question the justice of compelling

him to make a further division with a party who, besides buying his bonds at a great discount, has put Mr. Duncan to enormous expense and delay in litigation?

3. The question should not be disposed of upon the theory that the appellants are poor and unable to bid for or buy the property. There is no evidence that they are so. The presumption ought to be, that Swiss bankers, as persistently litigious as they are, have money in plenty. The property is not worth more than $4,000,000, as both the schemes of purchase show. That is not a difficult sum to raise for the purpose of either buying or building a railroad. But if the appellants *are* poor (as they will not say they are), does that fact make the appellees trustees for them?

4. The question should not be disposed of upon the theory that the "minority" have rights of any higher degree than those which the "majority" possess. The latter are entitled to protection, no less than the former, in the enjoyment of legal rights.

5. The question should not be disposed of upon the theory that the appellees can defy or discourage competition. The lurking fear seems to be that competitors will not bid, because the resources of the appellees are so ample that they can surpass all others in their offers. If that is so, there should be an end of apprehension, for a high price is ensured. It cannot be the duty of the court to secure any particular purchaser or any particular price, but only to see that the sale is fairly conducted. This is done by the decree here (*fol.* 1526), where it directs that "*the master will attend the sale in person and take care that it* "*be fairly and regularly conducted, and with proper regard to the* "*rights of all persons.*" It cannot be the duty of the court, either, to adopt measures to put the property within the reach of every person of moderate means, or, in other words, to cheapen the property. The duty which the court owes to every creditor is to see that he gets *his own* fair share of the proceeds or value of the property; but it is under no obligation to see that any creditor gets *any* share of the property of others. The court below can see that all are shielded from abuse and imposition, if that has occurred; and its orders can be reviewed here, if need be.

6. It would not be unfair to ask mutuality and reciprocity in impos-

ing restrictions upon the right to purchase. If the court can justly limit the appellees, why should it not put the appellants under restraint also? Why not *command* them to surrender their bonds to Hays, Pierson & Dupuy to be used in the purchase? If we are their trustees, they are ours.

7. A coalition of creditors interested in a trust deed or mortgage does, it is true, increase the purchasing power of those who go into the coalition, or rather of the one who represents them, but it does not diminish the purchasing power of any one else. That remains as before. Therefore, such a coalition subtracts nothing from another's rights or property. It creates no injustice which the court must neutralize. If it is true that the small interest must raise more money for buying the share of the large interest than the large interest must raise in order to buy the share of the small one, that is a mathematical fact which existed before suit brought, and cannot be altered by a decree. The "*minority*" is the "*minority*" because it has already risked and invested in the enterprise less money than the "*majority*." The "*majority*" is the "*majority*" because it has already risked and invested in the enterprise more money than the "*minority*." Both come to court to get their own money, not to get each other's.

8. Should the court modify the decree in the particular complained of, it will pass into a rule of law that no two or more creditors, whether by bond, note, or judgment, who are secured by one instrument, can unite with each other for mutual protection, without turning themselves into trustees for everybody else who claims an interest. Later on, it will become an improvement upon this rule, that no party of capitalists can raise a fund to buy an incumbered railroad property, except for the benefit of creditors. Thus a new kind of equity of redemption will be created. It will be styled: "*The small and perverse creditor's equity.*" The large and accommodating creditor can have no share in it. What will be the effect? Why, such associations will be under the ban. They will be discouraged. Every separate creditor will be left to the resources of his own unaided purchasing power. Then the separate and scattered competition of a hundred will be distanced by even the meagre purchasing power of a single one, if that is in excess of what any other one possesses. While no one else can overbid him, he cannot be compelled to go far before his purchasing power is exhausted,

The end of that will be cheap property, cheap sales, and poor results; while a combination of many is, as this case demonstrates, much at the mercy of a single dissentient. It can be driven into the high latitudes of bidding and competition as a horse may be the sport of a fly, or a ship the victim of a teredos.

9. If, after laborious consideration of the legal rights of the parties, it is competent for the court to compel a waiver, relinquishment, or partition of those rights, then it is respectfully submitted that the first and last question should be, not what those rights are, but what would be a fair compromise of conflicting claims; which being ascertained, the court has only to decree that the land be sold and the proceeds divided accordingly. That would save the trouble of examining anything but the agreement of October 1st, 1876. If that is affirmed, then clearly there should have been no appeal.

F. N. BANGS,
For Appellees.

Filed

April 22. 1858

Supreme Court of the United States.

No. 879.

Morris
~~MOSES~~ KETCHUM, Et. Al.

versus

WM. BUTLER DUNCAN, Et. Al.

Appeal from the Southern District of Alabama.

JOHN A. CAMPBELL,
Sol. for Trustees.

Clark & Hofeline, Book Printers, 112 Gravier St.

Supreme Court of the United States.

No. 879.

Morris
~~MOSES~~ KETCHUM, Et. Al.

versus

WM. BUTLER DUNCAN, Et. Al.

Appeal from the Southern District of Alabama.

STATEMENT OF PLEADINDGS.

The appellees, Duncan & Elliott, as only trustees of the first mortgage of the Mobile & Ohio Railroad Company, of Mobile, Alabama, bearing upon its railroad franchises and property, dated 1st November, 1853, sued in chancery because of the defaults of that corporation to pay coupons of semi-annual interest, belonging to an issue of a series of first mortgage bonds, falling due in May and November, 1874, and demanded possession of the property. The Court granted possession, and appointed the trustees, receivers, in May, 1875. The Mobile & Ohio Railroad Company, the trustees of junior mortgages, appeared to the cause, admitted the defaults charged, the insolvency of the company, and the necessity for foreclosure and sale.

In March, 1876, the Court appointed a master to report the amount of the debt owing by the company, the priorities of the liens, the mode of sale and state of property, to prepare the cause for a hearing. The Master's reports were filed prior to the June term of the Circuit Court of 1877, and the cause was set down for a hearing at that term, and a motion for a decree submitted. Two other bills were filed after that order of reference, one by Morris Ketchum, who was persuaded to appear as a claimant for the office of trustee, and showed in his proceedings a keen appetite for the manipulation and exploitation of the trust property. So certain bond holders for the Continent of Europe, were in 1877 enlisted to assist him in his desire for the office. These suits were in an immature and languishing condition at the June term, 1877.

A consolidation order was made at that term, whereby the preparations in the suit of Duncan & Elliott were appropriated to all of the suits, and the issues raised were either postponed or introduced into the first suit.

Upon the hearing of the cause, the Master's reports were all confirmed without opposition, except in that portion which sanctioned the claim made by Alexander Duncan, for coupons purchased in 1874, and the rank in the order of priority of that claim. The appellants deny the validity of that claim, and Hayes, Pierson & Dupuy, trustees, assert its pre-eminence and priority.

Upon these opposite pretensions, the Circuit Court passed an adverse decree to each of them, and confirmed

the Master's report, entitling them a place and a rank as a part of the debt due, without preference.

II.

ALEXANDER DUNCAN'S CLAIM.

The Mobile & Ohio Railroad Company, became embarrassed from losses sustained during the war. Peace found it with a dilapidated estate, arrearages of interest accumulated, and the railroad, and its material and equipment in a ruinous condition, held as captured property. The record contains evidence, of the increase of the debt by funding—of years of respite—and the resumption of payments in 1871, continuing for some three years, with a floating debt, ever urgent and pressing. In 1873, the year of commercial convulsion, the company borrowed from Duncan, Sherman & Co., money to pay the interest in November of that year. The depression which then commenced, is not yet removed from the country. In 1874, there was another demand upon Duncan, Sherman & Co., for advances to pay interest. The demand was exorbitant, and was not readily acceded to. The entire property of the corporation was burdened with mortgages and there had been no revival of confidence, business, or capacity to earn profits. The firm of Duncan, Sherman & Co., at the last moment determined *to purchase the coupons* falling due in May, 1874. The orders to their agents and to the company, bear date the last days of April. The testimony shows that Alexander Duncan was depended upon to supply the money, and that the purchase was made for his account. The parties were hopeful of a reviving trade, of increasing prosperity, and that there would be no danger of great loss.

The answer of the Mobile & Ohio Railroad Company admits there was an entire default on the part of the company to pay these instalments of interest; the books of account of that corporation on examination disclose no payments by the corporation of that debt; the executive officers of the corporation know of no payments or of moneys with which payments could have been made; the President, Vice President, and Directors are equally explicit and certain. The Bank of Mobile, the Credit Foncier, and Union Bank of London, who actually paid the money in Mobile and London for the coupons, as well as Duncan, Sherman & Co., prove that no moneys existed belonging to the Mobile & Ohio Railroad Company, applicable or applied, in the purchase of those coupons of interest. The arrangements and the orders for the arrangements have been fully shown in the testimony of the parties who were in any manner concerned in making or in carrying them into effect.

The coupons of 1874, purchased for him, have never been in any possession but of the purchasing agents, Duncan, Sherman & Co., and Alexander Duncan, and were produced before the Master by Alexander Duncan, as the BEARER paying a full price to the owner for them with their own money for a title implied by the transfer and delivery to him.

No one holder of the coupons disposed of, has asserted a claim either for the coupons in the hands of Alexander Duncan, or as having a debt for it against the company. No one holder of coupons at that date has proposed to cancel the contract of purchase, and to restore the status quo by mutual restitution. No one holder of coupons of 1874 has put upon this record that he was deceived or duped into parting with his coupons to Alexander Duncan, and that for the deception he wishes the contract to be avoided. A very, very large proportion of the coupon holders frankly acknowledge the title of Alexander Duncan and his right to participate in the product of the sale of the trust estate.

The Master's report in favor of the claim of Alexander Duncan, is not excepted to by more than one person claiming that *his* coupons—the coupons *he* had in 1874—were paid to him by the Mobile & Ohio Railroad Company. The evidence to sustain the general allegation that payment had been made by the company consists of some persons who had coupons as principal or as agent who went with the crowd and received money and surrendered coupons, and thought that the company paid them, but they made no inquiry, took no note of what was being done, and being now informed make no claim for a rescission of the contract. These witnesses are few in number and generally do not now pretend to be holders of bonds.

There is testimony that information was at hand. No concealment was inculcated. Inquiries were promptly answered. A new agency, not that of the company, made the purchases. No purchaser disguised or disclaimed his purpose or position.

III.

The first mortgage provides for the issue of six thousand bonds, uniform in amount, date, place of payment, with like coupons for semi-annual interest, and designed alike to be negotiable by delivery from hand to hand. The mortgage bears upon the property of the company, so that each and every bond and coupon shall be secured in the same manner by every portion of the estate. These bonds and coupons constitute the debt to which the mortgage is the accessory, and to which the mortgage is inseparable. The holders of bonds and coupons, as holders, are the beneficiaries of the mortgage. The production of bonds or coupons entitles the holder to share in the trust estate. The possession and production is the only title shown on this record by any other holder beside Alexander Duncan. In addition, Alexander Duncan has proved that on the day these coupons became due, he, with the purpose to become the holder, *paid* for them the par value of the coupons, to the holder. It is proved the company did not contribute *to* buy or to pay for one of them. The law of Alabama sustains the right of the holder to share in the trust property without other title.

Duvall vs. McLoskey, 1 Ala. R., 708.
Emanuel vs. Hunt, 2 Ala., 190.
Cullum vs. Erwin, 4 Ala., 452.
Connor vs. Banks, 18 Ala., 400.

IV.

THE PLEA OF PAYMENT EXAMINED.

The statement of the evidence shows that Alexander Duncan has the possession of a title of higher grade than any other exhibited to the Court—a purchase made in good faith, for value. The acknowledgment of the debtor of the validity of the demand on the record, and in their own books. The plea of payment does not come from the debtor. Payment implies that money was delivered to the creditor for the purpose of performing the obligation of his contract, by the debtor, and the legal consequence is the extinguishment of that obligation.

"*Solvere dicimus eum qui facit quod facere promisit.*"

Payment dissolves the tie (*vinculum*) which binds the debtor to the creditor. The creditor is thus satisfied, the debtor thus discharged. To accomplish the satisfaction and extinguishment of an obligation the same conditions are requisite as are needful to create it. The rational cooperation of the independent parties interested in the fulfillment of the obligation. The creditor and debtor must agree and assist. The Mobile and Ohio Railroad Company has never experienced the sensation of relief from the burden of the coupons of 1874. They have never imagined that there had been a decrease in their debts by any act of Duncan, Sherman & Co., or of their own, relative to them. The civilians describe a "fraternal mandate" (so called) to a benevolent person to pay a debt of a necessitous and worthy debtor, without his knowledge, and they discuss the legal qualities of such an act.

But the Court cannot find the ghost of such a case in this record. The solicitations of the Mobile & Ohio Railroad Company for help in their calamity; the conditions, neither hard nor unusual, expressed in the telegrams of Duncan, Sherman & Co., to the Mobile & Ohio R. Co., the supplicant, and to the Bank of Mobile, and to the Credit Foncier and Union Bank of London, and to their own agents in New York, leave no matter for doubt that the purchase of the coupons was not made under a "fraternal mandate," but as a transaction of business. Both parties hoped the crisis was transient and the corporation might weather the storm; but Duncan, Sherman & Co., required all the security that circumstances allowed of, to induce them to do what manifestly appears now an act of great indiscretion.

The first act of ownership by that firm was to put the corporation in default, by demanding payment and receiving a refusal of payment. In none of the transaction of this purchase was there any agency of the Mobile & Ohio Railroad Co.

Their officers at Mobile examined the coupons and merely certified them to be genuine. The Treasurer had no funds to pay with, and paid nothing; the purchases were made by the Bank of Mobile, agents of Duncan, Sherman & Co. Nor was there concealment. No evidence shows the company were concerned with the payment of a single coupon.

The bonds and mortgage are fitted for negotiation with perfect facility; they provide by their terms and by direct declaration that they are transferrable by endorsement or delivery. The bond is payable to bearer, the covenants of the mortgage are with the holder. The holder, in surrendering his titles to them, should enquire as to the person and the object of his delivery.

He cannot undertake to qualify the title of a holder by any imaginations, conclusions, assumptions, conjectures of his own. If he complains, he must show, error, suprise, artifice, fraud, conspiracy, by which he was circumvented and deceived, without negligence, supineness or credulity.

In this case there is nothing ef the sort shown. Alexander Duncan, with a complete legal title to the coupons, furnishes all the evidence the mortgage requires to entitle him to the benefit promised in its conditions.

The burden of proof rests upon those who challenge the claim thus supported.

THE CONTEST OF ALEXANDER DUNCAN'S CLAIM BEFORE THE MASTER.

There had been no contest of the claim of Alexander Duncan in the pleadings, in the cause of Duncan and Elliott. A bondholder, named Belloni, produced six bonds, as owner, to the Master. He filed an opposition to the allowance of the claim of Alexander Duncan.

It is the only specific statement of the ground of opposition made to the Master. The trustees of the second mortgage co-operated in the opposition, and their attorneys seconded Belloni.

Belloni claims that he had coupons due in May and November, 1874, he says, "that he presented them at

" the usual and accustomed places where coupons had been " previously paid; that the coupons were paid to him, " and to those presenting similar coupons, and at that " place they were surrendered on payment to the same " persons who had performed the same agency for the " Mobile & Ohio Railroad Company previously, and at " all other payments; that he had no notice before the " payment was made, that there had been any purchase " made of the coupons, and that Duncan, Sherman & Co. " had published notices that payment would be made to " them *on presentation* of the coupons." This issue tendered by Belloni, for himself, and for any other coupon-holders of that year, presents a definite and intelligible issue. The material allegations that the Company, by its agents, had paid the coupons from their own funds or funds borrowed, is excluded from these allegations. There is a statement of certain facts to raise an inference, that the Company most probably had paid the coupons, or at least that Belloni had good reasons for a belief that such had been the fact, and so surrendered his coupons. But Belloni has not appeared to prove that he had coupons in 1874, and none of the details that are so circumstantially alleged, as to himself, has been proved at all. He might as well have stated that the Talmud represents Adam to have been a thousand cubits high, to have had two faces and a tail; and that Solomon measured sixty cubits across his shoulders; and that when the Messiah came there would be in Jerusalem one hundred and eighty thousand shops, for the sole purpose of selling perfumes.

This record abounds with allegations, as absolutely destitute of support, and made with the same oriental habit of parsimony in the use of truth. When Ketchum was examined, in the Spring of 1876, to ascertain whose representative he was, he would furnish no name but that of Belloni, and he was held up as a mighty creditor.

No other holder of coupons disposed of in 1874, has put before the Master his opposition to this claim and sustained his opposition by his own testimony. None have averred that there was error, surprise circumvention artifice in the mode of purchase and transfer, to Alexander Duncan, and that he disavows the transaction, and claims a restoration of the status quo. Were there any inattentive persons who did not comprehend the import of the transaction at the time, but were afterwards informed of what had been done, the probability is, that they would have congratulated themselves that the arrangement was made, and their only grief would be, there would be no repetition of it. We know of one person who, having sent to New York his coupons, the agent collecting them, in returning the money informed the owner that the coupons had been purchased and not paid, and warned him of the difference, and the owner only returned the expression of regret that there was no hope of a similar occurrence. No coupon of interest has been paid by the Mobile and Ohio Railroad Company since November, 1873.. Since November, 1873, no one has purchased the coupons of interest at their par value, except Duncan, Sherman & Co., for account of Alexander

Duncan Since 1874, the corporation has paid no coupons of interest, and their price in the market has been as low as thirty cents on the dollar. The persons receiving the money of Alexander Duncan are contented with their share in the transaction. The murmurers and complainers in no single instance have *proved* that they had coupons in 1874, and were misled or doceived, and demand a dissolution of the contract.

The parties who have made the objection that they did not understand the arrangement either have failed to make any proof or decline to make exception or appeal.

VI.

OBJECTIONS CONSIDERED.

The allegation of Belloni as to himself has no support, and as his testimony might have been taken, the conclusion is irresistible that it was not true. Other parties, as we have seen, have made no exception, and it does not appear that the witnesses examined have interest in this controversy or an interest to raise one. The appellants do not show that in 1874 they owned either bonds or coupons, or that they were concerned at all in the intercourse with Duncan, Sherman & Co., or Alexander Duncan. The proceedings seem to be those of persons who fish for eels: they must first muddy the waters before they can hope to take anything. A purchase of a commercial security involves a contract between the owner and the purchaser—there is agreement upon the price and an exchange of security for the price.

Here the price was paid for Alexander Duncan and the property came to his possession, as the price was paid.

We hear of no complaint from the several hundred of owners, who parted with their coupons and received the price. The record contains the names of more than a hundred who sold their coupons in London. Baring Bros. Lampson & Co., Brown, Shipley & Co., Morgan & Company are on the list. No opposition comes from any one of this list of persons. None has stultified himself by affirming that he did not understand the import of the transaction by which money was paid into his hands, and misunderstood what he was doing. Had any such person appeared and declared that without negligence or default on his part he had honestly believed there was a payment by the Company and not a purchase by Alexander Duncan, and the latter had been a party to his error, mistake or surprise, and had caused him damage, an intelligible case for consideration would have been presented to the Court, and the evidence taken as to such case would have interest. Belloni, who has been set up as the champion, has not asserted that such a case exists. He did not pray for the return of some coupons he had parted with, or propose to return the price. The case he made as to himself is a feigned case. He never proved even by his own affidavit that he had parted with a coupon in 1874. Nor have the appellants. The fact too appears that two or three coupons could have been and can now be bought for the price paid for one by Alexander Duncan in 1874.

Moran & Brothers are the sponsors of all of these appellants; without them, Belloni & Ketchun would stand alone. Moran & Brothers, in May 1875, as a bondholder, addressed Duncan & Elliott a letter requiring them to enter into possession of the railroad and property. They knew at that date of the purchase of these coupons by Duncan, Sherman & Co. They have never offered on their own part to rescind any contract of purchase. No assertion of surprise has been made as occurring at the date of their sale of the coupons if they were parties holding coupons.

In 1876 Ketchum filed his bill. He alleged in his bill that these coupons were not sold, but paid by the company. Moran Brothers in 1876, with "knowledge of both suits," denounced Ketchum to the Circuit Court as wholly unfit to be consulted about a receiver, and disaster would follow from accrediting him, and approved Duncan & Elliott as fit and proper persons.

Moran & Brothers proved bonds and coupons before the Master, but even they made no exception to the claim of Alexander Duncan, and have made no appeal save in the interposed names of persons having no knowledge of the transactions.

There is no proof of any instructions from Duncan, Sherman & Co. to do other than to purchase the coupons. Intelligent and competent agents were appointed to perform this work. The work was performed without any difficulty or dissent. There was no dissention among all the holders of coupons at the time, nor any till the appearance of Ketchum.

There has been none since that time, save only such as we have examined.

A clamorous dissent was made up pending this suit to foment a litigation, without a better foundation than clamor. But concede that there had been an absence of any notice, a purposed concealment, an absence of all intention by the bondholders at the time to sell coupons, and what them?

Littleton states the case of a feoffment in mortgage on condition to be void upon the payment by the feoffor of a sum of money at a stated time, without mention of the heir. He says, that notwithstanding the heir though not mentioned, may after the death of the feoffer, make the tender at the time, and if refused he may enter, for he has an interest. But if a stranger, in the name of the mortgagor, of his own head and without the privity or consent of the mortgagor tender the money, and the creditor accepteth it, this is a good satisfaction and the mortgagor or his heir may enter. Coke, in his comment, says they may refuse or ratify the act done in their name.

Co. Litt., Section 334, p. 206 a.

A payment of a debt by the debtor or by a stranger, in the name of the debtor, the debtor ratifying his act, produces an extinguishment of that debt, and all the parties to the mortgage may claim there has been such an extinguishment. But there are no arbitrary nor inflexible rules to determine what is payment or extinguishment. Whether a transaction be regarded as a payment and extinguishment, or be a transfer or assignment, depends upon the intention of the parties, the acts done, the relations subsisting and their duties. If the money be delivered by one whose duty by law or contract it is to pay the debt and cancel the security, or to perform and extinguish the obligation, the presumption would be that the delivery of the money was a payment. But when no obligation or duty rests upon the person delivering the money, or to discharge the obligation or duty, no such presumption arises, and the intentions of the parties, their relative interests and aims are considered and control. Brown vs. Lapham, 3 Cush., 551; Swift vs. Kramer, 13 Cal., 526; Worthy vs. Warner, 119 Mass., 550; Low vs. Blodgett, 1 Foster, 121; Matthews vs. Aikin, 1 Comst., 598; 5 Ird., Eq., 196.

The intervention of a stranger, with the consent of the debtor in the advancement of money to a creditor, is not an impertinent or intrusive interference, nor does such intervenor bring upon himself any discredit, nor dispose the tribunals to reprobate or to nullify his acts. On the contrary, the multiplied relations which arise in commercial intercourse, and their wide-spread ramifications continually call for such interposition, and the modern cases deal with the results upon liberal principles, and make a candid construction of acts and motives.

Jones vs. Broadhurst, 9 M. G. and S., 172, 198.
Sampson vs. Egerton, 18 Exch., 845.
Belshaw vs. Bush, 11 C. B., 191.
Cook vs. Lister, 13 C. B., 544.

In Lucas vs. Wilkinson, 1 H. & N., Ex. R., 418; M, a solicitor, persuaded his client A. to lend B. $200 on his bond; A. requiring the money, requested M. to collect it; M. had money of B. in his hands, but borrowed money from a bank, and deposited the bond as security, and paid A. this money. B. being sued for the use of the bank pleaded payment. The Court answered "that B. did not pay the bond. It was not his money. The money was not in his hands and he did not pay it."

In Walter vs. Jones, L. R., 6 Ex., 124, A. paid B. a debt of C.; but before C. had ratified the payment, B. returned the money to A.—C. pleaded payment on being sued. It was determined that when payment was not made by way of gift for the benefit of the debtor and a re-imbursement is expected, and he had no authority to make the payment, it was competent to rescind the payment ~~b[illegible]~~, and the ~~payment~~ debtor became liable.

In Adele Gernon vs. McCan, 23 La. Ann. Rep., 84, the Court decided that payment of a debt to be acquitted in money might be made by a stranger, but this must be the deliberate and intentional act of this person, for payment, is an act of will, and the performance of an obligation. When therefore it appears that a third person acted as an agent for the makers of notes who desired extension, and for a party who wished to purchase them as an investment, and consented to the extension; and this agent paid the money believing that he was purchasing the notes, and the extension was granted; held, that the transaction would not be considered a payment, because the person who received the money, believed that he had received payment. Nor could another conclusion be reasonably made. * * * Dodge vs. Freedman's Savings Bank, 3 Otto, 379. If there were conditions of surprise, error, artifice, accompanied with damage, the person suffering in consequence, and who had been guilty of no negligence, carelessness or supineness, might have redress. He might demand a rescission of the contract into which he had been betrayed. But all the elements for interposition are wanting in this case. The price paid for the coupons exceeded their value, and has uever been returned. The coupons were delivered to the agent of Alexander Duncan, and not to the treasurer of the company for cancellation; nor did the treasurer pay the money or ever have it in his hands. The facts have all been made known in proceedings in and out of Court, and the coupon holder has been silent on the subject of a rescission of the contract. An impeachable transaction ceases to be so, when the injured party deliberately declines to make any complaint after he has obtained information.

It is quite possible that there were uninquiring, heedless and inconsiderate persons who did not comprehend the transaction, and who thought nothing about it at the time. But then we have evidence on the record that a vast proportion have never complained of their part in the sales of 1874, and unconditionally confirm them.

Kerr on Mistake and Fraud, 48, 127, 298, 343.

Grymes vs. Sanders, III Otto, 55.

VII.

Commentators on the Code Napoleon state and discuss a case arising in the courts of France, which is pertinent to this inquiry. An officer (Huissier) charged with a process authorizing a demand upon a debtor for payment, and upon a default to seize property for its satisfaction, made the demand and was refused.

A stranger offered to make the payment to the officer provided he would subrogate him to the creditor's rights. The officer received the money and made the subrogation, which was confessedly beyond his competency. His authority was to collect money from the debtor or to seize his property under the process. The commentators agree that the solution of the case depended upon the conduct of the creditor, subsequently. If, when the facts were made known, he received or retained the money, the subrogee's title would be assured; but if he declined to receive it, or claimed to reject it, the nullity of the subrogation would be established.

Gauthier, denying the authority of the officer, says: "Nevertheless, in such a case, if the creditor ratifies subsequently, the subrogation made at the time of payment could not be annulled, and the effect of the ratification would retroact to the day of the contract. *Ratihabitio pro mandato habetur.*

Gauthier de Subrogation, § 104, bis,
Demolombe des contrats, t. 4, § 349, 350.
Larombiere des obligations, t. 3, p. 112.
McMillan vs. Gordan, 4 Ala. Rep., 716.

The principle has application to this case, upon a concession that there had been some error, surprise, misconception or artifice, without any want of diligence on the part of the party complaining. The testimony shows there was no damage to the coupon holders, and no wrong designed or inflicted on any party. Alexander Duncan is the only sufferer.

VIII.

The Roman law permitted a debtor to delegate to a stranger the power to pay his debt, and to be substituted with all of the rights and credits of the creditor. It is defended and explained as a beneficent equity in favor of the debtor, to enable him to ameliorate his condition by changing his creditor. He may have ease, favor, reduced interest, opportunities to use property to advantage, to exert fresh energy with a better credit. The creditor receives his debt from the stranger, and the stranger imposes no additional burden on the debtor. Pothier and Demolombe vindicate it as a generous and benignant concession of the law. The principle is expanded and the procedure regulated in the Continental Codes, and in this country the principle has been grafted upon the equity system with a recognition of its harmonious relations to the constitution of that system.

Demolombe. t. 4, 345, 389, 339.

Story Eq. Jur., §§ 635, 638, 640.

The solicitation of the Mobile and Ohio Railroad Company, and the consent of Duncan, Sherman & Co., or

Alexander Duncan, relieve the latter from a charge of being intermeddlers or gratuitous intruders. They interfered with authority.

The debtor having no means of payment, procures one to make the advances, and with the condition that there shall be no extinguishment of the debt. There is no performance of obligation by the company. The resources of the company are not diminished. All that the creditors relied on still belong to the debtor. There is no addition to the debts of the corporation.

IX.

PRIORITIES AMONG COUPON HOLDERS.

The decree of the Circuit Court relative to the priorities among coupon holders and bondholders, as framed, was moved for by the trustees, Duncan & Elliott. The mortgage was executed to secure the holders of an issue of bonds, all of which are alike. The trustees were empowered to take possession of the property whenever a default occurred in payment of any one of them. After entry, their action was to be equitable, that is equal to all concerned. A sale embraced all of the property with the franchise, and the proceeds were to be paid among the creditors, paying pincipal and interest due. In case of entire insolvency the word due in the deed signifies contracted to be paid. The Court of Chancery unfettered by any statute, as they said, promulgated the rule of the Court in liquidating the affairs of an insolvent corporation in the case of Humber Iron Works, L. R. 4 Chapp. p. 643.

The rule there adapted is in harmony with the decree in the Circuit Court, and we are not able to discover any incongruity between the rule and the judgments of this Court.

Dunham vs. Railway Co., 1 Wall. 254.
Gordello vs. Wegelin, 5 L. R., Ch. Divis. 287.
Olcott vs. Bynum, 17 Wall. 44.

X.

MORRIS KETCHUM'S TITLE AS TRUSTEE.

The position of Morris Ketchum, as an appellant, makes it proper for us to inquire whether he is entitled to be heard upon any matter affecting the rights of any party. It is quite apparent he was set up as a pretender by a factious minority, who proposed profit to themselves by whatever embarrassment they could make in the affairs of an orderly administration. The principal object was to to have appointments and trusts of administration of the property. The Court of Chancery of the State of Alabama, holding its sessions at Mobile, removed Ketchum from the place by final decree passed at April term, 1863. The bill shows that Palmer and Hallett died in or before 1860, leaving Ketchum as the survivor. There had been discontent and dissatisfaction between the company and himself, and he was charged with infidelity in the trust: of corruption in the performance of duty; neglect of duty; exorbitant demands for salary and absence from the State and the place where the duties were to be performed. There was, when the bill was filed, civil war, and he resided in a territory hostile to the State where his duty lay, and it was inaccessible to him. The deed of trust was executed in 1853, at Mobile, the domicil of the corporation and the place where its principal seat of business was, and the duties of Ketchum to be performed. At the date of the deed, the Court of Chancery of Alabama had cognizance of cases against non-residents when the object of the suit concerned an estate, lien or charge upon lands or the disposition thereof, or any interest in, title to, or incumbrance on personal property within the State of Alabama, or where the cause of action arose, or the act on which it was predicated, was to have been performed in that State. The Court had jurisdiction to remove and to appoint trustees, and the causes of removal described in the Code of 1852, which embody the law existing in statutes previously made, are the same as set forth in the bill filed against Ketchum, and the suit for his removal might be made by any party interested. Code of Alabama, (1852) Sections 2872, 2999.

The manner of citing non-residents had been determined by statutes and rules, and had been used for a long period. This manner was followed in this suit. A decree *pao confesso* was taken in 1853. The effect of such a decree is an admission of the allegations of the bill according to the Code, Section 2839. A bill of review might be filed within three years. In 1865, upon the adoption of the Constitution for the State of that year, under instructions from President Johnson the judgments and decrees rendered between, January 1861 and that date were ratified and confirmed as valid; but that any person should be entitled to a new trial who was not defended, if the failure to make defence was not owing to any fault on his part, and he had no attorney in Court when the judgment or decree was rendered. This time for applying for a re-hearing or new trial was extended by statutes passed in 1866, '67 and 1868, whereby the period for the application only expired in June, 1869, four years after the termination of hostilities. No application for a re-hearing was made by Ketchum. The trustees appointed in April, 1863, by the Court of Chancery, at Mobile, in place of Ketchum, possessed the office and performed the duties until 1875; and then Wm. Butler Duncan and A. Foster Elliott were appointed and were recognized by the corporation and bondholders, and were admitted into possession of the property upon the default of the company and demand of a portion of bondholders, (Moran & Brothers, being of this number,) and were charged with the powers and the obligations of receivers.

The property had been in their possession from May, 1875, as trustees and receivers, without a dispute of their title, until Ketchum was drawn forth, for the purpose of creating a litigation. He had not made his appearance as a claimant since the decree of the Court of Chancery had been rendered, or made any claim upon the company, the trustees, or the bondholders. The embarrassments of the corporation between 1866 and 1871, invited none of his attention. Nor did he perform any act in respect to the lands which were under the charge of trustees.

The decree of the Court of Chancery, in 1863, having been recognized as valid by two conventions of the State, and several legislatures, and full opportunity having been given to Ketchum to show cause against it, he is estopped to make any claim as a trustee. The Court of Chancery had plenary jurisdiction by statute to remove a trustee at the suit of any party interested for either of the causes specified in the bill, Code 1852, Ch. ix, p. 534.

The Court had jurisdiction to remove and to appoint trustees, and the causes for removal set forth in the bill are those embodied in the Code of 1852. Absence and removal from the State, neglect of duty, infidelity, as being unfit or untrustworthy. The manner of citing non-residents was adopted long prior to 1852, by publication and by written or printed communications sent by mail; Ketchum was cited according to rules which existed when he accepted the office under the deed executed in Mobile.

He submitted to the laws of Alabama as the condition on which he was to hold his office, and to the authority of the Courts to decree his removal. The orders of publication having been fulfilled, and no answer being filed, a decree *pro confesso* was taken. This under the statute law is a confession of the charges in the bill. In April, 1863, a final decree was passed by the Chancellor, removing him from the place, expressing as the cause that he was an enemy residing in New York. The same decree provided for the appointment of trustees, to fill the vacancies occasioned by death, as well as that produced by the removal of Ketchum, and the persons designated were confirmed in the office, and remained so until May, 1875, when Duncan & Elliott took their places upon a resignation.

Every department of the State government have united to deal with the judgments and decrees during that period as if there had been no revolutionary disturbances, and the State has afforded full opportunity to every person injured or who might suppose that he had been injured to have redress by due course of legal proceeding. The statutes of that State exhibit a clear conception of their rights and duties. The statutes determining the process of the Court of Chancery in respect to non-residents was drawn up from statutes which existed in Great Britain, and have generally spread through the older States of the Union. The jurisdiction is contrary to no article of the Constitution of the United States, nor to any provision of international law. Every person who connects himself with a State by becoming a party to such a contract submits himself to the jurisdiction of its Courts in matters pertaining to it. The sovereign powers of the State extend to all property, and all rights of property which depend upon its authority or fall within its territorial jurisdiction, not prohibited by the Constitution of the country.

The inquiry then arises does this statute bind Morris Ketchum in the matters embraced within the terms of the chancery suit and the chancery decree? Lord

Chancellor Westbury, in Cookney vs. Anderson, 1 DeG. J. & S., 365, in commenting on statutes and orders in chancery in Great Britain, regulating procedure against non-residents in the Courts of Chancery—statutes and orders nearly identical with those of Alabama, says: "As international law in private rights, so far as it has been clearly established, is a part of municipal law, it follows that the law of a country which gives to its municipal tribunals authority to exercise jurisdiction as to persons and things which are beyond the confines of its territories, may also consistently with international law, be extended in certain cases to persons who are not natural born subjects. For when it is well settled by the comity of nations that any question of private right falls to be decided by the law of a particular country, it would seem reasonable that the Courts of the country should receive jurisdistion and the power of citing absent parties though residing in a foreign land. If therefore an action or suit be commenced in the courts of a particular country relating to a subject, which by this consent of nations is appropriated to the law of that country, it may be right in order to prevent a failure of justice, to give to such courts the power of exercising complete jurisdiction and therefore of citing absent parties under the penalty, if they fail to appear, of having judgment pronounced against them in their absence."

The extract we have made from this luminous opinion opens the inquiry as to the basis upon which the jurisdiction of Courts rests, as respects things in this State, and of persons in their connections with those things, anp secondly of persons independently of such relations. The learned Chancellor furnishes an answer. He proceeds to say: "there are therefore two grounds on which the legislature of any country is warranted in conferring on its tribunals an extra territorial jurisdiction. One the right which it possesses of binding universally by its laws the persons who owe it a natural allegiance; the other the right which it receives by international law—that is, from the consent of nations—of summoning all persons interested wherever resident when the subject of the suit arises, or is situate within its own territory, and falls to he determined by its own law, and the judgment of its own Courts of civil judicature."

The act of 4 and 5, of William IV, Ch. 82, allowed the service of process on any resident, in any place out of the kingdom in any suit concerning land, or any lien, encumbrance or charge thereon, or concerning any money vested in any government, or public stock, or shares in companies. Before this statute there was only a very restricted power in the Courts of Chancery, to bring an absentee before those courts. By the 7th and 10th of the consolidated orders, and the 37th order of 1845, the power of the Chancellor to convoke non-resident parties was not restricted to any class of cases. The power was given generally as circumstances required. In the case of Cookney vs. Anderson, the question was whether the consolidated orders, and the general order, authorized service in a case not falling within the Act of Parliament, before cited. The Chancellor holding the opinion that the orders exceeded the act, declined to grant the order of publication in that instance, because the subject matter of the suit was not one which could properly be brought before the court. "The origin of the right to sue, is a trust-deed, or contract, made in Scotland, in the Scotch form. The trusts of which, as well as the rights and liabilities it creates, must be ascertained and determined by the law of Scotland. The principal part of the property to which the deed relates, is real estate situate in Scotland, the right to which this suit determines."

The case before the Court of Alabama, is the converse of that before the Court of Chancery in Great Britain. The deed of trust submitted to the Alabama Court in 1862, was executed in Mobile. It was executed by a corporation domiciliated there, and the property, franchises, estate, rights of that corporation, were conveyed in that deed of trust. The conditions on which the trustee was to remain in office, are prescribed by the law of the State, and all non-residents accepting such a position is chargeable with notice of the conditions and the methods for enforcing them. It is apparent that the compilers of the Alabama Code of 1852, were advised of the statutes and orders we have referred to, and that they borrowed some of the language contained in them. The cases of Foley vs. Mallardet, and Samuel vs. Rogers, and Cohen vs. Alcon, in the same volume of the reports, contain orders and arguments, relating to the practice in chancery under the act of parliament. The limitation imposed upon the orders in chancery, by Lord Westbury, did not meet with the sanction of his successor and the other judges in chancery, and they were maintained in all their extent after a very careful examination by Lord Chan. Chelmsford, in Drummond vs. Drummond, 2 Ch. App. 32. It appears from the opinions delivered in the last case, that the orders were made by Lord Lyndhurst, aided by the master of the rolls, (Langdale,) vice-chancellor (Wigram,) and two solicitors, both of whom afterwards became members of the Chancery bench.

The conclusion results from this opinion that the exercise of jurisdiction in the case of the Mobile and Ohio Rail Road Company, by the Court of Chancery in Mobile, in 1862, was legitimate and authoritative.

It may throw some light upon the subject, to ascertain whether the jurisdiction over the citizens of a State, though absentees, and over persons who have been or are sojourners within the State, or have contracted there, can properly be brought into court by a constructive service

In Schillsby vs. Westenholtz, L. Q. 6 Q. B., 155, the question arose whether a suit could be maintained upon a personal judgment rendered in a Court in France, against defendants who were not citizens or residents of that country, and had not made the contract and had no property there. Justice Blackburn said: "We think some things are quite clear on principle. If the defendants had been, at the time of the judgment, subjects of the country whose judgment is sought to be enforced against them, we think its laws would have bound them. Again, if the defendants had been, at the time when the suit was commenced, resident in the country so as to have had the benefit of the laws protecting them, or, as it is sometimes expressed, owing temporary allegiance to that country, we think the laws would have bound them. If, at the time when the obligation was contracted, the defendants were in the foreign country but left it before the suit was instituted, we should be inclined to think the laws of that country bound them, though before finally deciding this we should like to hear the question argued."

This opinion was followed in Capin vs. Adamson, L. Rep., 9 Exch., 345, where a judgment in France was enforced in England, though the defendant did not reside in France, and had no knowledge of the suit; the notice being served upon him as a member of a company, and the law prescribing a mode of service upon all such persons in a particular manner. This judgment was affirmed in the House of Lords.

The same principle is maintained in the Courts of Massachusetts.

Henderson vs. Standeford, 105 Mass., 508.

11 Cush., 277; 13 Gray, 51.

The Congress of the United States in adopting a procedure for confiscation cases, and the sanction which that procedure has received from the judicial tribunals, fully establish the legitimacy of the claim we make for the Alabama Courts. If confiscation had been a matter of mere municipal regulation, and had been treated as a punitive measure, the Constitution of the United States would have been violated by the judgments rendered in those cases. The Constitution regulates criminol procedure in the particular that the accused must have notice and power to appear in court. But the Supreme Court answered the objection by affirming that the United States had a power to confiscate, and that the mode of doing so is and was within the competency of Congress for determination without any restraint from any Article in the federal Constitution.

The Supreme Court of the United States has not in any case disregarded or set aside decrees or judgments of State Courts which were rendered in accordance with State laws, regulating procedure. In some of the cases which have had the recognition of the Court, the execution was the first process issued under the Statute.

Bank of Columbia vs. Okely, 4 W. 235;
Murray vs. Hoboken, 18 H., 272;
Livingston vs. Moore, 7 P., 552.

In this cause the objection is made by the trustees of the second mortgage, that the decree of the Court of Chancery is inoperative. Ketchum, the defendant in that decree, has no connection with the trustees in that mortgage. He is not their servant nor their principal. The decree of the Court has been executed, and other trustees, for the period of thirteen years, have been officiating without opposition from them.

The corporation and the bondholders who are parties to the deed, have not made the objection. The Supreme

Court of Massachusetts say: Many considerations favor the rule that judgments of a court of competent jurisdiction which are erroneous by reason of a defect of process or insufficiency of service, can be impeached by parties thereto only by proceedings instituted directly for that purpose.

The plaintiff is concluded by such judgment. He cannot treat it as a nullity and proceed again upon his original demand as if no such judgment had been rendered.

Hendrick vs. Whittemore, 105 Mass., 23.

The defendant and those in privity with him, are the only persons interested in the decree, and these have all submitted to the decree.

2 Met. 135; 105 Mass., 504.

On the face of the decree it is operative. It is rendered in conformity with law and in a case within the jurisdiction of the Court. The decree is executed by transmutation of possession of property. In such conditions there is no title in the defendants who claim independently of the deed and of the defendant in the suit, to inquire into the validity of the decree.

Starbuck vs. Murray, 5 Wend., 148;

Harvey vs. Tyler, 2 Wall., 329.

The decree vests the estate in the appointees of the Court in the same mauner and with the same effect as if they had been originally appointed by the company, and the transactions of the corporation in so far as they are dependent upon the trustees appointed under the decree, have been carried on without opposition from any person whomsoever.

The exposition of the imbecility, feebleness and want of integrity in the pretensions of Ketchum is necessary to a just appreciation of the nature of the appeal. The conspicuous feature in the oppositions, is that they are superinduced for the mere purpose of fomenting litigation. That this has been done with no serious or sincere purpose to have justice administered or truth vindicated, but that the persons concerned might in some manner or another make themselves sufficiently troublesome to be paid off. The purpose has been to extort.

Heretofore, they have not been successful, and we confidently believe that their defeat will take place in this Court.

JOHN A. CAMPBELL,
Sol. for Trustees.

Peter Hamilton
Sol for trustees

U. S. Supreme Court.

WILLIAM H. HAYS AND OTHERS,
Appellants,
vs.
WILLIAM BUTLER DUNCAN ET AL.,
Appellees.

BRIEF FOR APPELLANTS.

F. N. BANGS,
For Appellants.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON ST.

1878.

In the Supreme Court

OF THE UNITED STATES.

William H. Hays et al.,
Appellants,
vs.
William Butler Duncan et al.,
Appellees.

The Circuit Court, by its final decree in the consolidated suit, put the overdue and detached coupons of 1874, upon a footing of equality with the principal of the bonds. It decreed that these coupons still constituted a part of the mortgage debt, and were entitled to share in the proceeds of the sale of the mortgaged property; but in no respect gave them any advantage over subsequently maturing coupons, or over the bonds, in the distribution of either the income which had accrued pending the suit, or of the fund which should arise from the sale of the security.

These particulars of the decree are sought to be reviewed on this appeal, which is taken by Hays, Pierson & Dupuy, the holders of the coupons in question. Their appeal necessarily assumes the correctness of the decree, so far as it establishes the continued existence and lien of the coupons; and it is presumed that the question, arising on this appeal, of the order and mode of payment of the coupons, will not be reached until after the cross appeal shall have been argued. It is therefore unnecessary to consider, here, the grounds on which the right of the coupon holders to be treated as creditors at all, depends. That question will already have been discussed on the cross appeal.

The Appellants, Hays, Pierson & Dupuy, make the following

Assignment of Errors.

1. The Circuit Court erred in not decreeing that the railroad company, the debtor, was entitled to redeem, within a time to be fixed by the court, upon paying the interest in arrear, with the costs and expenses of suit; and in not decreeing that the Receivers should aid the debtor in effecting such redemption by applying towards the overdue interest and expenses, the fund which had accumulated in their hands from the use of the property pending the suit.

2. The court erred in not directing that the income of the property which had accrued in the hands of the Receiver, pending the litigation, should be applied, after payment of expenses of suit, to the discharge of the interest coupons in arrear, in the order in which such coupons matured.

3. The court erred in not decreeing that the proceeds of the sale of the mortgaged property, in case a sale should be necessary, should be, in the first instance, applied to the payment of the interest coupons in the order of their maturity, down to the time of the decree, before being distributed upon the principal of the debt.

4. The court erred in not decreeing that the coupon holders were entitled to a decree not only that the coupons were a lien on the mortgaged property for their full amount, but that they were the first lien to be provided for next after the payment of the expenses of the suit, and that the master, after payment of the expenses of the suit

and of the sale, should divide the net proceeds of the sale rateably among the coupon holders, according to the order in which the successive series matured, until each maturity of coupons should be fully paid, with interest, before making any payment or dividend on account of the principal of any of the bonds; that he should divide the residue of the proceeds rateably upon the bonds until they should be fully paid, and that he should receive the coupons of any series or date of maturity in payment of the amount bid, as far as such coupons and interest thereon would go, as equivalent to the money which such coupons would be entitled to receive out of the proceeds of the sale; and that after retaining from the proceeds of sale enough to pay and satisfy in full, with interest, such coupons as had matured prior to the date of the decree, and as should not have been turned in to him as equivalent to money, he should receive, on account of the bid, any outstanding first mortgage or first mortgage interest bond, as equivalent to the amount of money which such bond would be entitled to receive by way of dividend out of the proceeds of sale.

The Facts

bearing upon the questions involved in the assignment of errors are the following:

1. There had accumulated, pending the suit, in the hands of the Receivers, the sum of \$394,915$\frac{50}{100}$. (*See their quarterly report for April*, 1877, *p.* 297, Vol. 2, *fol.* 850.) This was the fund to which the coupon holders claimed that a special right attached in their favor. It was not a part of the corpus of the mortgaged property, but was a part of the increase from the use and management of that property.

2. The principal of the debt secured by the mortgage was not, by the terms of the bonds or of the mortgage, due or payable at the time of the rendition of the decree.

3. Bondholders to the amount of $3,931,000 consented to the claim of priority set up in favor of the coupons.

4. The holders of the coupons had paid full value for them to the original owners, so that such original owners, after having received the amount of their interest from the purchaser of the coupons, in full, are allowed, if the decree below stands, to come in competition with their own vendees of a part of the debt, in the distribution of the proceeds of the security.

5. The coupon-holders of 1874 unite the legal rights and the equities which spring from the earlier maturity of their claims and from the priority of their rights of action, with those which spring from the fact that they are not the original holders, but are the assignees of the original holders, of the coupons.

Propositions of Law

In support of the assignment of errors, and depending upon the foregoing syllabus of the facts.

I.

It is the duty of the court to ascertain, as against the debtor, and as against subsequent incumbrancers, the amount of money now presently due and payable by the debtor, and secured by the first mortgage, whether such indebtedness matured before the commencement of the suit, or has matured since suit brought, to the end that the debtor and the junior incumbrancers may be advised by the court what amount of money they are under obligation to pay, in order to redeem the property and prevent a foreclosure and sale.

12 *B. Monroe*, 185, *Hopkins* vs. *Ward*.
14 *Wisconsin*, 351, *Manning* vs. *McClurg*.
Wright's (Ohio) *Rep*. 522, *Baker* vs. *Lehman*.
4 *Otto*, 463, *Howell* vs. *Western R. R. Co.*

II.

As the day of payment named in the bonds has not arrived, and as no promise is implied by law against the company, nor expressed in the bonds or the mortgage, to pay the principal upon default in the payment of interest, nothing is presently due except the expenses of the suit, and the matured coupons with interest thereon. The latter is all for which an action at law could now be maintained against the debtor, and it is all which the complainants can now require any of the defendants to pay, in order to redeem the property and prevent a foreclosure; and it is the only debt to satisfy which a sale can be decreed.

13 *Ohio*, 240, *Bank* vs. *Covert*.
4 *Otto*, 463, *Howell* vs. *Western R. R. Co.*

III.

Yet the non-payment of the interest is sufficient to maintain the suit.

1 *Bibb*, 149, *Adams* vs. *Essex*.
9 *Porter*, 547, *McVay* vs. *Bloodgood*.
1 *Alabama, N. S.*, 393, *Walker* vs. *Hallett*.
2 *B. Monroe*, 204, *Caufman* vs. *Sayre*.
11 *Indiana*, 245, *Hunt* vs. *Harding*.
7 *Wisconsin*, 566, *Wood* vs. *Trask*.
9 *Wisconsin*, 65, *Bank* vs. *Bank*.
23 *Illinois*, 30, *Vansant* vs. *Allmon*.
41 *Miss.*, 284, *Magruder* vs. *Eggleston*.
7 *Missouri*, 489, *Buford* vs. *Smith*.
4 *Otto*, 463, *Howell* vs. *Western R. R. Co.*

IV.

The application of what money may remain out of the proceeds of the sale, after payment of the indebtedness now due, to the payment of unmatured indebtedness, is only incidental to the principal object of the suit. That application is made only because it is necessary for the court to dispose of what surplus may incidentally arise in the process of satisfying the matured indebtedness; not because the unmatured indebtedness constitutes a demand presently payable.

1 *Alabama, N. S.*, 393, *Walker* vs. *Hallett*.
3 *Bland*, 179, *Salmon* vs. *Clagett*.
2 *J. C.* 485, *Brinckerhoff* vs. *Thalheimer*.
4 *Id.* 534, *Campbell* vs. *Macomb*.
4 *Otto*, 463, *Howell* vs. *W. R. R. Co.*

V.

The coupon holders being the only persons who have any present legal demand, the only persons entitled to have the land sold in satisfaction of their claim, and the only person whom the debtor is under obligation to pay off in order to redeem the land and prevent a foreclosure, their claim is in all respects prior in time and prior in right to that of every one else.

9 *Porter*, 547, *McVay* vs. *Bloodgood.*
13 *Ohio*, 240, *Bank* vs. *Covert.*
4 *Otto*, 463, *Howell* vs. *W. R. R. Co.*

VI.

The rule applicable in all cases of debts payable in successive instalments is, *qui prior in tempore, potior est in jure;* and that rule, according to the weight of authority, applies whether all the instalments have or have not matured before decree, except that, in Alabama and New York, where the creditor assigns an instalment, the assignee is regarded as having an equity superior to that of the assignor.

1 *Randolph*, 466, *Gwathmeys* vs. *Ragland.*
9 *Wendell*, 412, *Mechanics' Bank* vs. *Niagara Bank.*
9 *Porter*, 547, *McVay* vs. *Bloodgood.*
10 *N. H.*, 466, *Hunt* vs. *Stiles.*
1 *Alabama*, 393, *Walker* vs. *Hallett.*
4 *Id.*, 452, *Cullum* vs. *Erwin.*
13 *Ohio*, 240, *Bank* vs. *Covert.*
8 *Blackford*, 447, *Bank* vs. *Tweedy.*
32 *Maine*, 97, *Larrabee* vs. *Lumbert.*
6 *Florida*, 171, *Wilson* vs. *Hayward.*
7 *Wisconsin*, 566, *Wood* vs. *Trask.*
9 *Id.* 65, *Bank* vs. *Bank.*

23 *Illinois*, 30 *Vansant* vs. *Allmon.*
9 *Iowa*, 164, *Grapengether* vs. *Fejervary.*
11 *Iowa*, 211, *Hines* vs. *Mooers.*
17 *Indiana*, 52, *Murdock* vs. *Ford.*
36 *Missouri*, 526, *Mitchell* vs. *Ladew.*

VII.

It is true that where there is a special agreement to permit all classes of claims to share *pro rata* in the proceeds of sale, an equal *pro rata* distribution is decreed. Such is the case of

1 *Wallace*, 268, *Dunham* vs. *R. R. Co.*

That, however, is an exception. But for the peculiar language of the mortgage in that case, it would not have been an exception. The rule in Mississippi, also, appears to be an exceptional one, unless the intention of the parties, expressed or implied, requires the general principle to be applied.

23 *Mississippi*, 178, *Bank of England* vs. *Tarleton.*

It is submitted that the court below, in its opinion (*p.* 1039, *fol.* 1526), misapplied the case of *Dunham* vs. *R. R. Co.* That case does not announce any general rule, but only construed the particular contract then in question. The mortgage foreclosed in that case contained an express rule of distribution, by which principal was put upon an equality with interest. But in the mortgage here in question (*foot of p.* 32) the direction to the trustees, in case of sale, is, to apply so much of the proceeds of sale as may be necessary, to the payment of the principal and interest "*which may then be due.*" And by reference to the bond (*Ex. C, fol.* 42) it will be found that the due date of the principal is fixed at November 1, 1883, and it is not pushed forward by the happening of any contingency, while an installment of interest matures at the end of each intervening period of six months.

VIII.

The case at bar is one which justifies the application of both the general rule above referred to, and the special rule in force in Alabama. The coupons are prior in time to the bonds. Their holders have also the superior equity arising from the fact that the original creditors made Alexander Duncan assignee of their claims. In a case where these features existed, but in which, also, all the instalments of the debt had matured, as they have not in the case at bar, it has been held by a Federal court that the coupon holder from whom the bondholder had received the money for his coupons, had an equity superior to that of the bondholder, and to that of the holders of coupons which matured at subsequent dates.

13 *Blatchford*, 412, *Stevens* vs. *R. R. Co.*

In the case last cited, the court uses the following language: "*But, as to the holders of the unpaid coupons of July* 1, 1873, *there seems to me to be a special equity. It was through the advance of money to cash these coupons in the hands of the holders of the bonds to which they belonged, that such holders obtained the money for those coupons. On such advance, those coupons passed into the hands of those who now hold them. But for such advance, the coupons in the hands of the original holders of them would not have been worth their face value, as they were made to be by such advance. The original holders of such coupons must be regarded as still holding the bonds to which such coupons belonged; or if not, those who hold such bonds, and such maturing coupons belonging thereto, must* *be held to be subject to the same equities as such original holders.*"

In Louisiana, the right of an assignee to be paid in preference to his assignor, where the proceeds of sale are insufficient to pay both, is recognised.

20 *Lou. Ann.* 359, *Ventress* vs. *his Creditors.*

And where an sssignee of part of the mortgage debt has, by contract or otherwise, a right to priority of payment as against the remainder, the assignee of that remainder is chargeable with notice of the prior equity.

42 *Illinois*, 273, *Walker* vs. *Dement.*

IX.

The decree of the Circuit Court, denying priority to the coupons, was put upon an assumed rule of law, for which *Dunham* vs. *R. R. Co.*, 1 *Wallace*, 268, was the only authority quoted.

It is shown above that that case does not establish a general rule, but only a particular one, arising from peculiar language in a particular case. And the learned court below added (fol. 1521), "the bondholders themselves, when they have not parted with the coupons, or when an instalment of interest or principal not represented by coupons is due, may foreclose and sell the whole security for the satisfaction of the amount due, and thus deprive themselves of security for the residue of the debt." This seems to the appellants to involve a concession of all they claim. Is the right thus declared, personal to the original creditor, or is it an incident to the ownership of the coupons, and does it not pass to the vendee of the coupon with the coupon itself?

X.

The practical injustice of denying priority to coupons, as between their former owner and their present holder, in such a case as this, will be manifest upon slight reflection.

A simple illustration will show it. A holds a $1,000 bond, with two interest coupons for $70 each, attached. He sells the coupons to B as they mature, and thus receives his $140 interest in full. But the debtor pays no part of the debt, and a foreclosure follows. The road sells for one-half of the indebtedness, that is, for $570. A, who has already received the whole of his interest, *i. e.*, $140, from B, competes with B in the distribution of the proceeds of sale. He gets $500 on his bond, while B gets $70 on his coupons, and thus A obtains back from B one-half the interest which the latter has paid A. A in all has obtained 64 per cent. of his investment, and B has obtained 50 per cent. of his. No such injustice results from the rule we contend for. By that rule, A would have received $570 in all, and B $140. Multiply the factors in this sum, and the injustice grows more gross. The bondholders in this case have received from Alexander Duncan $535,000, the par value of their coupons. If they are allowed to compete with him in the distribution of the proceeds of sale, he may get only 25 or 50 per cent. of his money, while they may get 50 to 75 per cent. of theirs, counting what they have already received from him.

There is no stringent rule of equity rendering such injustice imperative. The maxim that equality is equity, does not require it; for that cannot be invoked to aid a party against his own voluntary act, in waiving his equality.

The equity rule which requires incumbered parcels of land to be sold in the inverse order of alienation, is only an illustration of the principle for which we are contending. A sentiment of natural justice would seem to dictate, that he who sells property for money, should use the money in perfecting the title to what he has sold; and that a sale of a coupon should imply a warranty that the vendor will not indirectly impair the value of what he has sold by subtracting from the value and proceeds of the security.

The legal rule that where the owner of two adjoining parcels of land sells one of them, that one which he retains is subject to an easement in favor of the grantee—that is, becomes the servient tenement, while that for which he has received his price becomes the dominant tenement, is another illustration of the same principle.

XI.

The appellants were entitled to the benefit of the stipulation of bondholders, who were such to the amount of $3,931,000 (*pp.* 1026 *to* 1053), that the coupons should have priority. Effect could have been given to that stipulation by a provision in the decree that all the coupons detached from bonds held by the stipulators, should be paid in full before any payment should be made on such bonds.

Hays, Pierson & Dupuy, now renew this stipulation in respect to all the bonds now held by them, and consent as such bondholders to a corresponding modification of the decree.

XII.

It is submitted that the errors assigned should be corrected, and the decree modified accordingly.

F. N. Bangs,
Of Counsel for Hays,
Pierson & Dupuy.

Relay

Supreme Court of the United States.

OCTOBER TERM, 1878.

No 879.

MORRIS KETCHUM, et al,
Appellants,
vs.
WILLIAM B. DUNCAN, et al,
Appellees.

BRIEF and ARGUMENT
for Appellants.

GEORGE HOADLY,
E. L. ANDREWS,
E. H. GRANDIN,
Of Counsel.

Supreme Court of the United States,

OCTOBER TERM, 1878.

No. 879.

MORRIS KETCHUM, ET AL.,
Appellants,
vs.
WILLIAM B. DUNCAN, ET. AL.
Appellees.

BRIEF FOR APPELLANTS.

This appeal is brought to review a decree of the Circuit Court for the Southern District of Alabama.

On the first day of November, 1853, the Mobile and Ohio Railroad Company executed a first mortgage of its property to Morris Ketchum, and others, as trustees, to secure the holders of an issue of its bonds.

The subjects of the litigation arose under this mortgage and involve:

FIRST: The marshalling of the liens and the ascertainment of the priorities of claims under the mortgage.

SECOND: The enforcement of the trusts of the mortgage and the equitable realization of the security on behalf of those who may be adjudged entitled to its benefits.

Under the first head, the errors assigned relate to *the coupon claims of Alexander Duncan.* The appelants show that these claims are not entitled to deprive the first mortgage bondholders of a portion of their security. The appellees, Duncan and Elliott, seek to obtain for these claims a share of the first mortgage security, *pari passu*, with the bondholders. Hays, Dupuy and Pierson, who bring a cross-appeal, insist that the Duncan claims should be paid, with interest, out of the proceeds of the mortgaged property before anything is paid to the first mortgage bondholders. The decision below held the claims entitled to an equality with the first mortgage bonds. The foregoing positions were advanced through the following pleadings and proceedings:

On the 8th day of May, 1875, a bill of foreclosure was filed by Duncan and Elliott in the alleged capacity of trustees of the first mortgage.

Duncan's Bill.

"Your orators show, that on the 1st day of May, 1874, an instalment of interest fell due upon the bonds hereinbefore described; that again, on the 1st day of November, 1874, a like instalment of interest upon said bonds fell due; that neither of said instalments of interest were paid at maturity; that the coupons cut from said bonds, and representing said interest, were presented to said company, or to its agents, at the places appointed by it for the presentation of said coupons, and the payment of said interest, by the holders thereof, and payment demanded, but payment of said interest was refused, and the same is still due and unpaid, and the said Mobile and Ohio Railroad Company is now in default in the payment of said interest, which matured on the days before stated, and said company has remained in said default from the said 1st days of May and November, 1874; that the aggregate amount of said instalments of interest, and which is represented by interest coupons outstanding and unpaid, in the hands of the holders thereof, is six hundred and thirty-eight thousand, four hundred and seventeen $\frac{60}{100}$ dollars, or thereabouts, in the currency of the United States."

On the 6th of May, 1876, Morris Ketchum filed his bill as trustee of the first mortgage, for the execution of the trusts vested in him by the deed of the railroad company. He showed that payment had been made to the bondholders of the coupons falling due in 1874, and that no default on the first mortgage had occurred until May 1st, 1875.

Ketchum's Bill.

"And your orator is informed and believes that the said coupons so claimed to be matured and outstanding, are the same coupons which were presented by the holders thereof to the Mobile and Ohio Railroad Company, and by it received and paid, and presumably canceled, as of right they should have been, but were, by the then president of the company, William B. Duncan, and by the directors thereof, delivered to Alexander Duncan, the father of the said William B. Duncan, and other persons, as pretended security for certain claims of said Alexander Duncan and others upon said Mobile and Ohio Railroad Company; that the said coupons are still in the possession of said Alexander Duncan and other persons, and are claimed by them to constitute a subsisting first prior and paramount lien upon the property conveyed to your orator in trust, as aforesaid. And your orator is informed and believes that the said Alexander Duncan and others claim and pretend, and will endeavor to use said coupons, which have been paid, and should be of right canceled, to bid for and obtain control of and title to the said Mobile and Ohio Railroad Company upon the sale thereof by foreclosure, under your orator's mortgage."

On the 30th day of March, 1877, Ziegler, Jump, Chavannes and associates filed a bill as first mortgage bondholders for the marshalling of the liens on the property, and the realization of their security thereon. They set forth in their bill, as folllows:

Zeigler Bill.

"Alexander Duncan, the father of the said William B. Duncan, had not exceeding seventy-five thousand dollars of first mortgage sterling bonds, but he has since claimed to hold certain coupons, principally for May and November, 1874, amounting to upwards of ($700,000) seven hundred thousand dollars as first mortgage liens on the property. These coupons were paid and surrendered in great part, on and after they became due, without notice being brought to the knowledge of most of the bondholders that any claim was set up to purchase them. In fact, the official reports of the company for the year 1874, exhibit net earnings to the amount of $707,865.04."

"During the entire year 1874 W. B. Duncan was a director of the company, and in general and substantial control of its board of direction and of its financial affairs, and from the first day of May, 1874, A. F. Elliott has been a director, and Duncan, the president. But so it is, that under this regime the greater part of the said sum of net earnings, to wit: Nearly $700,000 was appropriated to satisfy bills payable and other floating claims, instead of being applied to first mortgage interest. Most of these misapplications of funds were made by and through Duncan, Sherman & Company, and about ($100,000) one hundred thousand dollars of the said payments were made by Duncan, Sherman & Company on the 30th day of April, 1874. the very day before the May coupons on the first mortgage bonds fell due, and are claimed to have defaulted, and to have been acquired by Duncan, Sherman &

Company, and by them afterwards transferred to Alexander Duncan."

On the 3d May, 1877, a report was filed by a Master in the Duncan suit, to whom a reference had been made to take proof and report on the priorities. Exceptions were filed by Charles Moran and Louis J. Belloni. pp. 800 to 816.

Exceptions were thereafter filed to the report by Hays, Dupuy and Pierson. p. 816.

On the 5th day of June, 1877, these three suits were consolidated by the following order:

Consolidation Order.

The parties in these several causes appearing in open Court by their respective solicitors and counsel, and consenting to this order.

And it appearing to the Court that the above entitled suits are instituted for the common purpose of securing a sale of the Mobile and Ohio Railroad and other property of the Mobile and Ohio Railroad Company, under the first mortgage thereof, and disputes having arisen as to the legal title of and in said first mortgage, which might embarrass the sale of the mortgaged premises, and it appearing to the Court that all parties claiming said legal title are before the Court, and likewise the *cestuis que trust* of said first mortgage, and that a full and perfect title to said railroad and other mortgage property may be obtained under decrees in all of said suits combined.

It is, therefore, ordered that the above causes be consolidated, and proceed concurrently before this Court to final decree.

And it is further ordered that all the proofs taken, orders made, and proceedings had, in the cause first above entitled, may be read upon the hearing of the causes so consolidated in the same manner and with the same effect as if taken, made and had in all of said causes, and that the evidence taken before the Master in said first mentioned cause be read and used as evidence on the final hearing of said causes; and that said causes be set down for final hearing on the pleadings, proofs, orders, and proceedings forthwith.

JOSEPH P. BRADLEY,
Circuit Justice.

W. B. WOODS,
Circuit Judge.

Immediately upon this consolidation of the causes new parties were admitted in each of the suits; new pleadings were filed by them, and the several suits were, by consent, brought to final issue by answers and replications.

Merian, Renevier, and other first mortgage bondholders, who were then admitted as defendants to the Duncan bill, filed their answer "as well in behalf of other holders of like bonds to the amount of over six hundred thousand dollars as for themselves," and alleged as follows:

Merian's Answer.

"Further answering, these defendants say: That the said Mobile and Ohio Railroad Company had not made default in the payment of the instalments of interest which accrued, matured and fell due upon its said first sterling mortgage bonds, upon the first day of May and November, 1874 respectively, and that it had not refused payment thereof, but on the contrary, they say that the same were at and after the said respective dates of their muturity, to wit, May 1st, 1874, and November 1st, 1874, fully paid and discharged to the holders thereof, by the said railroad company, and the same are not in equity outstanding debts of said company, or in any manner secured by said mortgage."

"Further answering, these defendants say: That the said interests which so accrued and matured on said first days of May and November, 1874, was evidenced by coupons or interest warrants, originally attached to bonds from which they were cut or detached by the holders and owners thereof, for presentation to and payment by said railroad company; that they are now presented and claimed to be held and owned by William H. Hays, William S. Pierson and T. Haskins Dupuy, by transfer from Alexander Duncan, who is claimed to have acquired them when overdue, from the firm of Duncan, Sherman & Company, who claimed to have purchased the same from the holders thereof, partly at, but principally after their maturity."

"Further answering, these respondents say: That said Alexander Duncan is, and said Duncan, Sherman & Company were and are estopped to claim that said interest is unpaid; that the complainants were, at the maturity thereof, both partners of said firm, both directors of said company, whereof said Duncan was president and *ex-officio* chairman of its executive committee, and said Duncan, Sherman & Company were, and had long been the financial agents of said company, that said interest was paid with funds and moneys provided by said Duncan, Sherman & Company in the usual manner to the holders thereof, without any knowledge on their part that the same were not paid, and without any intention of selling the same, at times when said Duncan was in full possession and control of all the income and assets of said company, and the same were pledged by the Board of Directors thereof, to the payment of the interest upon said first mortgage bonds, and were placed in the hands of said Duncan, Sherman, as such financial agents for that purpose, and were sufficient for that purpose, but were and are claimed by said Duncan, Sherman & Company to have been by them diverted from such application, and applied to the reduction of the unsecured debt of said company, to themselves, and others."

Hays, Dupuy and Pierson, were admitted as defendants in each of the suits. They filed the following pleadings:

Hays' Answer to Ketchum and Zeigler Bills.

"These defendants allege and aver that they are the holders of bonds issued by the Mobile and Ohio Railroad Company upon the security of their first mortgage, mentioned in the bill of complaint in the bill in this cause, to the amount of three millions nine hundred thousand dollars and upwards and of interest arrearage bonds, issued on the security of the first mortgage, to the amount of $1,192,800, and of sterling interest bonds, issued under the security of said first mortgage, to the amount of $765,120, and of bonds, issued upon the second mortgage of said corporation, to the amount of $961,990, and of all the coupons attached to said bonds, and now remaining overdue and unpaid, and also of coupons formerly attached to said bonds and which matured in the year 1874, to the amount of $535,000 and upwards, all of which claims they aver and allege are entitled to be paid in the order of their maturity out of the proceeds of the mortgaged premises mentioned in the bill of complaint in this cause, and they deny all the averments and allegations in said bill of complaint which in any way tend to impeach, impair, weaken or diminish the claims arising upon the said bonds and coupons, and these defendants accept and adopt the answer made in this cause by the Mobile and Ohio Railroad Company, and the answer made in this cause by William Butler Duncan and Andrew F. Elliott."

Duncan, who was an original defendant to the Ketchum bill, had filed the following:

Duncan's Answer.

"As to the allegations of the bill that the coupons which matured in May and November, 1874, were paid by said railroad company, and were by this respondent and the directors of said railroad company, after said payment, and when the said coupons should have been canceled, delivered to Alexander Duncan and others as pretended security for certain claims against said corporation—this respondent states that the same are false. No portions of said coupons that fell due in the year 1874 were paid by said railroad company, or by any money in any manner furnished by it or advanced to it by any person or persons whatever, or by any person for said corporation. A portion of the coupons which fell due in 1873, were paid by money advanced to said corporation by this respondent and his then firm, Duncan, Sherman & Company; as to these, no claim has been made that they are outstanding, that payment was made by money loaned the railroad company. But the coupons of 1874 were not so paid, and have not been extinguished; they were with the assent of the corporation, purchased from the then holders thereof, with the distinct agreement that they were not canceled or impaired by such purchase, but still remained in the hands of the purchasers, valid coupons of the first mortgage bonds, with all the rights and remedies by which they were originally protected, to be enforced at the discretion of the holder. This purchase was an act friendly to said railroad company; it was made at a time of general and wide-spread distrust in the money market of the country, and of extraordinary depression in all commercial business, the object being, to have these evidences of debt in hands of friends having also other interests in the property, and by the gratuitous allowance of reasonable time, enable the corporation to see whether its affairs would not so improve that it could in 1875, resume the regular payment of its interests from its own resources. This hope, which was entertained by the directors of said railroad company, was not verified in the experience of the corporation, and the holders of said coupons so acquired, with others, demand as respondent is advised they had good right to do, of this respondent and his associates, that they should execute the powers of the mortgage for the protection of themselves and the other creditors of said corporation, secured by said first mortgage. Common replications were filed by the complainants in the several suits. The statement of the bill as to the facts attending these coupons due in 1874, are not true."

On the foregoing Pleadings, as settled and submitted, the cause went to

Final Hearing under the Consolidation Order.

By the terms of that order the testimony to be used under the new pleadings on the final hearing, was required to be the same which had been taken before the Master, and we therefore deem ourselves constrained to confine our statement of facts to that testimony.

The Evidence was adduced to prove

By the Coupon Claimants,

I. That the bondholders had sold their coupons to Duncan, Sherman & Co., and that these coupons had not ceased to form a part of the first mortgage.

II. That Duncan, Sherman & Co. had acquired by subrogation, a share of the first mortgage to the amount of the coupons.

By the First Mortgage Bondholders,

I. That the bondholders had not sold their coupons to Duncan, Sherman & Co.

II. That Duncan, Sherman & Co. and their assignee, are estopped by fraud and breach of trust from setting up these coupons as first mortgage liens.

III. That the marshalling of the assets, shows the coupons to have been paid to Duncan, Sherman & Co., under a special appropriation of the net earnings which they misappropriated to other uses.

TESTIMONY.

First Public Default.

On the 23d of April, 1875, the directors of the Mobile and Ohio Railroad Company issued the following circular to its bondholders :

MOBILE, April 23d, 1875.

The directors of the Mobile and Ohio Railroad Company beg to inform *the holders of their bonds* that the unexampled falling off in earnings, resulting from business depression general throughout the country and which will probably continue till another crop is assured, *deprives the company of the ability to meet the May interest at its maturity.* All the earnings of the past business season have been applied to arrears of pay-rolls, to current supplies, to necessary improvements of the road and to other matters which are *strictly in the interest of the bondholders.* All our labor and current supply bills are now paid as far as practicable in cash. The directors recognise the fact that *the bondholders have the first claim on the property, and that it is impera-*

tive upon the direction to apply all the earnings of the road to the interest in the strict order of equity. With this assurance the directors invite the confidence of the holders of the mortgage liens to enable them to make some acceptable proposition upon a substantial basis which will permit the continued development of the property in the interest of all concerned.

For details of the application of the earnings of the past year, the directors beg leave to refer to the annual report of the company.

By order or the Board.

(Signed) A. L. WILLOUGHBY,

Secretary.

A few days after this showing, on May 8, 1875, Duncan and Elliott, claiming as trustees, filed their pending bill to enforce coupons of 1874, which they asserted that Duncan, Sherman & Co. had purchased a year previous to the above Circular of Default. p. 315-316

y were afterwards
nsferred to A.
ncan. p 312

The above announcement of the corporation in April, 1875, was the first open default on the First mortgage.

Opinion.

The bondholders knew nothing of any previous default. The Circular was the first public notice on the subject. pp. 479, 480, 484.

The corporation stood before the bondholders as a solvent debtor when the time had arrived for

Payment of May Coupon, 1874.

LONDON.

There had been for some years a change of office for this payment from the place prescribed in the bond. It was no longer at George Peabody's, but at the Union Bank. p. 650.

In May, 1874, the bondholders simply presented their coupons at the Union Bank, and were paid their money. There is no pretense in the testimony of any sale by the bondholders.

Testimony of Manager of Union Bank.

Examined on behalf of Alexander Duncan.

FIRST.—To the first interrogatory, he saith: Yes. I am the general manager of the Union Bank of London, and I occupied the same position during the year 1874.

SECOND.—To the second interrogatory he saith: Yes. The Union Bank of London *paid* the coupons of the Mobile and Ohio Railroad Company, maturing on the first of May and the first of July, 1874, under instructions from Duncan, Sherman & Company, of New York, on their credit and under their responsibility, holding the coupons uncancelled on their account. The Union Bank of London had no communication with the Mobile and Ohio Railroad Company.

THIRD.—To the third interrogatory he saith: The coupons were sent to Duncan, Sherman & Company, from time to time uncancelled under registered cover.

FOURTH.—To the fourth interrogatory, he saith: No money was advanced on account of the Mobile and Ohio Railroad Company; it was advanced on account of Duncan, Sherman & Company, to whom alone the Union Bank of London looked for reimbursement. The coupons were in the first instance posted to a special account in the name of Duncan, Sherman & Company, which was subsequently closed by transfers of cash from their general account.

Cross-Interrogatories.

First.—To the first cross-interrogatory he saith: The Union Bank of London acted in accordance with instructions received by cable, a copy of which, dated April 28th, 1874, I hereunto annex, marked A. (This is the dispatch printed above.)

Second. To the second cross-interrogatory he saith: I am not aware of any enquiries having been made when the coupons were left for examination; if such enquiries were made, the answer would have been that we, the Union Bank of London, received our instructions from Duncan, Sherman & Company. pp. 391 to 393.

MOBILE.

May and November.

By an arrangement existing since the issue of the bonds, and expressed by a certificate on certain of the bonds, some were payable in Mobile. p. 163.

In 1874 there was no published communication from the directors indicating that the company would not pay the accruing coupon; nothing either in the newspapers or by circular. p. 565.

There was no paper purporting to be a notice in the Company's office, or elsewhere, in May. There was in November. p. 226.

There was no communication from or intimation by any one to the bondholders that he, she, or it desired to purchase their coupons. pp. 217, 218.

As usual, the bondholders went to the office of the railroad company, their debtor. pp. 191, 193, 195 et al.

As in previous years, the same official, the treasurer, examined their coupons. same pages.

The railroad company had always given some form of order, warrant or check. pp. 479, 480, 485.

These vouchers for money were always addressed by the company to the Bank of Mobile. same pages.

The place of deposit of its moneys was in the Bank of Mobile. same, and pages 219, 229.

The bondholders had been continually in the habit of dealing with the railroad company through the Bank of Mobile. pp. 483, 217.

The president of the bank was a director of the company and chairman of the finance committee. p. 207.

The treasurer of the railroad company and his assistant testified that after examining the coupons they put them in envelopes, endorsed—

"Paid to (Holder) dollars." p. 224.

Similar envelope warrants had been used on previous occasions. pp. 230, 485.

The Bank of Mobile, on presentation of the envelopes with the memorandum of payment placed on them by the company, delivered the money without a word f any kind. p. 216. *

* Except when it deferred to the railroad company. p. 198.

verified

The following is the substance of the testimony on the subject of the Mobile payments, which we quote at length on account of the weight given it in the opinion.

[*Nathan Whiting.*]—I was and am a holder of first mortgage sterling bonds.

My bonds are not in default for any interest of 1874; I have no claim against the company for the interest of 1874. The Court has the record of the balance of my interest.

I presented my coupons in person for May and November, 1874, to Mr. Willoughby, the treasurer, at the office of the company and got the money for them from him until the last payment; and then the coupons were left with Mr. Willoughby for a day, I think, and the next day I went and got them in an envelope with the amount placed on the back, and I was directed personally to Mr. E. B. Gale, at the bank of Mobile, who paid them. Since then I have collected nothing.

Q. At the times in the year 1874 that you presented your coupons you cut off of the Mobile and Ohio Railroad Company's sterling and interest bonds to the treasurer Mobile and Ohio Railroad Company for payment, did you or not, see any written notice in the office, or was or not any verbal notice given to you by the treasurer or other person employed in the office, that, or to the effect that, or conveying the impression that the company was not paying its first mortgage sterling coupons, but that the same were being purchased by any person or persons?

A. I have no recollection of seeing any notice in the office. My coupons were handed to Mr. Willoughby, and when they were returned to me, I am pretty sure he never said anything about any one buying them, but referred me to the Bank of Mobile to get my money.

Q. When, to your knowledge, did the Mobile and Ohio Railroad Company first make default in the payment of its first mortgage coupons?

A. The first I heard of it was 1st May, 1875.

EXHIBIT.

COUPONS.

Paid to Nathan Whiting,

£3 at $32.50 gold....	$97 50
Total gold....	97 50

May.

P. 195.

Testimony of John W. Holmes.

Q. Did you not believe when you delivered your coupons the last time when you presented coupons, that the same were paid and satisfied and ceased to be a first mortgage lien on the property?

(Objected to by Mr. Stewart as involving the belief of the witness instead of the facts.)

A. I had no reason to believe anything else; I never made any inquiry. I thought the earnings of the road paid the interest.

Q. Were you ever notified in any manner at any time that you presented coupons for payment, that your coupons were not going to be paid, but were going to be puchased by somebody else for the company?

A. I never had any intimation of that kind. I remember at one time the treasurer, Mr. Willoughby, detained me some time, eight or ten days, and stated that the company was pressed. p. 538.

Testimony of William H. Ross.

Q. What transpired when you presented you coupons to the treasurer.

A. On one occasion he took my coupons, as I understood him, for the purpose of registration or comparison, and then and there handed them back and directed me to go to the Bank of Mobile for the money. He put them in an envelope—put the numbers on the back, (I think he sealed it) and directed me to go to Mr. Gale, who opened it and then paid the money.

The numbers of my bonds, with the coupons, are in proof before the Master; I think there is somewhere in the neighborhood of thirty thousand dollars.

Q. At the times in the year 1874, that you presented your coupons cut off, of the Mobile and Ohio Railroad Company's sterling and interest bonds to the treasurer Mobile and Ohio Railroad Company for payment, did you or not see any written notice in the office, or was or not any verbal notice given to you by the treasurer, or other person employed in the office, that, or to the effect that, or conveying the impression that the company was not paying its first mortgage sterling coupons, but that the same were being purchased by any person or persons?

A. I recollect nothing of that sort. I saw no notice that the coupons were to be purchased. I never heard of such a thing.

Q. Did the difference in the mode of payment in 1874 from previous payments strike you?

A. My recollection is, that it did, and I remarked upon it and I was told that the company had made arrangements with the Bank of Mobile to pay those coupons.

Q. Who told you so?

A. I don't recollect. It was some one in the office of the Mobile and Ohio Railroad. pp. 194, 481.

Testimony of Hazard.

In November, 1874, I went to the office and presented the coupons for payment, and they were passed to Mr. Bull, and he gave me an envelope containing these coupons, and I sent my clerk to the Bank of Mobile with the envelope to collect the amount, and he brought it back some sixteen dollars short; I then took the money back and got my coupons from Mr. Gale and took them to Mr. Willoughby, who corrected the error, and he gave me another envelope with the coupons, and I went to the Bank of Mobile and got my money. p. 198.

Testimony of Egbert H. Grandin.

In the year 1874, the coupons of all the bonds in my hands, held by me in the capacities that I have named, were paid. I don't think, I am not positive, that I ever visited this office, the office of the railroad company, and presented any of those coupons. I know that some of them were deposited by me in the Bank of Mobile, in this city, and in a bank or banking house in New York, and they were paid, or at least I never heard of them again. I have an indistinct recollection that on one occasion, in 1874, I saw Mr. Willoughby, and learned from him that the Bank of Mobile was paying the coupons.

I state most positively, that I never had any idea, and never had any reason to suppose, that the Mobile and Ohio Railroad Company made default in the payment of its first mortgage coupons, either on the 1st May or 1st November, 1874. On the contrary, I had reason, (what I considered to be the best reason) to believe that there had been no such default on the 1st May, 1874, because on my expressing to one of the directors of the company, near about the 1st May, 1874, my doubt as to the ability of the company long to continue to pay its interest on its bonded debt, he assured me that I need have no doubt about it. This director was Mr. Wm. H. Pratt. I had very strong doubt about the solvency of the company, and expressed those doubts to parties in this city, and the director came to me and asked why I was depreciating the securities of the company, or something to that effect. It was then I expressed my doubt and received his assurance. The first time that I ever heard, in any way, shape, manner or form, that this company had made default, or proposed to make default, in the payment of any of its interest, was when it issued its circular of 1st March, 1875, to its second mortgage bondholders, announcing that it would be compelled to pass the payment of its coupons, or something to that effect. As a matter of course, I then looked for the default in the first mortgage coupons on the 1st May, 1875. pp. 619, 620.

Impression produced on Bondholders.

Nothing said about any one buying their coupons.

p. 479.	NATHAN WHITING,
p. 619.	E. H. GRANDIN.

I never heard of such a thing.

p. 480.	WILLIAM H. ROSS,

I don't think I was told anything about it.

p. 484.	HUGH MONROE.

Made no inquiries why it was that the coupons before 1874 were paid by the company, and those for 1874 sent to the Bank of Mobile.

p. 480.	NATHAN WHITING.

"No, I thought nothing about it."

p. 482.	JAMES B. HAZARD.

Saw no notice, and was told about none.

p. 484.	HUGH MONROE,
p. 482.	JAMES HAZARD.

Did not see any notice, and never heard of any.

p. 192. Theodore Guesnard.

Mr. Willoughby told me to take my coupons to the Bank of Mobile and they would be paid.

p. 193. W. H. Ross.
p. 191. Theodore Guesnard.

Willoughby said he would send them down to the Bank of Mobile, and Mr. Gale would put them to my credit.

p. 483. Hugh Monroe.

First default in first mortgage bonds, to their knowledge, was in May, 1875.

p. 480. William H. Ross,
p. 479. Nathan Whiting,
p. 482. James Hazard,
p. 620. E. H. Grandin,
p. 665, 677. Dougherty,
p. 679, 699, 700. Thorburn.

If we may use evidence not before the Master, the following was the

Testimony of Charles Moran.

He knew nothing about any claims of purchasing coupons until September, 1874, and at that time he warned Duncan in substance, that he must know whether the coupons for November were to be bought or paid. Notwithstanding this, Duncan did not make any contract with the bondholders for the purchase in November.

Q. 283. You had a conversation with Mr. Duncan in 1874, on that subject, didn't you?

A. No, sir.

Q. 284. Didn't you tell Mr. Duncan, in May, 1874, to be careful in purchasing those coupons that he complied with all necessary forms?

A. No, sir; if Mr. Duncan so informed you, he is misinformed as to dates; I had such a conversation, *but it was later in September, I think, in* 1874.

Q. 285. You then advised him, *if he purchased coupons,* to be careful that he complied with all necessary forms?

A. Yes, sir.

Q. 286. What made you talk to him about purchasing coupons, and keeping them alive?

A. Because he told me he might purchase them, and I cautioned him as a friend.

Q. 287. You understand they were purchased in September, 1874?

A. No, I do not; he said something about there *might be* a purchase.

Q. 288. If they were purchased, what objection have you got to their being paid?

(Objected to.)

A. I will not answer.

Q. 289. If they were purchased under your advice?

A. I am not trying this case before Justice Bangs, I believe.

Q. 290. I know as well as you do you are not trying the case before me, but I know I am trying you, and you do not stand the trial as well as you think you do; I would like to have you state what objection you have to Mr. Duncan's being paid the amount of the coupons you advised him to purchase?

A. I did not give him the advice.

Q. 291. Didn't you say you gave him the advice?

A. I gave him advice to be careful what he did.

Q. 292. Did you not advise him to be careful, and to conform with all necessary forms?

A. I told him to be careful, or he might lose all the rights of the mortgages.

Q. 293. If he purchased bonds?

A. If he purchased coupons.

Payment of Amy's Coupons.

MOBILE, May 7, 1874.

Messrs. H. Amy & Co., New York:

Gents.—We have received your favor of the 30th with stated enclosures and note contents. The Mobile and Ohio Railroad are only paying $32.50 each gold, for ex-certificate sterling coupons.

In returns for 24 coupons, $32.50 each, $780 gold, we hand you our No. 18,497 on Germ. Am. Bank, $776 12
½ prem. . . 3 88—$780
In returns for 3 coupons each $40 . . $120 00
Less express charges . . . . 3 50—$116 50

We hand you our No. 18,502 on Germ. Am. Bank, $116.21, ¼ per ct. prem. 29, $116 50.

Yours, truly,

(Signed) THOS. P. MILLER & CO.

Testimony of Treasurer.

Alonzo L. Willoughby, a witness called for Alexander Duncan, and sworn, deposes and say:

Q. Were you in 1874 an officer of the Mobile and Ohio Railroad Company, and if so, in what capacity did you act? Were you in that office before and since?

A. I was, secretary and treasurer, before and since.

Q. Are you now in the office or employment under the trustees and receivers, and if so, what?

A. I hold the office of treasurer for the trustees and receivers.

Q. Please state whether you have been in the habit of paying the coupons of interest for that company for several years previous to 1874, as treasurer.

A. I have.

Q. Please state, previous to 1874, where and in what manner the coupons were paid.

A. The coupons were paid at my office, also in New York and London.

Q. Were those paid in Mobile, paid by you?

A. They are prior to 1874; the coupons were taken up by me and registered and paid.

Q. Were the coupons of 1874 on the first mortgage bonds due 1st May and 1st November, paid by said company, or by you?

A. They were not.

Q. Please state what occurred in respect to those coupons in May and November, and if they were taken up, how it was done, and by whom. In what manner?

A. The coupons due in May and November, 1874, were presented to me at my office for payment by parties claiming to be the owners or agents through the banks who held them for collection, also, through the express company. Some were sent direct to me by mail or express. I received the coupons, sorted them in envelopes, describing their contents, and told the parties to present them to the Bank of Mobile, who were paying them. To those parties who sent them by mail, I enclosed them in similar envelopes and sent them to the Bank of Mobile for collection, who invested the proceeds in their checks on New York, which I enclosed to the senders.

Q. Please state, if in any one instance you paid any of the coupons above mentioned at your office?

A. I did not.

Q. Did you ever, in any single instance, give a check, as treasurer of the company, to any of the holders of said coupons of May and November, 1874?

A. I did not.

Q. Did you ever, in any instance, give a check or order on T. P. Miller and Company for payment in gold of any of said coupons?

A. I did not.

Q. Please state whether the parties were informed, and particularly when they inquired, that the company did not pay said coupons?

A. They were so informed.

Q. Please state if any notice in writing was put up in your office in respect to payment of said coupons?

A. There was.

Q. Was there such notice at both periods, May and November?

A. There was no written notice in May; there was in November.

Q. Where was said notice put up or fixed?

A. It was pasted on my counter, in full view of all.

Q. What was the purport of the notice?

(The question objected to on the ground that it is not competent to give the purport of a written notice. The notice must be produced.)

A. That the coupons were being purchased by the Bank of Mobile, or at the Bank of Mobile.

Q. Have you said notice or a copy of it; is it in existence, or has it been destroyed?

A. I am not positive, but think it is destroyed. The notice was pasted on the counter, and gradually wore out.

Q. How were the coupons of years prior to 1874 paid by you as treasurer?

A. By checks on different banks where I had my deposit.

Q. Was one of those banks the Bank of Mobile?

A. It was.

Q. Had the railroad company a current deposit account with the Bank of Mobile, and for what time?

A. Yes, for many years, and up to the neighborhood of the time the trustees took charge.

Q. Did you as treasurer of the Mobile and Ohio Railroad Company refuse payment of the May and November coupons, of 1874 in any instance?

A. I told them when asked that the company were not paying them—that they could go to the Bank of Mobile and get their money, conveying the impression to all that the company was not in funds. That is the impression I intended to convey and believe I did so convey it, because parties went to the Bank of Mobile to collect their coupons instead of coming to me.

Q. Is that all the refusal of payment you made?

A. It is, according to my recollection.

Q. Will you positively swear that you stated to all parties presenting coupons to you in May and November, 1874, that the company was not in funds?

A. I cannot positively as to May, but I can as to November, or words to that effect, and referring, also, to the notice pasted up.

Q. Then you do positively swear that you stated to every party that presented coupons to you for November, 1874, that the company was not in funds?

A. Verbally, I believe I did; I can swear it to the best of my knowledge and belief, especially to those who asked information.

Q. Did you not, in all cases, tell parties presenting coupons to go to the Bank of Mobile with the envelope enclosing coupons and they would get their money?

A. I did—with the remark that the Bank of Mobile was paying the coupons—endeavoring to leave the impression that the company was not in funds; I am positive that I told some of them, too.

Q. Did the Mobile and Ohio Railroad Company announce themselves insolvent in May, 1874, or November, 1874?

A. Not to my knowledge.

Q. Was any notice ever given by you, as treasurer of the company, that the coupons of May and November, 1874, were being purchased by Duncan, Sherman & Co?

A. No.

Q. Was there, to your knowledge, any understanding or agreement between the railroad company or its officers, and the Bank of Mobile or its officers, that the bank would pay to the bearer of the envelopes, inclosing coupons with your recommendation indorsed thereon the amount indicated by such memorandum?

A. My knowledge and understanding was that the

Bank of Mobile would pay the coupons after having been verified by me. I simply used this envelope, having a quantity of them on hand, as a means of describing them. I don't recollect of any particular form or statement to be used, or of any understanding to that effect.

Q. By whom were those envelopes gotten up and prepared, and for what purpose.

A. They were prepared by me and originated with me for my own convenience, and for the purpose of securing coupons from loss after being paid. They were simply used between me and the auditor to preserve the coupons from loss; similar ones were used by me prior to 1874; they were paid by for the company like all other blanks.

Q. Were not the envelopes inclosing the coupons delivered by you, with your memoranda, endorsed thereon, to the bearers of the coupons, to be by them presented to the bank in order to get the amount of money indicated by the memorandum?

A. They were.

Q. Was not that circular letter the first notice given to the public, that the Mobile and Ohio Railroad Company could not pay its interest on its bonded indebtedness?

(Objected to on the ground that there is no such circular letter in evidence—the fact is assumed and evidence irrelevant.

A. I think it was the first public notice.

Q. There was such a letter, was there not? Can you produce a copy of it?

A. Yes. I here produce the copy.

(Copy produced and marked Exhibit 1.)

Mobile and Ohio Railroad Company,
Mobile, Ala., March 1st, 1875.

To the holders of second mortgage bonds:

The depression in business all over the country, and especially in the Southern portion of it, resulting, of necessity, in a great decrease of earnings, compels the board of directors reluctantly to ask your indulgence on coupons due this day. An increase of earning from an improved condition of business, with an economical administration of affairs, combined with the assurance of the board that all receipts will be faithfully applied to the payment of the liabilities of the company, will we trust, induce you to give us the indulgence, and thereby enable us to protect second mortgage as well as first mortgage bondholders, who have the precedence over you.

The value of our property and its earning power is beyond question, and with the return of prosperity to the country, is ample for the protection of all, if we are left free from the embarrassments of litigation.

By order of the board:

A. L. WILLOUGHBY,
Treasurer.

Q. Why was not public notice given that the company would not pay its coupons of May and November, 1874?

(Question objected to for incompetency, and because the witness is not competent to answer it.)

A. I don't know.

Q. Do you not know, or at least believe, that the bondholders of the Mobile and Ohio Railroad Company believed the company to be solvent, as to them, until the issuance of the circular letter just before March 1st, 1875, announcing that the company would make default on the second mortgage coupon due March 1st, 1875:

(Objected to on the ground that it is a question that the witness is not competent to answer. That it assumes a fact not in evidence, and for irrelevancy.)

A. I do not know what the bondholders believe.

Q. The question is not as to what the bondholders believe, but what you know and believe yourself?

A. Not knowing what they believed, I have no opinion at all.

Q. Do you believe, or have you any idea, that the Mobile and Ohio Railroad Company was generally believed to be insolvent as to its bonded debt, prior to the issuance of the circular just before 1st March, 1875?

(Objected to, for incompetency and irrelevancy.)

A. I did not believe so. I have no idea what the impression of the public was.

Q. Will you say, on your oath, that you conveyed, or attempted to convey, the impression to any bondholder in the year 1874, that the company was unable to meet its interest on its bonded debt out of its net income?

(Objected to, for irrelevancy.)

A. I don't believe I ever did, as I never kept the books.

Q. Mr. Willoughby, on pages 26 and 27 of your cross-examination, mention is made of your telling every one who presented coupons what is therein stated as to mode of payment, please state what is the meaning of your answer and whether you intend it to be that you gave the information to every one who presented coupons, literally speaking, or to those only with whom you did converse on the subject?

(Question objected to by counsel for Mr. Belloni and trustees of the second mortgage, on the following grounds: that it is incompetent for a witness to state the meaning of an answer to a given question and to state what he intended the answer to be. The answer speaks for itself and the witness is bound by it.)

A. My answer is, that to those who asked for information I gave them the information that the company were not paying their coupons. I believe that I intended to convey the impression to all that I saw or conversed with. I was not present all of the time. While I was absent to dinner or on business, Mr. Bull, my clerk, was in the office, who attended to those calling. I do not mean to be understood that I conversed with every person, literally, who presented coupons.

Q. With whom did you converse on the subject of the paying of the coupons by the Bank of Mobile? Name any party, holder of coupons, to whom you gave notice verbally that the company was not in funds.

A. It is impossible for me to particularize after such a lapse of time. As I said before, to those who asked for information I gave it.

Q. Did you, in any instance, call the attention of any coupon bearer to either of the notices you swear were put up?

A. I believe I did.

Q. Name the instance; give the name of the party whose attention you called to either notice.

A. The same answer as before: lapse of time.

Page 223 to 233, and 243, 244.

Testimony of Edward B. Gale,

Teller of Bank of Mobile.

Q. Please state whether you know of the transactions in that bank, by which the coupons of the first mortgage of the Mobile and Ohio Railroad Company, payable on the 1st May and 1st November, 1874, were taken up from the holders?

A. I know nothing of any transactions or arrangements made; I only know that I paid the coupons for gold and currency for May and November, 1874, upon such certificates as these which came from Mr. Willoughby, of the railroad office. [The certificates exhibited, and two attached.]

The certificates were presented by the coupon holders. As I understand it, the coupons were presented to Mr. Willoughby, who enclosed them in the envelope, and the parties brought them to me, and I paid on the envelopes, with the endorsement on them, by orders of the president.

Q. Were not the coupons surrendered to you by the persons whom you paid?

A. The coupons were enclosed in these envelopes, and were surrendered to me.

Q. Did any of the holders make any inquiry of you as to why it was that these coupons were paid at the bank instead of the railroad company?

A. I can't say that they did, only in this way: they would bring their coupons to the bank to get their money on, and I would send them to the railroad company; they wanted to know why I would not pay, and I told them they had to take them to Mr. Willoughby to see if they were correct, and he would examine them and enclose them in an envelope, and on that envelope I would pay the money for them, just exactly as they are done here, (referring to the envelope.) pp. 216, 217.

Testimony of William H. Pratt.

Q. You were chairman of the Finance Committee Mobile and Ohio Railroad Company throughout the months of May and November, 1874?

A. Yes.

Q. Was it intended by the directors Mobile and Ohio Railroad Company, in May and November, 1874, that any inability of the company to pay the coupons for those periods on the First Mortgage Bonds should be publicly known?

A. I speak for myself. Of my own knowledge there was no intention to conceal it from the public. I believe it was intended it should be known.

Q. What was done (if it was intended it should be known) to make it publicly known by the directors Mobile and Ohio Railroad Company?

A. There was no publication by the press or any written notice that I am aware of.

Q. Was there any concealment or withholding of any information by you as to the real nature of the transaction by which the coupons were taken up?

A. There was no concealment; if I had been asked I would have stated that I was purchasing for Duncan, Sherman & Company, or on account of whom it may concern, according to their instructions.

Q. Was any question made to you by any of the holders of said coupons as to the mode and manner of their being taken up?

A. I have no recollection of any questions; certainly no objections were made.

Q. Can you state whether or not it was generally known that the company was not paying its interest in May and November?

A. That, I can't answer; it is impossible for me to tell how general the information was.

Q. Were you a director of the Mobile and Ohio Railroad Company during the whole of the year 1874?

A. I was. From the election in March or April, 1874.

Q. Was William Butler Duncan, of the firm of Duncan, Sherman & Company, a director during the whole of that year?

A. Mr. Duncan was a director and president after the election in March or April.

Q. When did it become known to the directors that the company would be unable to pay its coupons?

A. Immediately after the installment of the new board of directors it was found that the company would be unable to pay the interest that fell due on the 1st of May.

Q. When was Mr. Duncan first elected president of the company?

A. At the first meeting of the new board.

Q. Was there or not any agreement or understanding that Mr. Duncan or his firm would supply money to meet the coupons? If so, what was it?

A. Of my own knowledge I can't say that any negotiations were going on prior to the meeting of the new board. Negotiations were sanctioned by the new board with Duncan, Sherman & Company, or William Butler Duncan, to meet the payment of coupons falling due on the 1st of May. I don't recollect any agreement. I know of no agreement made by the board, and I presume that it was understood that Duncan, Sherman & Company were to purchase the coupons falling due May, 1874, and hold the same uncancelled for their security. I presume the negotiations were carried on by the vice-president, Mr. Walker, in writing.

Agreeable to said instructions, I instructed the cashier of the bank to pay to parties who might present the coupons, after they had been presented at and verified at the railroad office, the amount for which they called, upon surrender of the coupons. Said amounts were charged to the account of Duncan, Sherman & Company, and the same reimbursed to the bank by drafts on their house in New York, drawn by the president of the bank. pp. 211, 213, 565.

Testimony of William B. Duncan.

The firm of Duncan, Sherman & Co. had previously, in November, 1873, advanced to the Mobile and Ohio Railroad Company to enable them to meet the interest maturing November 1, 1873, and January 1, 1874, the company agreeing to remit the same out of earnings and from any other sources at their disposition. Duncan, Sherman & Co. made during the whole of the period extending from 1873 to May, 1875, frequent and large advances to the company for the general purposes of their business. The remittances made by the company during 1874 to Duncan, Sherman & Co. and deposited by the company with the Bank of Mobile to the credit of Duncan, Sherman & Co., were in payment to Duncan, Sherman & Co. of the moneys advanced by them to meet the coupons of November, 1873, and January, 1874, in accordance with the agreement made by the company with Duncan, Sherman & Co. at the time of taking up said coupons, and somewhat for the purpose of transmitting funds to Duncan, Sherman & Co. for the general purposes of the company; and any such remittances on deposits as were not applied to redeeming the coupons of 1873, we appropriated under the explicit direction of the company at Mobile. As I have before stated, I had frequent conversations with the holders both before I determined to purchase and at the time of purchasing such coupons, stating generally the condition of the company; its inability to meet its interest; its cash, I endeavor to obtain advances for account of the company from several parties. I would name Mr. William H. Hays who was at that time interested in the securities, and through Mr William W. Clark and George T. Bonner, Messrs. Clark and Bonner were brokers who knew many of the holders of the securities, but was unsuccessful in obtaining assistance through them for account of the company. There was no concealment with reference to the affairs of the company; its financial condition was well known to all those who cared to inquire; the non-payment of the coupons for the year 1874, and January, 1875, was well known and was distinctly referred to and mentioned in the report of 1874, a copy of which is produced to be mailed and annexed as part of my deposition.

I have reason to believe that the parties who purchased the coupons in London and Mobile, notified inquirers that they were purchasing the coupons for Duncan, Sherman & Co.

I instructed my clerks to give this notice to the parties, and I gave the notice to the parties who spoke with me personally.

The firm of Duncan, Sherman & Co., had to do, in the years 1874 and 1875, with the getting together and acquiring the ownership of the coupons maturing at the dates mentioned in the inquiry. Previous to and at May, 1874, my firm was largely interested in the securities of the Mobile and Ohio Railroad Company. I was applied to to take the presidency of the road at that time. The directors also applied to my firm to advance large sums of money to meet the indebtedness of that company, and also to meet the interest which was about to mature on the 1st of May, 1874. My firm was at that time in considerable advance to the company, and agreed in the latter part of April, 1874, that they would purchase the coupons about to mature on the 1st of May, and not press the company for payment then. The company offered and did assign to me, for the protection of my firm for past and future indebtedness, the claim they had upon the United States Government. I produce a copy of that assignment, to be made part of annexed to my disposition.

The facts I have mentioned were of course known to the directors of the company, and, I believe, to the trustees of the mortgage bonds. I am certain they were known to one of the trustees at least.

The foregoing facts in relation to the purchase of the coupons were stated to any inquirers, and were well-known to all those who were conversant with the affairs of the company. The directions given were by me as senior member of the firm of Duncan, Sherman & Co.

Pp. 304, 310, 314.

Testimony of Peter Hamilton.

Q. Please state whether or not you were the holder of first mortgage bonds, or agent for others holding them, and did you present any coupons for payment in May or November of that year; if so, state all you may know in relation to the payment of said coupons, or the manner in which they were disposed of in that year?

A. In behalf of my wife and others I held nine sterling bonds and seven interest arrearage bonds. On or about the 1st May, 1874, I presented their then maturing coupons to the treasurer of the company. He requested me to leave them until he could examine them. I did so. I called, probably the next day, when Mr. Willoughby handed me the coupons back in an envelope, with some memorandum of numbers, and I think my name was written on the envelope, and told me to carry the coupons to the Bank of Mobile and I would get the money for them. This was different from the former mode of collecting the interest, and I enquired whether the railroad was paying its interest. The information I received was that the Bank of Mobile was buying the coupons for Mr. Duncan, or his firm, or associates. I carried the envelope with the coupons to the Bank of Mobile, and presented them to Mr. Gale, the teller, who gave me the money for them, giving me a check on T. P. Miller & Co., for the gold portion. The occurrence with regard to the November coupons was very much the same, the only difference that I remember being this: that, to my question whether the same thing was being done then as in May, Mr. Willoughby—my recollection is—raised my arm, which was on the counter, and directed my attention to a notice which was lying on the counter, stating that the Bank of Mobile was buying, or purchasing, or taken up, the coupons—I don't remember the precise language of it.

Q. Do you recollect of seeing, also, a written notice, pasted upon the glass door on entering the treasurer's office, that the coupons were being paid by the Bank of Mobile, or being taken up by the bank?

A. It may have been so; I don't recollect. pp. 248, 249.

Sales of coupons to Duncan, were made by

Bonner, Iselin, Hays,
Plock and Murdock, p. 370 to 381.

Payments in New York, in May and November, 1874.

The coupons had been as matter of custom, paid at the office of Duncan, Sherman & Company, in New York. WILLOUGHBY. p. 224.

Duncan says he told his clerks to inform persons inquiring that they were purchasing. That the transaction was secret is shown by the testimony of the following witnesses, and by the proof of value of the bonds in the New York market.

p. 309.	DUNCAN,
pp. 664, 666.	DOUGHERTY,
p. 685.	THORBURN,
p. 738.	OLIVER.

Boyd testifies he said to bondholders that Duncan, Sherman & Co. were buying coupons. p. 307.

Testimony of Caleb Oliver.

Q. What took place when you presented your coupons to Duncan, Sherman & Co. for payment?

A. I inquired—

(Objected to by Mr. Bangs as incompetent.

(Answer taken subject to objection.)

A. I inquired in the banking house of Duncan, Sherman & Co. if they were paying the coupons of the Mobile and Ohio bonds then that day. I was told they were not paying them there, but were paying them around in Pine street, around the corner; No. 11, I think it was. I then went to No. 11 Pine street, and stepped up to the desk where they were paying something, I don't know what. I inquired if they were paying the coupons of the Mobile and Ohio bonds, and they said they were. I then took my place in line I think, at the time.

Q. And they were paid?

A. They were paid there; yes, sir.

Q. Was anything said when they were paid?

A. No, sir, there was nothing said to me.

Q. And nothing said before you went around to No. 11 Pine street, beyond what you have already testified to?

A. No, sir. pp. 758, 764, 765.

Payment of November Coupons.

LONDON.

DUNCAN, SHERMAN & CO., TO CREDIT FONCIER.

The arrangements for the payment of this coupon, were initiated by the following dispatch to the Credit Foncier of London:

"Will next week cable deposit with you £10,000, and further amounts as advised of purchase of November coupons. Murdock will give details of coupons. Have told Union Bank to refer holders to you."

At the request of Duncan, Sherman & Co., the disclosure of the situation to bondholders was confined to the following:

OFFICE OF DUNCAN, SHERMAN & CO., Bankers,
New York, October 22, 1874.

To the Credit Foncier of England, Limited:

Gentlemen—We have instructed the Union Bank to refer parties holding Mobile and Ohio Railroad Company coupons due 1st November, and presenting the same to them for payment to you, stating that you will purchase the same at their face value.

Simple notice as follows at your coupon desk will be all sufficient:

"Coupons of the Mobile and Ohio Railroad Company, due November 1, 1874, of £6 15s., £6, and £3 each, will be purchased at their full value."

This is sufficient notice to the parties holding the same that the coupons are not paid by the company, which is the position we wish maintained until reimbursed for the advances.

DUNCAN, SHERMAN & CO.

pp. 418, 419.

Testimony of J. H. Webster.

To the third interrogatory, he saith; The Credit Foncier of England, Limited, during the year 1874, became possessed of some coupons issued by the Mobile and Ohio Railroad Company, maturing the first day of November, 1874, and the first day of January, 1875.

To the second cross-interrogatary, he saith: I was not present when the coupons referred to in the last interrogatory were received or paid. I can only state that nothing would transpire on such an occasion beyond the handing over of a ticket by the clerk who received the coupons in exchange for the same when they were left for examination, and that on their respective owners or their agents calling for their money, the said ticket was returned to the clerk, and a check would be handed to the bearer of the ticket, payable to the order of his principals for the face value of the coupons, less income tax. p. 399.

Arrangement between Railroad Company, and Duncan, Sherman & Co.

Testimony of Vice-President.

I was Vice President of the Mobile and Ohio Railroad Company during 1874, and was not in any other business.

My only connection with the coupons referred to was as Director and Vice President of the company, and my agency in relation to them was confined to efforts in my official capacity to effect some arrangement through Mr. Duncan in New York BY WHICH THE CREDIT OF THE COMPANY COULD BE PROTECTED AGAINST THE DEFAULT OF PAYMENT OF INTEREST COUPONS from resources outside of the resources of the company, which were inadequate to that end. p. 321.

Appropriation of Net Earnings.

Minutes of a meeting of the board of directors, held at Mobile, 28th April, 1874, at which were present, John J. Walker, vice president and president *pro tem.*, Henry Hall, A. Murdock, Wm. D. Dunn, Moses Waring, Wm. H. Pratt and A. J. Gillespie, directors—the following resolution appears :

"*Resolved*, That the net earnings of the company, after payment of the current expenses, be pledged for repayment of advances obtained by the president for the purpose of meeting the May interest, and that the floating debt in the shape of bills payable, be extended so far as practicable, to next winter, and that credits so extending shall be secured by pledge of consolidated bonds in the hands of Bank of Mobile, or at such other bank or place as may be determined by the vice president, in trust, at the rate of 75 cents." Which stands attested by A. L. Willoughby, secretary. p. 596.

This was on the same day on which Duncan had telegraphed Pratt who was there present—

Duncan & Elliott's Relations of Trust.

William B. Duncan had been a director since 1872. He was president at the time of the above notice of default. pp. 515, 517.

A. F. Elliott became a director in April, 1874, at which time Duncan had become president. p. 517.

Duncan and Elliott were members of the firm of Duncan, Sherman & Co. pp. 309, 533.

Duncan, Sherman & Co., were the financial agents of the company. pp. 240, 651, 652, 231.

Duncan was the absolute controller of the financial affairs of the company. pp. 585, 650, 545.

Opinion 1033.

Report of the Directors for the Year 1874,

did not appear until April 21st, 1875. This afforded the first information on the subject of the resources of the company for 1874. It showed net earnings amounting to $707,865.04.

It purported to account for the exhaustion of these earnings, and other receipts, as follows:

Interest coupons, matured in 1872 and 1873, not charged or mentioned in report of 1873	$139.296 35
Interest coupons, matured and paid in 1874	197,970 70
Interest paid to secure renewal of Floating Debt, and to prevent proceedings against the company on the part of holders	118,346 97
Paid on account of Floating Debt, to prevent sacrifice of securities belonging to Company	281,948 85
p. 281.	$737,562 87

Reductions of Floating Debt.

Jan. 1, 1874, it amounted to..........	$1,451,147 77
" 1875, it had been reduced to...	1,166,492 19
May 8, 1875, " " ...	820,932 96
Total reduction.................	$631,214 81

Misappropriations of Earnings.

" Office of the Mobile & Ohio Railroad Co.,
Mobile, November 5th, 1874.

A special meeting of the Board of Directors of this Company was held this day.

Present, Wm. B. Duncan, President, J. J. Walker, Vice President, Messrs. W. D. Dunn, W. H. Pratt, W. P. Halliday, A. J. Gillespie, M. Waring, A. Foster Elliot.

The Finance Committee submitted a report through their Chairman, the President; which, on motion, was received and ordered to be spread on the minutes.

The Committee to which was referred the question of the Finances of the Company, with power to act, have to report :—First, That continued depression of business during the first nine months of the year 1874, so far diminished the gross receipts, as to render it impossible for the Company to meet to any material extent, its maturing indebtedness. For the same reason, the Company has been unable to pay the interest coupons which have matured since February last. These coupons are now held by the parties who purchased them, and who have demanded and now demand payment therefor. The total net earnings of the Company for said nine months, which by the statement, appear to be between $300,000 and $325,000, have been appropriated to the reimbursement of coupons matured previous to February last, and held by the purchasers and to the payment of the class of claims against the Company which was essential to the preservation of friendly relations with connecting roads, and to reduction of the floating debt. p. 475.

Duncan, Sherman & Co. absorbed earnings of 1874 on the following claims:

On company's Demand Notes	$150,000 00
Interest on same	10,000 00
Interest and commissions on general account	19,245 39
Transfer of acceptances	32,837 63
Sundry items (19)	13,233 18
Loans made in 1873	139,256 00
pp. 286 to 291.	$364,572 20

On May 1, 1875, when the default occurred, Duncan, Sherman & Co. had brought themselves into the company's debt on the book account, $17,363. p. 603.

May Coupons really paid, with earnings of Railroad.

Duncan, Sherman & Co., held for account of the Mobile and Ohio Railroad Company the following amounts about the time of payment of May coupons of 1874:

April 30,	Sales	$15,000,	Convertible	Bonds	'80,	$12,000
	"	50,000	do.	do.	'80,	40,000
	"	15,000	do.	do.	'80,	12,000
	"	2,000	do.	do.	'80,	1,600
May 30,	"	750				750
	"	25,000			'80,	20,000
p. 290.						$96,350

November Coupons.

MOBILE.

The Mobile and Ohio R. R. Co. deposited to credit of Duncan, Sherman & Co., in Bank of Mobile, the following amounts at the times of payment on November coupons, as appears from account of Duncan, Sherman & Co. :

To Mobile & Ohio R. R. Co.

1874	*Warrants Deposited in Bank of Mobile.*	
Oct. 31 to Nov. 23.	Warrants deposited in Bk. Mobile; No. 4394 for $2,000; No. 4404, 1,620 20	$3.620 20
	4408 for 1,004. No. 4413, 16.257 44	17,261 64
	4440 for 25,003 31. 4482, 2,550 85.	27,554 16
	Warrants deposited in Bk. of Mobile	13,152 53
	do. do "	19,395 00
	Warrants. do. " No. 4495 for $13.026 36 4503 " 5.238 79 4511 " 6,878 87	25,144 02
Dec. 1-8	Warrants deposited in Bk. Mobile. No. 4518. 3,000, No. 4569, $7.916 84	10.916 84
10-12	Warrants Cr. No. 4578, $12,460 78 4584, $9,036 43, 4593. 5,035 89	26.532 80
16-28	Warrants deposited to credit. No. 4625. $11.000, 4638, $7,500	18,000 00
	4651. $10,600, 4658, $5.000, 4666, $3.000	18,600 00
	4669, $2,500, 4675, $12.852 51	15.352 51
	4677, $3,970, 4682, $10,000	13,970 00
30-31	Warrants deposit to credit No. 4691. $20,000, No. 4703, $7000.	27,000 00
p. 291.		$236.999 50

M. & O. Company remitted following moneys to Duncan, Sherman & Co. about the time of payment of November Coupons, as appears from the following account :

DUNCAN, SHERMAN & Co.

1874. To the MOBILE & OHIO R. R. Co.

Oct. 12-19	Warrants 4307, 4311, 4314, 4315, 4335, 4339, 4341, for $2,500 each remitted	$17,500 00
" 20-26	Warrants 4346, 4347, 4349, 4350, 4363, 4374, for $2,500 each, remitted	15,000 00
" 27-30	Warrants No. 4377 for $2,500, No. 4380 for $4,000, No. 4382 for $6,000, 4383 for $5,000, remitted	17,500 00
	p. 291.	$50,000 00

THE NOVEMBER COUPON ACCOUNT OF THE BANK OF MOBILE shows payments of Coupons on the following dates in Mobile :

DUNCAN, SHERMAN & Co.

1874 WITH BANK OF MOBILE, CR.

Nov. 9.	154 coupons at $40 each	$6,160 00
	160 coupons at $40 each	6,400 00
11.	M. & O. R. R. coupons paid to Saturday night, November 7th	39,527 75
	M. & O. R. R. coupons paid to November 9th	8,833 00
	M. & O. R. R. coupons paid to November 16th	4,555 00
12.	Gold coupons paid 10¼ per cent premium on same, $3,607 50-369 77	3,977 27
14.	M. & O. R. R. coupons	1,956 00
17.	do. do.	1,648 00
18.	Gold coupons paid 11 per cent. prem. on same, $1,690 00-$185 90	1,875 90
24.	M. & O. R. R. charged	1,436 00
Nov. 24.	To balance this day.	
Dec. 3.	Coupons M. & O. R. R. Co	1,608 50
28.	do. do.	1,015 50
28.	Gold coupons and 12½ per cent. prem. on Gold, $292 50-35.10	327 60

1875.		
Jany. 4.	Coupons M. & O. R. R. Co.	3,120 00
8.	do do.	288 00
8.	Gold coupons and 12½ per cent. prem. on gold, $65 00–$8 12	73 12
Feb. 19.	Coupons M. & O. R. R. Co	476 00
	2 gold coupons at $32 50 and gold 14¾ per cent. prem., $65–9 58	74 58
Mch. 8.	20 gold coupons at 32 50, and gold 15 per cent. prem., $650–$97 50	747 50
	6 coupons at $40 each	240 00

p. 567.

Company's identical money used to pay coupons.

COUPON ACCOUNT.

Duncan, Sherman & Company,
In account with
The Bank of Mobile.

Transferred from Individual Ledger	$45,882 45
Deposited by Mobile and Ohio R. R. Co.	2,550 85

p. 567.

Testimony of Owen McMahon.

Q. Who was it provided the means to pay said coupons to the holders, and who reimbursed the bank for the amount paid for taking them up?

A. Duncan, Sherman & Company provided the money; the Mobile and Ohio Railroad provided some; they deposited in 1874 some forty-five thousand eight hundred dollars to the credit of Duncan, Sherman & Company. p. 214.

Q. Explain item, "November 13, by transferred from individual ledger, $45,885.45."

A. That was an amount standing on the individual ledger to the credit of Duncan, Sherman & Company, deposited by the Mobile and Ohio Railroad Company, and transferred erroneously by the book-keeper to the coupon account on the general ledger. The amounts should have been held subject to the drafts of Duncan, Sherman & Company, of New Orleans. The error was corrected in the accounts sent to Duncan, Sherman & Company. p. 564.

Duncan bought claims against company in 1874 and paid them to himself.

Testimony of J. H. Masson.

Q. To whom or to what party or parties did you trade or sell this paper in so reducing your line?

A. I sold a great deal of that paper to the brokers here. I believe I traded and sold some in New York; I believe I traded some with Mr. Duncan. I traded or exchanged it with the brokers whenever I could. I was about eighteen months handling that paper.

Q. How much of that paper did you sell or trade Mr. Duncan?

A. I exchanged twenty-five thousand dollars of the paper for twenty-five thousand Mobile County Bonds.

Q. When was that?

A. I think it was some time about the middle of 1874.

Q. Did the paper that you traded with Mr. Duncan for these County Bonds bear the endorsement of your bank?

A. No, it was exchanged for the bonds on its own merits. We never endorsed any railroad paper.

Q. Do you know what specific pieces of paper you traded for the bonds?

A. I don't think I could show. I think there is no record on my books. The denomination of the paper was somewhere in the neighborhood of $37,000, I think.

Cross-examined by Mr. Stewart:

Q. I understand you to state that you exchanged with Mr. Duncan about $25,000 of paper for a like amount of county bonds?

A. Yes.

Q. What is your recollection of the then market value of Mobile County Bonds?

A. It's pretty hard to recollect. I suppose nominally 80 or 90 cents. The paper also sold at depreciated value. We considered it about an even exchange.

A. I am pretty well satisfied the railroad had nothing to do with them; for Mr. Duncan's agent had tried to sell them to me a long time before. They were a lot of fifty bonds of one issue that had been in the hands of Duncan, Sherman & Co. for years. p. 486.

Duncan was interested in concealing knowledge of the company's condition, so that he might market his 9000 shares of stock. (Duncan, p. 621 to 623.)

The following correspondence shows that it would have conflicted with the stock speculation on foot, to have allowed knowledge of non-payment of first mortgage interest to become public.

Mobile, February 12, 1874.

Wm. B. Duncan, Duncan, Sherman & Co.:

Received yours. Papers for stock exchange were left with chairman of committee. Bonner introduced me to him and knows all about it

(Signed) A. MURDOCK, President.

Wm. Butler Duncan, Esq.:

Dear Sir—By the mail, Mr. Beers sends you the papers asked for in your favor of February 25th, for application to stock exchange.

The name of the registrar is left blank for you to fill up, as I have forgotten the given name of Mr. Hays or the bank he represents. There is also wanting a letter to registrar, asking him to furnish the amount of stock registered; please ask Col. Walker to address Mr. Hays the necessary note. We have, of course, been rather busy in getting up an elaborate and accurate statement, and one which I think will meet your expectations. We are pressing the mortgage as fast as possible; the recording in all the counties in the four States is a job, but we are pushing it vigorously, and will send it to you at the earliest moment.

(Signed) A. MURDOCK.

Stock, of which there is little on the market, is gradually improving, and I am told is quoted at 23—no quantity could be purchased at that. The papers necessary to put it on the stock board are sent you some days, and I hope were found complete. As the planting season is upon us, business of course falls off; but the energy being used for a greater production along the line, was never so great, while immigration is looking towards us more than ever before: Our agents are now in the counties getting the mortgages recorded.

(Signed) A. MURDOCK.

MARCH 21, 1874.

Wm. Butler Duncan, Esq.:

Dear Sir—There is a strong disposition to invest in our stock here. There are those here, and along the line, who have idle means to a greater or less extent, who regard the stock as a good investment. A day or two since a gentleman came here from the interior. with the money to purchase 50 shares at 25; he got it at 21½, and told me he should have given the 25. Orders went from here yesterday, through a broker, to purchase in New York at 22½, what amount I do not know.

There is none of consequence offered here, and if the slightest activity, or inquiry in New York for the stock, it would advance at once. I am told that convertible bonds have been quoted from New York to our brokers here at 92½. If the stock was advanced, of course the bonds would follow. Not knowing your plans, I am saying and doing nothing, only to say that the stock is worth more than it is selling for. Your Mr. Sherman will be with you before this reaches, and from him you will learn of the destructive floods of rain in our section. Our line was exempt from the almost general damage, and the only loss to us is the difficulty of getting to and from our stations, and consequent loss of business.

(Signed) A. MURDOCK.

MARCH 5, 1874.

We desire to interest, to answer definitely, On the points inquired of, I infer from what I hear from Mobile that you are halting in your policy of requiring your creditors to extend your notes, as if your were certain that the negotiations I am endeavoring to make for the company were already successful. This is not so, nor can I make much progress until I receive the facts which will enable me to obtain a quotation for our stock upon the stock exchange; in the meantime, *all the* resources of the company should be husbanded for a purpose of paying the interest due in May. The company is still indebted to myself and others for some $200,000, advanced to pay November, 1873, and January and March, 1874, interest, and this amount should be reimbursed if the company expect to obtain assistance in paying the May interest. Can you not make further remittances out of your receipts?

(Signed) **WM. BUTLER DUNCAN.**
p. 652.

At this time Duncan, Sherman & Co. held $210,000, and owned $96,000 of convertible bonds, exchangeable by their terms into stock. Hays, Bonner, and others named in the correspondence had just taken convertible bonds at eighty cents on the dollar. p. 509.

Bondholders who purchased after May and November, 1874, had no knowledge of the transactions at those times.

M. PHILLIPI, a witness called for objecting bondholders, sworn, testifies in response to questions by Mr. Andrews :

Q. Have you purchased Mobile and Ohio Railroad Sterling Bonds since November 1, 1874, since or May 1, 1874?

A. I have no recollection ; perhaps I might tell by looking at my books. I have looked at my books, and find I have purchased since 1874.

Q. Did the bonds which you purchased have attached to them the coupons of May and November, 1874?

A. No, I don't think they had any attached of 1874 at the time I purchased, which was March, 1875. p. 560.

H. F. WILSON, a witness summoned in behalf of objecting bondholders, and sworn, testifies as follows :

Q. Did you purchase any First Mortgage Sterling Bonds Mobile and Ohio Railroad Company since November, 1, 1874?

A. Not on my own account.

Q. Then you did on account of others?

A. I acted as broker.

Q. Did those bonds have the coupons of May and November, 1874, attached?

A. As a rule I think they had all the coupons that were in default.

Q. About when did you purchase them?

A. I could not tell without looking at my books.

Q. What do you mean by saying that the bonds had all the coupons which were in default attached?

A. I mean that the unpaid coupons since the road ceased to pay interest were attached.

Q. What was the last coupon attached to the bonds?

A. I think it was May, 1875.

By Mr. Stewart:

Q. You don't know who paid the coupons of 1874, or under what circumstance they were paid?

A. No, I do not. p. 561.

O. F. CAWTHON, being sworn, examined by E. L. Andrews on behalf of L. J. Belloni, objector.

Q. You purchased Mobile and Ohio Railroad sterling bonds subsequent to November 1, 1874?

A. Yes.

Q. You recollect about what time in November?

A. I could not give specific dates.

Q. Have you purchased any subsequent to November, 1874?

A. Yes.

Q. Were the coupons which fell due on May 1 and November 1, 1874, attached to those bonds which you purchased after November 1, 1874?

A. My recollection is that they were not.

Q. Did you purchase any of those bonds on account of other persons?

A. Yes. p. 573.

Custom as to purchases of bonds after public default.

Q. Were there coupons falling due November 1, 1874, attached to the bonds you purchased after that date, or any of them?

A. There were not.

Q. Were there coupons falling due the 1st May, 1875, attached to the bonds you purchased after that date, or any of them?

A. In a single transaction that I have an account of they were not attached.

Q. Did it make any difference in the price, the circumstance of coupons not being attached after the 1st day of May, 1875?

A. Yes, sir; it did.

Q. What?

A. I can't tell you exactly.

Q. Were the coupons attached to the bonds you purchased after the 1st May, 1875?

A. They were, unless by special contract.

Q. I mean the ordinary purchases?

A. When I paid the regular price they were. If I bought them ex-coupon, we had to agree upon what we would allow for the coupon, either 4 per cent., or whatever the coupon would be worth.

Q. What made you say, then, that the market generally was ignorant, if you cannot name a single person?

A. Well, my reason for that is, that when a bond is in default the market knows it, and trades upon that basis; I should have known it myself.

Q. How did you acquire the knowledge of the default?

Mr. Bangs. In 1874.

Mr. Blandy. In May, 1875.

Witness. From the fact that in trading in the bonds they carried coupons that were due May 1875.

Q. Of course, if those coupons had been paid, they would not have been attached to the bonds, would they?

A. That is what I think about it; it would have been a matter of course to me.

Q. So that bonds cannot be sold after a default had taken place in the payment of interest, unless the coupons go with them.

A. Not to be a regular delivery.

Q. What do you mean by "to be a regular delivery?"

A. I mean to say, if nothing is said about the default. If I sell you $10,000 of bonds, and nothing is said about what coupon it carries, you are entitled to all unpaid coupons.

Q. By Mr. Blandy. As well matured, as those to mature?

A. Yes, sir. pp. 665, 677, 701.

Moran's purchases in 1874.

Charles E. Thorburn, testifies: I have spoken to Mr. Duncan prior to this about the condition of the road, and the chance of paying the interest. I was sent by Mr. Moran once to see him; and Mr. Moran sent me to Mr. Duncan and I had a conversation. It was in reference to the purchase of some bonds for a correspondent of Mr. Moran's, in Europe. I went to see Mr. Duncan. I can't tell you whether it was in May, 1874, or November, 1874, but it was during the year 1874; and on the strength of that conversation I suggested—

Mr. Bangs—No matter about the "strength" of that conversation.

Witness—You want to get at it?

Mr. Bangs—I do not want to get at it. I asked you a question and you have not answered it yet.

Witness—If you wanted to find out about the road, I will tell you all about it; all the conversations.

Mr. Bangs—Go ahead. Nobody has interrupted you in stating the conversations.

Witness—All right. This thing is coming back clear to me now. Mr. Moran sent me to see Mr. Duncan and I went to see him. I asked Mr. Duncan in reference to the condition of the road as an investment for the other side. Mr. Duncan told me that he thought the bonds were good; stated that their house was largely interested in the success of the road; and so I reported to Mr. Moran.

Q. Do you mean to say that you told Mr. Duncan or any body else, that you were acting for Mr. Moran?

A. Yes, sir.

Q. You did tell him that?

A. Yes, sir.

Q. You are sure of that?

A. I told him that I came from Mr. Moran, yes.

Q. Mr. Duncan told you they were largely interested in the road, did he?

A. He said they were largely interested in the road.

Q. Did he tell you the nature of the interest?

A. Yes, sir.

Q. Are you sure of that?

A. Positive.

Q. Are you sure that he did not tell you that they had bought the coupons of May, 1874, and were largely interested in that way?

A. I am positive of that, because Mr. Moran would not have bought the bonds if he had known that.

By Mr. Blandy:

Q. What is the exact date?

A. It is May 21, 1874.

By Mr. Bangs :

Q. What were the purchases that were made on the strength of the information obtained from Mr. Duncan?

A. I bought 5,000 bonds at 81 from McGinnes Brothers & Fearing. Mr. Moran saw Mr. Duncan himself also before the purchase of the bonds.

Q. Is that what you mean by the payment ?

A. Yes, sir.

Q. About the time it fell due ?

A. Yes, sir.

Q. Was it before or after ?

A. It was before.

Q. Had you told this to Mr. Moran ?

Q. When was your next purchase after the 21st of May ?

A. The 15th of July.

Q. For Mr. Moran ?

A. For Mr. Moran ; 1874.

Q. Was Mr. Moran the holder of bonds on the 21st of May, 1874 ?

A. I believe so.

Q. Will you just take up the conversation that you were relating, between yourself and Mr. Duncan, and give us your reasons why you are satisfied Mr. Duncan did not tell you that his firm had taken up the coupons of May 1st, 1874 ?

A. Mr. Duncan stated to me that the road was doing very well, and he spoke very well of the road, and I repeated the conversation to Mr. Moran ; and Mr. Moran invested in the bonds, as I understood it, on the strength of that conversation.

Q. On the strength of that conversation ?

A. Yes, sir.

Q. On the strength of your report of it, did he ?

A. Yes, sir.

Q. And you reported to Mr. Moran, in substance, what Mr. Duncan had stated to you.

W. B. **Duncan**, testifies:

Q. You heard his testimony, and heard what he stated took place between you and him at the time, did you not?

A. I did.

Q. Do you wish to be understood as denying that any such conversation took place?

A. Denying the unqualified character of the conversation.

Q. What is your denial based upon?

A. That it was not my habit to make any such unqualified statements as he claims I there made.

Q. But it is not based upon any distinct recollection of the interview with Mr. Thorburn?

A. No; except that I deny that he has a better recollection of it than I would have. pp. 719, 721, 788, 796.

MASTER'S REPORT.

The question appears to be, whether or not the coupons of 1st May and 1st November aforesaid were extinguished by the sums paid to the holders for them, so as to be no longer securities protected by the first mortgage, or whether they stand in claimant's hands as uncancelled, with all the rights of the mortgage, and as all other coupons due and unpaid.

It is in evidence and admitted that the former holders of said coupons have been satisfied and have no further claim, having received the money coming to them for the same.

The evidence shows that the coupons of 1874, are held uncancelled by Alexander Duncan, and were proved by him before the Master as his property. The question, however, seems to be as to the nature and effect of the mode and manner of payment.

As to the mode and manner the evidence is very complete.

For instance, the coupon-holders who presented them for payment at the company's offices in Mobile, were handed back their coupons after they had been verified or counted by the treasurer or his assistant, and placed in envelopes endorsed with memoranda of the number and amounts, and the holders were told to take them to the Bank of Mobile where they would be paid. On presentation at said bank to the teller, the coupons were retained by the bank officer and the bank's cheques or money was given for them. The mode and manner of payment in London and New York was not the usual mode. In London the coupons for May, 1874, were taken up on instructions from Duncan, Sherman & Co. by the Union Bank, and for November by the Credit Foncier. In New York the evidence is that they were not paid in the usual manner, and that the holders were informed that they were being purchased and held uncancelled.

It is in proof that the railroad company did not pay them, and supplied no money for their payment. The May and November interest for 1874, on first mortgage Bonds, stands on the company's books as unpaid and in default. It does not appear that the Mobile and Ohio Railroad Company paid one of those coupons, or that it intended to do so.

It is shown by evidence that the money to take up said coupons was furnished by Duncan, Sherman & Co., out of their own moneys, or from funds furnished by Alexander Duncan and others.

The proof is full as to the intent of Duncan, Sherman & Co., and their agents—the Bank of Mobile, Credit Foncier, &c., with the assent of the company, not to pay or satisfy said coupons so as to extinguish them; but on the contrary, their plainly expressed intention was that they should be purchased and remain uncancelled with all the rights that purchasers would have. Their taking up the coupons without extinguishment was with the consent of the company, by the express agreement with its officers that they were to be purchased with all lien rights as existing mortgage security preserved and held until the company could pay them.

It is not shown in evidence that in any instance the company or its officers retained possession of any of these coupons, but they were received from the parties presenting them, by Duncan, Sherman & Co.'s purchasing agents. There is no proof that they have ever been in the possession of the company since the original holders received the money for them and surrendered them to said agencies.

Evidence was adduced to show that a portion of the original owners did not know that the company was not paying. It appears that some did not know and did not inquire. Others did and were fully informed. Payment was not made at the treasurer's counter as usual. It appears that all who inquired were informed of the nature of the payment. There was evidence to show that a written notice was posted up in view in the treasurer's office. The evidence is full that the purchasing agencies and the officers of the company fully understood the transaction. Evidence offered to show that the matter was kept secret, failed.

The Master conceives that the question does not depend on the fact whether the parties receiving payment, knew who made it. It seems that it is immaterial to the inquiry. The debtor company consented to the transaction, and the party paying did not intend to extinguish the security, which was a negotiable paper passing by delivery. It is sufficient that the parties most interested, viz: the company owing and the party paying the debt, both concurred in the expressed intent that the coupons should be held as a valid subsisting lien, to make it so in this case. It certainly could not have been intended that the lien should be destroyed. The evidence in the shape of telegrams, correspondence and instructions passing between Duncan, Sherman & Company and their agencies in taking up the coupons, and with the officers of the company, prior to the maturity of the coupons, seems to the Master to be conclusive as to the intention to preserve the lien, which intention should govern this case.

There was evidence to show that the company could have paid the coupons, if it would, in preference to other debts which were paid, some of which were unsecured. The Master is of the opinion that it is immaterial whether the company, by better management, could have paid or not. So long as the company, by its own officers, was in possession of its property and income, although subject to be taken possession of by the trustees, and although it may appear that it did pay inferior debts, that is not a matter material and should not be allowed to affect the rights of the claimant.

It is undeniable that the defendant corporation did not pay this debt. The coupon-holders received the money, but it was not the money of the company whose books fail to show the payment of one first mortgage coupon of May and November, 1874, or since those dates. It was claimant's money which purchased the coupons for full value, and he holds them uncancelled with all the rights and liens of the bonds from which they were taken.

The Master therefore finds and reports to the court that the claim of Alexander Duncan for the detached coupons of 1874, which has been objected to on this reference, is a just and lawful claim, and should be allowed with interest from the time or times when due, as a valid subsisting lien of the same force and effect as other coupons of the first mortgage unpaid, with all the liens applicable to said mortgage. p. 165.

DECREE.

1. That the reports submitted by the Master under the orders and directions to him are confirmed, and all the exceptions to the same are overruled.

2. The Court declares and decrees the deed of trust described in the bill executed by the Mobile and Ohio Railroad Company, dated the 1st of November, 1853, and appointing John J. Palmer, William R. Hallet, and Morris Ketchum, the survivors and successors of them, as trustees, is a valid conveyance of the railroad of the said corporation, and of all the property therein mentioned, for the security of the uniform series of first mortgage bonds, and the interest to accrue thereon, therein set forth, and that the said bonds and coupons, including the coupons which became due on the 1st of May and November, 1874, represented as owned by Alexander Duncan, are secured equally and to be ratably paid from the proceeds of the property without priority or preference among them.

3. The Court declares and decrees there was a default on the part of the corporation aforesaid in the payment of the instalments of interest promised to be paid in May, 1874, also in November, 1874, and successively in May and November since that date, and that a title accrued to the trustees under the said deed therefrom to enter into possession of the property and to obtain a decree for the sale of property therein described to be enforced unless the said corporation shall pay the debt which has been ascertained to be due on the said deed of trust by the Master's report in this cause.

7. The Court orders and decrees that the Masters may receive in payment from the highest and last bidder, bonds and coupons which form a part of the first mortgage debt ascertained to be due or owing, by the Master in his report, and sustained by the opinion of the Court, provided, however, that a sum sufficient to pay the costs, charges and expenses of the trust as above mentioned, whether exceeding the said cash deposit or not, and also to provide for the payment of the pro rata dividend which shall be due or owing to

the owners of other bonds and coupons, secured under the deed of trust, must be paid in money.

And provided, also, that if the said mortgaged property shall be bid off, directly or indirectly, for or in behalf of the bondholders and creditors who have or shall have entered into and subscribed the agreement for the re-adjustment of the securities of said company dated October 1st, 1876, commonly called the agreement of re-organization, then in that case all and every bondholder and creditor of said company, not having already entered into and subscribed the said agreement, who shall, on or before the 1st day of September, 1877 next, enter into and subscribe the same and deposit their securities with the Farmer's Loan and Trust Company in the City of New York, or with the Bank of Mobile in the City of Mobile, as provided by said agreement, shall be and they are hereby allowed to participate in said bid and purchase on the same terms and on equal footing in all respects according to the character of their claims respectively with the said bondholders and creditors who have heretofore entered into and signed said agreement.

9. The court orders and decrees: that it appearing to the court that there is a clause in the deed of trust or mortgage described in the bill, saving and reserving the rights and liens that may attach to the roadway and construction thereon in favor of the State of Tennessee, which will exist and attach as a prior lien by statutes of that State, in the event of said State aiding in the construction of the railroad of the Mobile and Ohio Railroad Company, in that State, being a distance of one hundred and eighteen (118) miles, and it appearing that there was such aid, and a claim for a prior lien under the statutes in Tennessee, is the subject of controversy in the Circuit Court of the United States for the Western District of Tennessee, and the parties asserting such prior lien are not before this court, and this claim cannot be settled here.

The court orders, that the sale to be made under this decree be subject to the rights and liens which exists, if any, under the statutes of the State of Tennessee, or in favor of the State of Tennessee, its grantees, or assigns, or the parties asserting such prior lien in so far as the railroad and property effected by that lien are concerned. p. 1041.

ASSIGNMENT OF ERRORS.

First. The Court should not have decreed that there was a default on the part of the corporation in the payment of the instalments of interest promised to be paid in May, 1874, and in November, 1874; but the Court should have decreed that there was not a default on the part of the corporation in the payment of the aforesaid instalments of interest to the bondholders secured by the first mortgage.

Second. The Court should not have decreed that the coupons which became due on the 1st of May, and November, 1874, represented as owned by Alexander Duncan are secured equally and to be ratably paid from the proceeds of the property with the bonds under the mortgage to Morris Ketchum and others, but the Court should have decreed that the said coupons should not be paid out of the proceeds of the property until after the payment of the aforesaid bonds, and are not secured ratably with the bonds.

Third. The Court should have declared and decreed that the first mortgage bondholders with the exceptions proven had not sold their coupons.

Fourth. The Court should have decreed that Duncan, Sherman & Co., and their assignees, were estopped from claiming the said coupons as first mortgage liens.

Fifth. The Court should have decreed that on the marshalling of the assets the said coupons were paid to Duncan, Sherman & Co., and Alexander Duncan.

Sixth. The Court should have decreed that the said coupons were paid by the equitable appropriation of the earnings and assets of the corporation.

Seventh. That the Masters should not have been directed to receive on the sale any commodity, such as bonds, in lieu of lawful money, except by consent of all the *cestuis que trust* represented before the court, *or for the equal benefit of all the bondholders*, according to their holdings.

Eighth. That the Masters should have been directed not to receive the bond bid, except for the amount of the foreclosing mortgage or some other reasonable amount, as a minimum upset price, in order that the bondholders not desirous of becoming purchasers of the property might not be deprived of all substantial share of the proceeds of the sale by a nominal bid, under the terms of this decree.

Ninth. That the Master should have been directed not to receive bonds, in lieu of cash, for any greater value than the dividends such bonds would be entitled to receive from the proceeds of sale. They should not have been directed to be received at their face value under the decree allowing the use of bonds as bid-money.

Tenth. That a trustee should have been ordered to bid for the property for the benefit of all the bondholders alike, to the amount of the mortgage ascertained, payable in bonds, as the equitable measure of securing the bondholders.

Eleventh. That the time for participation by all the first mortgage bondholders in the bond-bid should not have been limited to a shorter period than the time necessary to prosecute an appeal to the Supreme Court, so that the appellants might not, by exercising their right of appeal, lose even those equities secured to them by the decree, in order to provide for their unquestioned interests in the property.

ARGUMENT on the COUPON CLAIMS.

These claims, to the amount of $535,000, are asserted to be subsisting liens under the first mortgage, upon the following grounds :

First.—That they hold the liens of the mortgage by virtue of subrogation.

Second.—By purchase from the first mortgage bondholders.

Neither of these positions ao ~~were~~ sustained by the Circuit Court, but the coupons were decided to be subsisting liens under the first mortgage, upon another theory stated in the opinion.

We will first consider the grounds advanced on behalf of the claimant, and then the doctrine declared at Circuit.

Duncan, Sherman & Co. did not acquire the liens of the First Mortgage on the Coupons of 1874 under the Doctrine of Subrogation.

The principle of subrogation was invoked upon two grounds:

First.—As a conventional subrogation, namely, an agreement of the debtor, without the knowledge of the bondholder, with the party advancing the money to pay the coupons that he should hold them with the same rights that the bondholder had. This is claimed, though such party had sustained no previous relation with the security or with any of the parties interested therein. This was the theory asserted and defeated in the earliest litigations on the subject of detached coupons. It was adopted by the Master in this cause.

The doctrine is said to be derived from the civil law, but no right of subrogation, as matter of law, can be sustained under the equity system of jurisprudence on behalf of a stranger or any one except a party secondarily liable as a surety or a subsequent incumbrancer.

It would be destructive of a mortgage security that the holder of a bond, with a coupon attached, may be deprived of his lien for the coupon by secret arrangement between the debtor and a third party, without his knowledge, so that the pretended payment of the interest represented by the coupon is converted into a mere loan to be deducted eventually from the mortgage security. It is well perhaps that this question should be first presented in this discussion, because it clearly illustrates the entire theory of the claimants in this case.

It must be conceded, as a fundamental proposition, that a creditor can ~~refuse payment~~

~~from any person except the~~ debtor. He can insist upon such a payment as would extinguish the obligation, to wit, the coupon due. Any other theory would be destructive of the rights of a mortgagee. If he could be forced to accept an interest payment from any other person than the debtor, without the extinguishment of the coupon, as a first mortgage lien, he would be subjected to the loss of the most important right inherent in his mortgage, namely, the right to seize and impound the security upon the failure of the debtor to comply with the terms of the contract. What are those terms? To pay the interest as it accrues—to pay it, and, of course, that means to extinguish it. If the debtor is unable to extinguish the coupon, so that it no longer remains a part of the mortgage entitled to share in the security on a par with the owner of the principal indebtedness, the right of foreclosure accrues. The bondholder cannot be compelled to assign his coupon so that it may remain a lien co-equal with the principal indebtedness. But what he cannot be forced to do against the terms of the contract it is can claimed be obtained without his knowledge by a legal implication. If the debtor can, by any secret arrangement with any third person, and without the knowledge of the creditor, assign his interest in the mortgage, so that this third party becomes the owner of an aliquot share of his security, the result follows; first, that under the fraudulent pretence of payment, there is mere loan to the mortgage creditor, which he must repay out of his security; secondly, that he is deprived of the inherent and important right by this interposition of realizing on the mortgage security. Such an arrangement, if it can be legally enacted once, may be repeated *ad infinitum*, so that when the mortgage creditor does not finally receive any interest payment, and proceeds to enforce his mortgage, his position has been varied, as follows, without his knowledge; Instead of holding a mortgage, say for $6,000,000, the principal of the mortgage in this case, he will find that he has only an aliquot interest in a mortgage to the amount of $12,000,000. This pretence is utterly at war with the nature of interest payments, as a product of principal. To obtain that interest is the very object of the bondholder's investment.

The theory of a railroad bond is security for principal and receipt of interest revenues. The security is regarded as ample for the interest as it becomes due, and the principal as it becomes due. Under this mortgage it is held at Circuit that they both become payable on the enforcement of one instalment of over due interest. But it is not contemplated by the investors that the realization of their security, is to ~~stand~~ be retarded until it becomes encumbered by infinite duplications of interest. Such a variation from the contract and the mortgage security requires their most explicit consent. It cannot be obtained by any species of subrogation known to our law as illustrated by the following authorities. It will be observed that the effort of the coupon claimants in these cases, is an attempt to apply to coupons the familiar principle by which a mortgage debtor can keep alive as against himself and his interest in the property a lien which he has paid off with money loaned him for that purpose. This is not as against other encumbrances, but only as against the mortgagor, on the ground that the mortgage is a good muniment of title as against him, which he should not be equitably permitted to dispute. He might have executed a new mortgage to the lender, and so he may use the old one, and it is good in the hands of the holder, as against the debtor, and those deriving under him.

In an Ohio case where the most elaborate examination of the point was had, the Court said:

"It appears that the consideration of the debt for which the defendant Hilliard recovered a judgment was for moneys advanced in payment of interest and taxes, and the right of way. This, it has been suggested, gives him an equitable claim as against the mortgages. The directors may acquire~~d~~ property for the use of the road. This may be done from the earnings of the road, and with money borrowed, and on credit. But the property acquired becomes the property of the company, and thereupon subject to the mortgages under the construction we have felt bound to give to the statute. Those who advanced money on credit to the directors of the company, are bound to take notice of the claim which will arise under the mortgages, which are required by law to be recorded in each of the counties through which the road passes. If they part with their money or property without taking security, we know of no principle upon which one could be created for their benefit. We are not inclined to exempt the company or the mortgagees from the application of any rule of law which would properly apply to the dealings between them, or to the property which is the subject of these dealings, and which would secure or protect the just claim of third persons. But we are bound to respect the claims of the mortgages, and do not feel authorized to modify the settled rules of law which govern the dealings of third persons with the directors of a company, so as to impair that security which the mortgagees, under the terms of a contract authorized by law have obtained."

Coe *vs.* Columbus, Piqua & Indiana Railway Co., 10 Ohio State Reports, 404.

In Maryland, the question was thus treated:

"They neither sought nor received any assignment of their liens from the parties whom they paid, nor any assent from them that their coupons should be so treated after payment as to the remainder of the lien in preference to those subsequently falling due. Mere payment to these creditors created no such assignment, and mere silent receipt of money due them, furnishes no ground for presuming any such assent."

The Commonwealth *vs.* The Chesapeake and Ohio Canal Co., 32 Maryland, p. 545.

In the following Vermont case, the claimant who had acquired possession of the coupons through the railroad company, as in the Ohio case, was allowed a share of the fund only, because there was ample for the bonds, and a sufficiency remaining to satisfy him without interfering with the superior equities of the bondholders.

"A Court of Equity will not convert a payment into a purchase in favor of a party advancing the money, when there is a superior countervailing equity in another person."

"If this mortgage is redeemed, it is no prejudice to them (first mortgage bondholders) to have these coupons allowed, as they will get their whole debt."

"But if it is not redeemed it does not appear, nor is it claimed in argument that the property is insufficient in value to pay the whole of this first mortgage debt, including these coupons."

Miller *v.* Rutland R. R., 40 Vt., p. 408.

The following was a case of conceded assignment of the coupons, the only question being as to the construction of orders of Court, for their payment.

Petition for holders of coupons, which had been sold by bondholders, as to distribution of funds in hands of receivers.

The coupons were *sold* long after fund was in the hands of receivers, when payments were being made under orders of Court on account of the coupons, as they became due. *Held*, that the coupons without regard to their holders, were payable according to the orders of Court, on faith of which they were bought.

Sewell *v.* Brainerd, 38 Vermont, 373.

In a late case decided by the Supreme Court of Massachusetts, the principle is adhered to that the bondholder has the superior equity. But as there were funds enough to pay all claimants, and the coupons were declared payable, as against the company.

"It is true, that the person who presented the coupons at the counting-room of the company, had no intention of assigning them to any party, and understood that they were paid and extinguished in the usual and regular course of business. But as between Kimball and the company itself, it was understood that they were not extinguished, and that he had taken the place of the persons who had presented them for payment. As between him and the company, this was an allowable agreement, and a legitimate mode of furnishing pecuniary aid to the company, changing the form, but not increasing the amount of its actual debt."

"The only parties who could have any right to object to this proceeding, would be the other creditors of the company, to protect whose rights the mortgage was given. If the security had proved insufficient to pay the entire debt, the other mortgage creditors might say that, when the coupons of July 1st, 1856, were given up, they were understood to be paid and cancelled; that they were presented to the treasurer at the usual place and in the usual manner for payment, and not for assignment; and that Kimball, having taken part in a transaction which appeared, and was understood to be a payment, is estopped now to come forward as a purchaser and assignee, and thereby diminish the dividend which the other creditors, whose claims were covered by the mortgage, were entitled to receive."

Haven *v.* Grand Junction R. R., 109 Mass., p. 96.

The Court of Appeals of New York, as late as 1875, decided a cause involving this principle. The decree contains a review of the authorities, and concludes with a unanimous affirmance of the decisions of the referee and of the Supreme Court, disallowing the claim of the coupon holder, to deprive the bond holders of a part of their security. As we rely strongly on the enforcement of the doctrines of this case to its systematic and logical results, we quote the referee's findings:

"I do further report, that in my opinion, the claim of the said A. Y. Smith should be disallowed; that he made a private agreement with the president of said company to advance the money for said coupons, with an agreement that he should hold the coupons as a claim against the company, as a loan of money to pay the same; that the holders of the bonds were not aware of any such arrangement, and that the moneys so advanced to the company cannot constitute any claim upon the mortgage property, precedent to, or of equal extent with, the bonds, but must be subject to the lien of the bondholders."

Opinion of the N. Y. Court of Appeals.

" Here the holders of the coupons did not agree to assign, or transfer them to Smith, and did not in fact do so. When they delivered these coupons to the Trust Company, they supposed they were receiving payment of them, and Smith undoubtedly knew this. He, however, intended to take and hold them and keep them in being as his security for the money advanced. This he could do, as against the Railway Company ; and, as against it, the mortgage could be enforced for his benefit. It has not paid the coupons, was in no way harmed by their payment by Smith, and he advanced the money for its benefit upon the request of its principal officer.

But a different rule applies as between Smith and the bondholders. They had a direct interest in having the coupons paid so as to preserve the value of their security. They delivered them up to the Trust Company for payment, and supposed they were paid. If they had known the true state of the case, they might, and probably would have, refused to assign the coupons, and to have kept them in life, and thus, by an accumulation of interest, to have impaired the value of their security. And they could have caused a foreclosure of the mortgage for default in the payment of interest."

Union Trust Company *against* The Port Jervis Railway Company, 63 New York, page 311.

The elaboration of the principles involved can be found in Court of Appeals Cases, 1875, vol. 32, No. 369.

It was said by the appellees that a decision of Judge Blatchford contravened this line of authorities. An inspection of that opinion will show that a totally different question was involved in the case referred to.

A part of a series of coupons had been paid, and the question was whether the rest of the same series falling due at the same date should be paid in such manner out of the proceeds of the estate, as to put them on an equality with their fellow coupons. Extracts from the judgment will show that its features are totally different from the case at bar.
~~Jessie 13 a~~

"The bill in this case sets forth, that the debtor made default on the 1st of July, 1873, in the payment of the coupons which became due on that day, and has never paid any of such coupons.

"As the bill is filed by the trustees under the mortgage who represent the bondholders, I think this averment in the bill is properly to be taken as against the bondholders, as an averment that the coupons which fell due July 1, 1873, were presented and payment of them demanded, and refused, and thus default was made, inasmuch as every bond with coupons attached to it provides that the interest is payable upon presentation of the coupons.

"In support of the preference claimed it is contended, that as to the interest which matured at any given time on and prior to July 1st, 1873, inasmuch as some of the parties entitled to receive such interest received it from the debtors, and some did not, the former will have received a preference unless the latter are now to be put on an equal footing with them.

"Certainly there is nothing in those words, or elsewhere in the mortgage, that forbids a course which is absolutely necessary, unless a result is to be effected which will not be a payment of interest according to the tenor of the bonds, but will leave some part of a given installment of interest paid in full, and the rest of it not paid in full.

"I do not see how any diligence, of those of a given class who were paid their interest, in asking to have it paid can be imputed as laches to others of the same class who did not ask to be paid their interest, so as to work a virtual preference in favor of the former.

"To give to the latter their interest in full before paying the principal of the bonds, is only to put all those in a given class entitled to interest on an equal footing; and to put them on such equal footing requires, also, that interest maturing at an earlier date shall be paid before interest maturing at a later date.

"Here are special equities, it seems to me, which would be violated, if such an inequality were left to exist as the exclusion from the full payment of interest of some of a given class.

"No case was cited on the argument which decides the above question adversely to the view I take.

"Most of the cases cited were not cases of coupons or interest on numerous bonds secured by mortgage, and none of them were cases where some interest in a given class had been paid, and the rest not paid, and the funds insufficient to pay all the principal and interest due.

"The case of Sewell *v.* Brainerd (38 Vermont, 364) was not such a case, nor was the case of Miller *v.* Rutland and Washington R. R. Co., (40 Vermont, 399); and in the latter case no preference was claimed.

The above views cover all the questions involved,

"But as to the holders of the unpaid coupons of July 1st, 1873, there seems to me to be a special equity.

"It was through the advance of money to cash those coupons in the hands of the holders of the bonds to whom they belonged, that such holders obtained the money for those coupons. On such advance those coupons passed into the hands of those who now hold them.

"Those who had their coupons of July 1st, 1873, cashed by means of such advance, retained the money, and to permit them now to exclude the holders of such coupons from being paid in full *and put on an equality with the registered interest of July 1st*, 1873, *which was paid in full*, would be to permit them to work an inequality which would be unjust."

The result of the authorities is that the bondholders who detached their coupons for payment, and as against whom, in the language of the opinion in this case, purchase of their coupons is prejudicial—are held to have "a Superior Equity" over coupons that they had not specially assigned.

The elements of the doctrine invoked in the above causes to sustain the coupon claims, and overruled by their decision, pervades another class of cases which have also been decided adversely to the claimants, and by this Court.

We refer to claims of material men, who have sought in the absence of statutory liens, and merely on claims of equity to attach their advances against the property, as a mortgage incumbrance.

Dennistown *a.* Chicago R. R., 4 Bissell, p. 414.

Even where there was a contract for the lien by two trustees of the mortgage, claiming to act under the covenants of the deed the claim was denied.

Dillon *a.* Barnard, 21 Wall, 430.
Galveston R. R. *a.* Cowdrey, 93 U. S., p. 352.

A decision made in this Mobile and Ohio case is in point, if the claim of Alexander Duncan is not sustained by an assignment of the coupons from their original owners, but merely upon an alleged equity to a subrogation.

Duncan, *et al.*, *vs.* The Mobile & Ohio R. R. Co., 2 Woods.

The claim to this conventional subrogation is overruled in the opinion of the Circuit Court, and we have discussed it because we deem that the doctrines finally adopted by the Court below possess many of the same dangers to bondholders.

Duncan, Sherman & Co. cannot be subrogated as junior encumbrancers until after satisfaction of the Principal debt.

Claimed—

THAT DUNCAN, SHERMAN & CO., COULD AS JUNIOR SECURITY HOLDERS, AND UNDER THE APPEARANCE OF PAYING THE COUPONS, ACQUIRE A RIGHT TO DEDUCT THEM OUT OF THE FIRST MORTGAGE *pari passu* WITH THE BONDHOLDERS.

The opinion of the Circuit Court on this point, tersely expresses the result of the decisions:

"Whilst we are inclined to think, that as holders of junior securities, Duncan, Sherman & Co., would have been entitled to pay the coupons, and hold them, by way of subrogation, we are not prepared to concede, that this would have placed them on any equality with the bondholders. No one can deprive the creditor of his security, or any part of it, without his consent, until his whole debt is satisfied. Sureties and others, entitled to the privilege of subrogation, paying only part of the debt, must be postponed to the creditor until they are in a position to demand all his securities." The above answer to the claim, to this subrogation is sustained by an unbroken array of authorities.

And the reasoning of these cases applies with double force to the phase of subrogation, discussed in the first point.

Considering the general right of subrogation on the part of a junior incumbrancer, subrogation means and implies, from its very nature, the payment of the claim of the subrogatee. Under this principle the second mortgagee has the right, when the first mortgage becomes due, to pay and satisfy the superior incumbrance, and thereby become subrogated to its rights as against the mortgagor. It is a principle for the protection and benefit of the subordinate incumbrancer as against the common debtor of the various lien holders.

Ellsworth *vs.* Lockwood, 42 N.Y., p. 97.

Under this doctrine, it has become established by the adjudications that a second mortgage lien holder may pay a coupon falling due, and belonging to a first mortgage bond, and thereby become subrogated to such rights as the bondholder held by virtue of the ownership of the coupon as against the mortgagor. The very statement of this application of the doctrine of subrogation shows, for itself, that the coupon which has been so redeemed by the subordinate incumbrancer is satisfied, and extinguished as far as the first mortgage incumbrancer is concerned. It is thenceforth to be laid out of view as a participator in the fund devoted to the satisfaction of the first mortgage bond and succeeding coupons. It becomes a part of the muniments of title of the subordinate incumbrancer who has thus redeemed it for his protection. After the full satisfaction of the first mortgage security he can assert it as against his fellow bondholders, standing in the same order of rank with him as a subordiate incumbrancer. They would be entitled upon paying their share of the expenses of subrogation, as their *pro rata* of the amount paid on the first mortgage coupons, to become participators in the subrogation.

The principles involved in the above statement of the law of this subject are still further sustained in this case, from the fact that the principal, as well as the interest falling due, is enforceable under the terms of the mortgage upon a default on a coupon, as fully elaborated in the opinion below.

We shall content ourselves under this head with quoting from an opinion, which the learned Chief Justice of the United States aided, then in the capacity of counsel in securing.

"The owner of the debt can foreclose when the first instalment becomes due, and to pay such instalment he may sell the property, and it is certainly correct in principle to hold that when the right to foreclose the equity of redemption accrues, the right to redeem the premises from such foreclosure attaches on paying the sum due for the non-payment of which foreclosure is sought. The junior incumbrancer must be entitled to step in and redeem the premises when the senior incumbrancer has the right to have them sold if not redeemed."

Butler *v.* Elliott 15 Cowen 187. (Dixon on Subrogation, 116.

But the subsequent creditor may be subrogated to such rights only by full payment of the debt.

Dixon on Subrogation, 122.

"In other words payment ought not to place the prior mortgagee in a worse situation than if payment were made by the mortgagor. And therefore, where an instalment of principal or interest of the debt secured by the first mortgage is due and the sum is paid by a subsequent mortgagee his lien upon the mortgaged property which results from such payment will be postponed to the payment of the residue of the first mortgage. But when the amount so due is paid together with costs where the action in his favor has been instituted, the right of the prior mortgagee to a sale of the mortgaged property ceases, and the most he can claim is the right to apply to the Court for an order of sale to satisfy future instalments as they become due in the event they are not paid.

Penn. *v.* Atlantic and Great Western Railroad Company. American Law Register, p. 576.

In a Maryland case

The endorser pays notes given for interest. No assignment given by the payee. He claims to be subrogated to mortgagee, and to be preferred to subsequent mortgagee.

Held, that subrogation to this interest would not place the surety on an equality with the mortgag~~or~~, ee as to sharing in the fund. "This holder of the claim must take rank as a simple contract creditor."

"It would not subserve the ends of justice to consider the assignment of an entire debt to a surety as effected by operation at law where he had paid but a part of it and still owed a balance to the creditor; and this Court would not countenance such an anomaly as a *pro tanto* assignment, the effect of which could only be to give distinct interest in the same debt to both creditor and surety."

"It may be, that when the appellant endorsed Dorsey's notes, he supposed he would have the benefit of the security held by the creditor; but if this was his view, he should have entitled himself to such indemnity, by an agreement to that effect, *or by an assignment pro tanto when the notes were paid.*"

"We suppose that the principles of substitution would require payment in full of the debt on which the equitable assignment might be claimed."

Swan *v.* Patterson, 7 Maryland, p. 164.

The following is from the opinion of one of the Justices of this Court:

"Indeed there cannot be subrogation until the creditor is fully paid, for a right to subrogation is rather against the debtor than the creditor. The latter cannot be compelled to cede his claim while anything remains due."

Delaware and Hudson Canal Company's Appeal, 2 Wright, p. 572. Per Strong, *J.*

We need only add a partial list of the precedents on this point. Jones on Mortgages 707

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Field *v.* Hamilton, 45 Vt., p. 35.
Hoover *a.* Eppler, 2. P. F. Smith, 522.
Magee *v.* Leggett, 38 Miss, 139.
Rayner *v.* Kyner, 6. Watts, 227.
Vose *v.* Scatcherd, N. Y. Sup. Ct., Albany, Law D., July 14th, 1877.
Dixon on Subrogation, p. 122.

Certainly, if neither a junior encumbrancer, not a surety, can acquire a subrogation on partial payment to the detriment of the bondholder, there is not a shred of a pretence of subrogation to the first mortgage lien ~~for an~~ action at the instance of the debtor. As will be shown from the facts in this case, the rule laid down by the Supreme Court applies that no equity to subrogation can arise from fraudulent conduct, or breaches of duty.

by

Soutter *v.* Railroad Co., 13 Wall.

Alexander Duncan has not, therefore, succeeded through his assignors, Duncan, Sherman & Co., by operation of law to a first mortgage security upon this railroad. We will now consider the claim that he has become a first mortgage lien holder by virtue of a contract of sale executed by the first mortgage bondholders to Duncan, Sherman & Co., resulting in an assignment of their rights under the mortgage on the property, so that they must part with an aliquot share of their security to the claimant.

The First Mortgage Bondholders did not sell their Coupons of 1874 to Duncan, Sherman & Co.

All the information the bondholders had of the corporate affairs, was derived from the annual report for 1873, presented in April, 1874, and which exhibited net earnings of $907,000. This was nearly two hundred thousand dollars more than was necessary to pay the first mortgage interest. Indeed, on March 1st, 1874, the second mortgage interest became due, and there is no pretence that it was not paid. So that as far as the bondholders had any information at all it was of such a character as to give them full confidence that the corporation was able to pay the coupons.

In order properly to weigh the testimony on this point the Court should be advised of the motives and purposes that were actuating Duncan, Sherman & Co., at this time.

In the early months of 1874 the financial affairs of the Mobile & Ohio Railroad Company were in this condition :

Duncan, Sherman & Co. were the financial agents. Duncan was a director and the controller of the finances.

The company had a first mortgage debt of eight millions of dollars, and a second mortgage of debt of one and a half million dollars. p 279

Duncan, Sherman & Co. had notes of the company, and floating claims with convertible bonds as security, which did not become even a third mortgage until July, 1874. pp 46, 56, 57.

They were also most heavily interested in the stock. These were the two ties that bound them to the corporation. p 787

It was evident that Duncan, Sherman & Co. could not make their floating claims good if the company kept faith with the first mortgage bondholders. One or the other must be kept unpaid. Should it be the director-trustee with inferior security or the paramount bondholder. The whole scheme presented at this juncture is disclosed in the following letter from Duncan to the President of the Company:

New York, March 5th, 1874.

A. MURDOCK, Esq.,

On the points inquired of, I infer from what I hear from Mobile, that you are halting in your policy of requiring your creditors to extend your notes, as if you were certain that the negotiations I am endeavoring to make for the Company were already successful. This is not so; nor can I make much progress until I receive the facts which will enable me to obtain a quotation for our stock upon the Stock Exchange; in the meantime *all* the resources of the Company should be husbanded for the purpose of paying the interest due in May. *The Company is still indebted to myself and others for some* $200,000 advanced to .pay November, 1873, January and March, 1874, interest, and this amount should be reimbursed, if *the Company expect to obtain assistance in paying the May interest.* Can you not make further remittances out of your receipts

(Signed) WILLIAM BUTLER DUNCAN.

Any disclosure of the insolvent condition of the corporation would have at once perilled the ability of Duncan, Sherman & Co. to continue in the receipt of the revenues of the road, as indicated in the above, and by their own accounts and correspondence. Pages 290, 291, 508, 510.

The principal interest that Duncan, Sherman & Co. had in the road was to keep up its apparent solvency, in order to profit by their stock operations.

The great scheme which they had on foot to market the stock, would have come to immediate disaster if the inability of the Company to pay paramount interest had been acknowledged. pp, 621. 622,

With these circumstances in view, the Court can better understand what impressions were designed to be produced on the minds of the First Mortgage Bondholders, when their interest became due on May 1st, 1874.

It must also be remembered that the first public notice which the Mobile & Ohio Railroad Company furnished to these bondholders of any default on its first mortgage securities, was about one year after the transactions hereinafter described.

This was effected by the circular of April 23d, 1875.

The first suggestion that naturally presents itself to the mind is.

If it was intended by the Railroad Company to notify the bondholders that it had made arrangements, whereby they might sell their coupons; why did not the directors of the Railroad Company furnish a notice to the bondholders similar to the one furnished a year afterwards. On the contrary, no such notice, either in the public press or by circular, to the bondholders was furnished by the Railroad Company.

Another suggestion of equal reasonableness presents itself. If Duncan, Sherman & Co., intended to invite the first mortgage bondholders, to make a sale to them of their coupons, why did not they themselves, or through their agents, make some similar announcement, either through the public press, or by circular, to the first mortgage bondholders, announcing that they, Duncan, Sherman & Co., desired to buy from the bondholders the coupons of 1874. But no such proposition of purchase came from Duncan, Sherman & Co., to the bondholders. The means of making a contract of purchase of more than a half a million dollars of first mortgage security, present no difficulty of attainment. ~~It does~~ They not differ from any of the ordinary means of buying personal property, which is attainable by any well seeking purchaser.

The bondholders had nothing to look to but the tenor of the instrument which they held, which was a contract to pay them certain amounts of money at certain specified times. They were not seeking a purchaser; they were seeking payment; and in that search they went to the railroad company, their debtor, and to its accustomed agencies. Why did not Duncan, Sherman, & Co., interpose at that stage. They could have done what, in making such purchases, is done every day, they could have offered to buy the coupons. They might have tendered orally or in writing, to make a contract of purchase, just as any intending purchaser proffers bids for any other species of property. Had they adopted this simple and straightforward course of action, the bondholders could have exercised their option, whether to sell and assign their rights under the mortgage, and keep the coupons alive as against their bonds; or they could have asserted their rights as mortgagees, holding a defaulted security, and have enforced their remedies against the trust premises. Nothing of this kind transpired. ~~And~~ Indeed it is apparent that such an honest course would have been fatal to the further appropriation of the revenues by Duncan, Sherman & Co., and the marketing of ther stock. The first day of May, 1874, arrived, when the coupons became payable, and ~~without a~~ no word of intimation was given o the subject The bondholders were silently led to approach the usual places of payment.

In considering the effect of the testimony, as to what transpired at the several places of payment, the following phases of the transaction should be present to the mind :

I.—Moneys may be loaned to a railroad corporation, for the purpose of paying the coupons, without any reservation of security on the part of the lender. In that case the lender become a simple creditor of the corporarion,

Cases cited *supra*.

Commonwealth v. Ches & O Canal Co
32 Md., 545 Et ali

II.—Moneys may be loaned for such a purpose, the lender contracting with the corporation to take an assignment of the coupons as they are paid. This contract confers on the lender a right to the coupons only against the corporation, but not against the bondholder. As the mortgagor could execute a new mortgage to secure a lender of money, so he may keep alive an already existing security, and the new creditor may hold it as a valid muniment of title against the mortgage, but not against the bondholder.

Cases *supra*.

III. There may be a direct contract on the part of the bondholders to sell and assign their share of the debt represented by the coupons with the attendant liens and securities.

It is to be considered under which of the above categories the evidence adduced brings this claim. This must depend upon what transpired by written or oral proceedings of the bondholders in the premises, at the times the coupons were payable. Anything said to the bondholders, or done in their presence which could refer to any transaction but the third one above stated, namely, a sale, could have no interest to them, as it could not affect their rights. If they were told "The Bank of Mobile was paying the coupons," or, "Take your coupons to the Bank of Mobile, and you will get your money," there was nothing in that to create an assignment from them, but everything to cause them to suppose, as they really did, that the Railroad Company had made arrangements with the Bank for payment.

It must be borne in mind that the bondholders knew absolutely nothing of the internal condition of the corporation. There is one passage in the testimony of Duncan which indicates a purpose to cast upon the bond holders such a knowledge of the corporate affairs as might be derived from a scrutiny of the report of 1874. Fairness requires that it should be impressed upon the Court, that the report of 1874, so called, did not appear until April 23d, '75. An ~~The~~ element connected with the internal administration of the corporate affairs, which it is important to consider in connection with the testimony regarding the payment of the coupons, is, the evident purpose to maintain the credit of the corporation by an appearance of ability and sufficient solvency to pay these first mortgage coupons in 1874. This is strongly evidenced by the testimony of the vice-president Walker, who represented the railroad company in the negotiations on this subject. He is no longer connected with the affairs of the road, as appears from the record, and is very frank in his statement that the object of this arrangement was to maintain the credit of the corporation. Also Duncan's letter p 602 and p. 408 "In anticipation of their receipts."

This is also evident from the fact that the arrangement was executed as a loan to the Company, for which there was a pledge of the net revenues. *

~~There is an~~other elements in this connection ~~referred to above, and which~~ must be very powerful in carrying conviction that it was not intended to let the bondholders know that, even the company was reduced to the necessity of borrowing the money in order to provide their interest payments.

Th~~is is~~ese are the relations of Duncan, Sherman & Co., as absorbers of the very resources that should have gone to pay the Interest and the arrangements for the marketing of the stock of the corporation simultaneously with these transactions. Duncan, Sherman & Co. were very large holders of the convertible bonds. William H. Hays, who testifies that he knew that Duncan, Sherman & Co. were going to busy the coupons, was also a large holder of convertible bonds. So was Bonner, who sold his coupons to Duncan, Sherman & Co., likewise a large holder of convertible bonds. If these men knew that it was intended to purchase these coupons, they did not testify that they disclosed that knowledge to any one else. It would be contrary to the very nature of the schemes of these parties who were preparing an elaborate arrangement to furnish the public through the New York Stock Exchange, with the proprietorship of the stock that they would at the same moment disclose the fatal fact that the road was not able from its earnings to pay its first mortgage interest, and furthermore, that it was not able, upon its own credit, to obtain the money for that purpose, but that its bondholders were obliged, if they desired to obtain any money on their coupons, to borrow it, to transfer their rights in the mortgage, and their power of foreclosure to another party. With these facts in view, we can better estimate the testimony on this subject.

These bonds were all convertible into stock at 25 cts on the dollar

To establish title by purchase in Alexander Duncan, it must appear that when the bondholder detached his coupon and delivered it, he intended a sale—so understood it.

The decisions of this Court upon the elements necessary to establish a sale will furnish us with a guide upon this subject.

7t Viley *against* Donaldson, 94 U. S.

With these authorities in view, we will examine the transactions which passed in reference to the payment of these coupons, at the several places and times when the bondholders presented them. In the confidence that there can be no controversy with the estimate placed on them by the Circuit Justice—that they did not constitute any sale of the coupons. In considering these facts, it should be premised that in all the several instances mentioned below, it appears that when the bondholders detached their coupons from their bonds and presented the same, they did so with the purpose of receiving payment, and not with the purpose of making a sale.

Coupons paid in London, in May, 1874.

They were paid at the usual place of payment. There is no pretence that any notice of any kind was given to the holders. Nothing transpired, as appears from the testimony of their own witness, the manager of the Union Bank of London, but the simple presentation of the coupons and the receipt of the moneys. It is inconceivable that the lien could be sustained on these coupons, even on the theory suggested in the opinion below. We are entitled without dispute to a reversal in regard to these twenty thousand ~~dollars~~ pounds of coupons.

Coupons paid in Mobile, in May and November, 1874.

The difference between these two payments relates principally to a claim that in November there was a piece of paper pasted in the office of the company which is alleged to have contained words of purchase, and to be a binding notice on the subject of these coupons. The Court below seems to have adopted the events which transpired in Mobile as the standard for its adjudication in respect of all the coupon payments. We cannot conceive why this theory was propounded. Certainly, if title by assignment is the basis of Alexander Duncan's claim, that assignment must be established by the facts as they transpired at the several places of payment. If these events be different in London and in Mobile and in New York, there can be no more reason for adopting the facts of one payment in preference to another as the basis of a conclusion of law in respect of all the payments made thousands of miles apart, and at six months' interval, than there could be in assigning the facts of one distinct litigation to constitute the basis of decision for another litigation dependant on entirely different facts. But considering the facts of the case at Mobile, they certainly do not establish, as in fact, the judgment below held, any contract of sale by the bondholders.

Unguarded and uninformed, as shown in the opening of the argument, the bondholders went to the office of their debtor, the railroad company, for the collection of their interest. They were received by the treasurer of the railroad company. Neither Duncan, Sherman & Co., nor their agent at Mobile, the Bank of Mobile, had any representative or agent at the office of the railroad company, to enter into any negotiation with the bondholders, in respect to the purchase of their coupons. The bondholders handed their coupons to the administrative officer and paymaster of the corporation, the treasurer. He examined them. On the May coupon, there is some conflict of testimony as to the form of order or voucher, which the treasurer gave the bondholders for the payment of their money.

The railroad company had never paid the bondholders any cash. It had invariably given some form of warrant directed to the Bank of Mobile.

The weight of testimony seems to be, that for May, 1874, the bondholders were paid by check on the Bank of Mobile. This we regard as immaterial, one way or the other. The treasurer and his assistant, testify that they placed the coupons in envelopes with a memorandum, or receipt, it may be more properly called, printed on the back of the envelope, to the following effect: "Paid," then the amount, and the name of the payee. This same form of voucher or envelope, had been used on previous occasions. The language of it, "Paid," was certainly not calculated to indicate to the bondholder anything connected with the purchase of his coupons; on the contrary, it would naturally produce the very opposite impression on his mind. Handing this voucher to the bondholders, the treasurer, said, "The Bank of Mobile will pay you the money," or, "Take this to the Bank of Mobile, and you will get your money." The testimony of Willoughby, the treasurer, should be closely scanned. It certainly does not bear out in any degree, a claim of purchase. His assistant, perhaps, went a little further than he did, in stating that he said to some of the bondholders, that the Bank of Mobile was paying the coupons, as the company was not in funds, and could not pay them.

Taking the most favorable view of this testimony, it is susceptible of but two interpretations, either one of which it would have been perfectly natural for the bondholders to have placed upon it, at the time the language is alleged to have been used to them. They might have reasonably supposed, if they supposed at all about the matter, that the Bank of Mobile had loaned money to the Mobile & Ohio Railroad Company, wherewith to pay its coupons. Or upon a still more favorable view for the claimants, they might have supposed that the Bank of Mobile, had loaned the money with the view of holding the coupons as against the Company. Let us examine this:

As a matter of fact it appears that no bondholder, except one Peter Hamilton, supposed, or had the slightest suspicion that he was selling his coupons. We call the attention of the Court to the testimony of the numbers of citizens of Mobile, whom we placed on the witness stand to establish the impression, or rather absence of impression, on their minds in reference to this matter. To most of them it was a mere matter of administrative detail of which they took no notice. In what form the Railroad Company sent them to its bank, was a matter of which, as creditors of the Company, they took no concern, nor felt that they were bound to take any. * A bank has a well recognized function of paying orders for money. It is not one of its ordinary or legitimate functions to purchase mortgage securities of any kind. It does not invest in dead capital, but in active commercial discounts. Railroad coupons do not belong to this class of obligations. However that may be, they went to the bank and presented this envelope voucher or warrant, with "Paid" marked upon it. The Company marked it "Paid." This was an indication of its destiny, and the destiny of its contents. They were "paid."

Did the bank do anything to disabuse the minds of the coupon holders of this result? Not at all. Not a word from any of the officials of the cank. They simply received the envelopes and paid the money. It is true that Duncan had telegraphed the President of the Bank to purchase coupons. If this be so, then the bank did not perform its duty to Duncan, Sherman & Co. It certainly did do not ~~purchase~~ anything towards purchasing the coupons. It did nothing to contribute to that result in any manner, shape, or form. The bondholders left the bank, some with the amount credited in their bank books, some with checks for gold interest, where the bonds, called for gold, and some with currency for their coupons.

We cannot do better than to quote the estimate of this transaction contained in the opinion of the learned chancellor below:

"Then was it a purchase? We are clearly of opinion that there was no purchase, unless there was an intent on the part of the original holder to sell. This is almost a self-evident proposition. And where as in this case, a sale, as compared with payment, is prejudicial to the holder's interest by continuing the burden of the coupon upon the common security, and lessening its value in reference to the balance of the debt, **the intent to sell should be clearly proved**. Such an intent may be inferred, however, when the holder has actual notice that purchase, and not payment, is being made, and, when having such notice he consents to take his money. To the same result will follow, if the holder acquiesces in the transaction, on being subsequently informed that payment was not made by the debtor company, but was made by a third party intending to purchase the coupons, and keep them subsisting and uncanceled. In such case the holder would undoubtedly have a right to repudiate the trasacaction, and demand possession of his coupons, by returning the money received for them, but not doing this, he would be presumed to acquiesce in their transfer.

" In the present case many of the parties had actual notice of the nature of the transaction, and all who inquired were informed in relation to it. The circumstances of the payment were calculated to excite enquiry. The coupons were not paid in the usual manner by the officers or agents of the company, at the place designated for payment, but after examination were sealed up in an envelope, and the holder was directed to go elsewhere to get his money. At the place to which he was directed to go—he received it and delivered up his coupons. They were not delivered up to the company. This was an indication that they were not to be cancelled. The great advantage to the holder, on payment by the company, would have been the cancelation of the coupons, so as to diminish the burden on the mortgage security, but he delivered his coupons to a third party, who furnished him the money for them. He ought to have known that that party, whether the bank itself, or some person by whom it was employed and furnished with funds, would at least keep the coupons for its security until the company could pay them. We think that this was notice to the holder, at least sufficient notice to put him upon inquiry. It may not have been, *and we think it was not sufficient notice to bind him absolutely to a contract of sale.* He might still have repudiated the transaction by returning his money, but it was certainly sufficient to put him upon inquiry, and his subsequent acquiescence confirmed the title of Duncan, Sherman & Co , whose money he received.

The basis of the opinion on which it was adjudicated that these coupons to the amount of $535,000 are continued as a first mortgage security, entitled to deduct from the mortgage of the bondholders a share of the trust premises, is then this: That the first mortgage bondholders were put upon inquiry. It is conceded that there was no sale. The testimony was too flimsy to justify any deduction that there was a meeting of minds and a contract of sale by the bondholders. But the novel and startling doctrine is enunciated that a creditor may be held to have assigned his rights in the mortgage by not observing and scanning the manner of the debtor or any other person with whom he comes in contact through the debtor. The case resolves itself then into a discussion of a principle of law. Is the owner of property bound, as a matter of law, to observe the conduct of his debtor, or of any party with whom he deals through his debtor, to discover whether it is the intention of such party to become the purchaser of his property? At the threshold it is apparent that the enforcement of this position would reverse the entire law of sales of personal property. The principle of *caveat emptor* would no longer be applicable; it should rather be *caveat vendidor*. Upon what theory of ethics or of law should the intending purchaser of property be relieved from the duty and the necessity of making such intention known. How can the owner deal with him as a purchaser, unless he knows that he occupies, or desires to occupy, that relation. How can a price be agreed upon for the property. If Duncan, Sherman & Co. intended to become the purchasers of these coupons, or, rather, intended that the bondholders should know that they intended to become the purchasers of the coupons, why could they not convey or indicate that intention to the bondholders? The Court found that they did not bring that intention to the minds of the bondholders, and hence that there was no binding contract of sale. What proper object could Duncan, Sherman & Co., have in this concealment of their purposes? They had only to say by themselves or an authorized agent, "We desire to buy your coupons." The bondholders would then have a proposition of purchase before him. He could have made terms. He could have elected whether to take the money or to enforce his mortgage against the corporation. None of these elements of a contract of sale transpired.

Put upon inquiry as to what? It could be nothing else than in respect of the intention of the Bank of Mobile to buy these coupons. In the previous paragraph of the opinion, the Court tells us that as such a transaction is prejudical to the bond holder the intent to sell should be clearly proved.

If, then, the bondholder, as is conceded, parted with his coupon without such intent, when did the transaction develop, or, rather, metamorphose itself into a sale of the coupons. The theory of the opinion seems to be that the suspicions of the bondhold should have been excited from the form of the transaction, and that the bvrden was on him to follow out these suspicions. We cannot appreciate the logic of this position. At the time the bondholder parted with his coupon and received the money, the transaction was either a sale or a payment, so far as the bondholders were concerned, and their rights under their mortgage.

The doctrine of a party being put upon inquiry, is totally inapplicable to such a transaction, as the one at bar. The principle invoked is one fully defined in equity jurisprudence. It may be stated thus: When a purchaser of realty, upon searching the muniments of title, finds some reference to an existing incumbrance, he is put upon inquiry, so that he is bound to follow up the indication of an existing lien, and examine its condition and rights. If he does not follow up the enquiry suggested to him by the notice furnished by the record, he takes the property, subject to all the rights and equities of the incumbrance. It will be seen that this doctrine applies to an intending purchaser, and applies in favor of an antecedent and existing incumbrance. There can certainly be no legitimate application of this doctrine as against a party holding the lien, in order to establish an intention on his part to sell his incumbrance. This is the very opposite of the principle above stated. *Caveat emptor* is the rule which underlies the doctrine of the purchaser being put upon enquiry. in regard to the incumbrances involved in his muniments of title. It is a doctrine in favor of the holder of the lien. It is to secure an incumbrance, not to abstract it.

The theory which, as far as we can ascertain, seems to have been in the mind of the Court below, may be best illustrated by this remark contained in the opinion: "So the same result will follow if the holder acquiesces in the transaction, on being subsequently informed that payment was not made by the debtor company, but was made by a third party, intending to purchase the coupons and keep them subsisting and uncancelled." The Court does not find that the bondholder was so far put upon inquiry, at the time of the surrender of his coupons, as that he was then bound to any contract whatever. The relations of the parties having been then established, the Court throws upon the creditors, who had surrendered his coupon, upon the faith of a payment, the burden of making subsequent inquiry to endeavor to discover whether the party to whom he had surrendered his coupon, really intended to purchase it or to pay it. The theory of this judgment, throws the entire burden of such a transaction upon the original owner of the property.

If a purchaser had gone to work in the most simple and honest way, he might have bought the coupons openly and fairly from their owners. Not having done this, having for purposes of his own, concealed his intentions sufficiently, must the bondholders afterwards seek out such a coy and reticent dealer in railroad coupons, and inquire from him if he really did intend to buy their coupons. If such a legal obligation exists upon the owners of railroad securities, it is in the power of any one for their own advantage, to convert the payment of interest on a mortgage bond into a loan of money, to be carved out of the mortgage security at any convenient time thereafter, by an unexpressed intention. Its effect is to render it attainable on the part of any one, to obtain the ownership of coupons with all their mortgage rights, and yet to conceal and veil his purposes of buying them. We might better at once admit all the claims of partial subrogation in their fullest extent, for the theory enunciated in this opinion is tantamount in its results to the bondholder, to all the worst effects that could follow from that doctrine.

Says the opinion: "In such case the holder would undoubtedly have a right to repudiate the transaction and demand possession of his coupons, by returning the money received for them, but not doing this he would have presumtively acquiesced in their transfer." But is the Court quite sure that the bondholder can repudiate the transaction, so that he can be reinstated in the same position which he would have occupied on the day when the coupons became due. In the first place, is the bondholder who received the money in May, 1874, upon finding out that he became unwittingly a seller of those coupons, is he bound, at his own expense and trouble, to return the money from all quarters of the globe and under all circumstances, or lose his interest *pro tanto* in the first mortgage.

He has lost the right of foreclosure. The property has suffered successive defaults in the meanwhile. Had he known that it was proposed to buy his coupons in 1874, he could have refused to sell them and have foreclosed. Had the property been brought to sale on the first default or the second default, had those defaults been made known to the bondholders the property might have produced a much better price than after it had become discredited by numerous failures.

Besides this injury to the right of the bondholder in the fee of the mortgaged estate, what is to be said about the use of the revenues during the twelve months that the property has remained in the hands of the mortgagor? Had Duncan, Sherman & Co. confided to the bondholders that they desired to become the owners of their coupons, with all their mortgage rights maintained, and the bondholders had refused to enter into this contract, the revenues for the year 1874, amounting to more than enough to have paid the coupons for the year, could have been placed in the possession of the bondholders and have been applied to the payment of these very coupons. Afterwards when the moneys of the company that could have been secured to pay the coupons have been used by Duncan, Sherman & Co., is the bondholder to return the money received and take back a coupon after the exhaustion of the annual revenues?

November 1st, 1874, of £6 15s. 0d., £6 and £3 each will be purchased at their full value. *This is sufficient notice* to the parties holding the same, that the coupons are not paid by the company, which is the position we wish maintained, until reimbursed for the advances. Duncan, Sherman & Co." Note how very careful Duncan was to restrict and circumscribe the officials of the *Credit Foncier* in reference to the information, which it was to furnish to the people, whose property they proposed to themselves to acquire. Nothing was to be communicated to them by word of mouth. They were not to be asked to sign any contract of sale, but a paper was to be pasted at the coupon desk which they might or might not see. Their attention was not to be called to it, as Duncan says, "This will be all sufficient." The Circuit Cour does not seem to have regarded any of the testimony in reference to notices, so called, of this character, either in Mobile or in London, as of any weight whatsoever. Clearly, such a device cannot be treated as evidence of the meeting of minds, and a contract of sale based on it, particularly in a case where, as the Circuit Court tells us, "a sale was most prejudical to the interests of the bondholders." Even in the most ordinary contracts of life, knowledge would not be implied against the owner of a property from the posting of such a paper in an office or a banking house. What obligation is there upon any one to see such a posting? What obligation is there on any one to look for such a posting?

It is a part of the history of our jurisprudence that a struggle has been made in reference to the limitations of carriers liability by such means known as general notice, and they have been uniformly discountenanced by our courts. But to apply such a doctrine to the transfer of the absolute title to property is an entire novelty. It would appear, therefore, that Duncan was mistaken in thinking that such a posting was all sufficient notice for the position that he wished maintained. The Circuit Court does not even deem such a suggestion worthy of its consideration. Leaving this part of the subject, we merely call attention again to the peculiar solicitude of Duncan that this should be a pretence of notice to the bondholders, while at the same time, it is evident that there was to be really a suppression of information as to the relations which they proposed to claim on getting possession of the compons. this 2,000 pounds of coupon

Payments in New York.

Duncan's direction was to his clerks to inform all who inquired that they were purchasing the coupons. There is, certainly, a conflict of testimony between Duncan's clerk, and the bondholder, Oliver, and such advantage, consistent with the other features of the case, as Duncan may derive from this difference between the witnesses, he may be entitled to. But, as we will proceed to show, even a supposition on the part of the bondholders, that they were selling their coupons, will not avail to the claimant under the circumstances and facts of this case.

Duncan is Estopped by Fraud and Breach of Trust.

We have now to consider a branch of this case, which presents peculiar equities scarcely to be found in any other controversy, on the subject of the payment of railroad coupons. These appellants would have come fully within the authorities on this subject, if they had contested these claims, solely upon the ground that they had not made a sale of their coupons in the year 1874, and without any regard to the question whether the Company have paid the coupons or not. That position, it will be seen, is really based upon the doctrine that a fraud is consummated against the bondholder. A claim of purchase can not be tenable in the absence of the full consent of the bondholder to be deprived of his right of foreclosure, and to subject the revenues of the property to impartial administration. This is entirely irrespective of the question whether the corporation earned enough, or had enough money, with which to pay the interest as it fell due.

But in this case, we have the additional and substantial equity that the corporation earned more than $700,000, which was sufficient to have paid the First Mortgage interest, and that by the action of the very parties through whom this present claim is set up those moneys were, in breach of trust, diverted in great part to their own benefit.

Alexander Duncan is the assignee of Duncan, Sherman & Co. As the payments and the assignments were made after the coupons were overdue, the claimant is bound by the equities against Duncan, Sherman & Co. The relation of Duncan, Sherman & Co., and the members of that firm, to this corporation, is clearly set forth in the opinion of the Circuit Court: "William B. Duncan, the head of the firm, was for several years a director of the company, and in April, 1874, he became its president, and was invested with the most plenary control of all its financial affairs. By resolutions of the Directors, adopted in April, 1874, after Mr. Duncan was elected president, he, as such, was invested with full direction over the available securities held and owned by the company in consolidated bonds, convertible bonds, first and second mortgage bonds and stock, and was author-

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ized to sell or hypothecate the same, and the net earnings of the company were pledged for repayment of advances made by him for the purpose of meeting the May interest, and the consolidated bonds were pledged as security for the floating debt. The truth is, the whole financial operations of the company were under the control and passed through the hands of Duncan, Sherman & Co., both in 1873 and 1874, **and up to the time of its open suspension in May, 187~~6~~.** 5

At the times when Duncan, Sherman & Co. claimed to have bought the coupons of 1874, they held moneys of the Corporation sufficient to discharge the interest.

Duncan and Elliott, in their capacity as directors of the corporation were trustees for its creditors, and it will be seen by the foregoing quotation that no persons standing in relations of trust were ever clothed, or ever took upon themselves fuller trust powers than Duncan, Sherman & Co. and its members. With these powers came corresponding duties. The manner in which they discharged these trusts is the question to be considered. Besides the available securities of the company, the other trust funds which came into their hands during the year 1874 are likewise described and set forth in the following extract from the opinion of the Circuit Court: "The resources which thus came into their hands were derived from the earnings of the road, the disposable securities and stock of the company, and the temporary loans that were made from time to time. It appears from the annual report of the company for the year 1874—the year in question—that its net earnings for that year were $708,000, and the sales of bonds, mostly convertible, amounted to $94,000, making a total of $802,000. The contestants in this case contend that these sums were sufficient to have kept down and paid the interest of the first mortgage bonds and most of the other outstanding bonds of the company. This is true. The annual interest of the first mortgage bonds, including the Tennessee Substitution Bonds, was about $730,000."

In the above statement we have a description, first, of the trustees and their powers, and, secondly, of the trust funds and their nature.

In the light of these facts it appears by the extracts from the accounts of Duncan, Sherman & Co., and of the Bank of Mobile as their agent, with the railroad company, that at the very times when they claim to have purchased the coupons in question from the bondholders, the following amounts of money were standing to the credit of the corporation:

At New York, in May, 1874	$96,350 00
At New York, in November, 1874	50,000 00
At Mobile, at the times of the payments of the November coupons ...	236,999 50
	$383,349 50

Could the trustees for the creditors withhold these moneys, and apply then to their own purposes, and for their own objects, and at the same moment claim to purchase from the first mortgage bondholders their rights in the mortgaged estate, and their rights to seize the very moneys then being applied to the uses of the very parties claiming to be purchasers. We maintain that, conceding the bondholders supposed they were selling their coupons. Duncan, Sherman & Co. really acquired them with the trust funds to the above amount.

Coupons

An attempted purchase

The~~y~~n must be regarded as trust property for the common benefit. requir~~ing~~ the exercise of gooded faith by Duncan, Sherman & Co. in disclosing the condition of the trust

Again referring to the language of the opinion:

"As financial agents of the company and general managers of its pecuniary concerns, William B. Duncan being the chief executive officer, it is undoubtedly true that they were bound to observe entire good faith. Had they been furnished by the company with the requisite means to pay the coupons, it would have been acting in bad faith toward it, to have purchased the coupons in this manner without the company's consent; and **under such circumstances even to have purchased them with its consent,** and kept them on foot for the purpose of getting possession of the company's property would have been a fraud upon other parties interested in that property. But the requisite funds were not furnished by the company. **Money enough was furnished. It is true to have paid these particular coupons by leaving everything else unpaid."**

Duncan, Sherman & Co. misappropriated the revenues applicable to the coupons to satisfy their own inferior claims.

Bearing in mind the above language, let us examine the financial relations of Duncan, Sherman & Co., with the Railroad Company. Duncan, Sherman & Co. had entered upon the year 1874, as large creditors of the Railroad Company. For considerations, and with securities which are fully shown by the evidence, they had, during the year 1873, loaned about $300,000 to the railroad company. Before the first of November, it appears from the report of a special meeting of the Board of Directors, over which Duncan presided, and at which Elliott was present, that "the net earnings for the preceding nine months, amounting to between $300,000 and $325,000 back, been appropriated to the reinbursement of coupons matured previous to February last, and to the reduction of floating debt and other claims." These were the coupons of 1873, which, in his answer, Duncan says, were not purchased, but to pay which the company was loaned, the money making it thus a mere debt. The balance of the claims of Duncan, Sherman & Co., on various floating obligations is shown, by the extracts from the books referred to in the statement of facts. These moneys were repaid to Duncan, Sherman & Co., during the very interval, and at the very times when they claim that they purchased the coupons. Rather, it is more correct to say, not that the moneys were paid to them, but that they paid themselves out of the moneys and trust funds of the corporation. At the very time, simultaneously, when they claim to have purchased the coupons, they were using the trust moneys to satisfy their own subordinate floating claims against the fund. The whole machinery of pretended purchase of the coupons, is the merest gossamer pretence. The railroad company was depositing money in the Bank of Mobile to the credit of Duncan, Sherman & Co., and while the bank was remiting this money to Duncan, Sherman & Co., it was drawing on them for money to pay the coupons. Are not these facts fairly within the principle laid down by the Circuit Court. In the light of these facts, can there be any doubt of the proper application of the following extract from the same paragraph of the opinion of the Court.

"**Money enough was furnished, it is true, to have paid these particular coupons,** by leaving everything else unpaid, but the company was overwhelmed with floating debt, and creditors were pressing to be paid. Securities to a large amount had to be pledged as collateral to prevent instant prosecution, and debts had to be extended by payment of interest to prevent the sacrifice of the securities. Duncan, Sherman & Company cannot be justly condemned for paying these pressing obligations as far as the money in their hands would go. Immediate bankruptcy would have resulted from the contrary course."

We have seen that the larger part of these creditors who were pressing, were Duncan, Sherman, & Co. It appears from the testimony that the other floating creditors upon payment of their interest, and a small curtailment of the principal, of the obligations of the company which they held, were induced to renew the company's paper. Duncan bought at this very period at a discount, $25,000 of the Company's paper, and obtained payment out of the trust funds. This was one of the pressing debts with which the company and the trust fund too, it may be said, was overwhelmed.

But we must differ *in toto* from the doctrine of law involved in the above extract from the opinion. This appropriation of the revenues of the trust estate, to use a common expression, right from under the nose of the bondholders, is justified on the ground of benefit to the trust estate. Floating creditors were pressing; collaterals would be sacrificed. Is this ground tenable as an abstract proposition, divested of the lurid light of the real destination of the moneys in this case?

Moneys are to be paid to subordinate creditors in preference to mortgage bondholders, for fear of the former. What harm could such creditors inflict on the paramount bondholders. Suppose they got as far as judgment and execution, they could not have disturbed the entirety of the trust estate. This Court decided the arm of Chancery to be long enough to reach that position in the case of Coe *v.* Pemrock, 23 Howard.

If the theory of th~~e~~to opinion be correct, the most beneficial act to a bondholder is not to pay him his interest, but to pay to inferior creditors. If this be adopted as the law of this Court, then all the protection which Courts of Chancery to railroad estates as entireties, even against fellow bondholders under a common mortgage, a position against inferior creditors count for naught.

A still more curious fact, throwing light upon this transaction, was the deposit of some $48,000 by the Mobile and Ohio Railroad Company, in the Bank of Mobile to the credit of the coupon account which had been opened by that bank with Duncan, Sherman & Co. More than $2,500 of his money was deposited directly by the Mobile and Ohio Railroad Co. in this very coupon account, and no contract was made at Circuit by Duncan, about that. The bookkeeper of the Bank of Mobile distinctly testified as follows: "The Mobile and Ohio Railroad provided some. They deposited in 1874, some $45,800 to the credit of Duncan, Sherman & Co." The explanation which Pratt, the president of the bank, and a director of the Mobile and Ohio Railroad Company, gives of this transaction, is somewhat curious. The item as entered in the coupon account of the Bank of Mobile, acting as agents for D. S. & Co., reads "Tranferred from individual ledger $45,882.45." Pratt says that was an amount standing to the credit of Duncan, Sherman & Co., deposited by the Mobile and Ohio Railroad Co., and tranferred erroneously by the bookkeeper to the coupon account. The amounts should have been held subject to the drafts of Duncan, Sherman & Co., of New Orleans. The error was corrected in the account-sent to Duncan, Sherman & Co. This exemplifies and illustrates the whole character of these transactions. The money was paid into the bank by the Mobile and Ohio Railroad Company. It was credited to the account of Duncan, Sherman & Co. Meanwhile the coupons are paid, and drafts drawn on Duncan, Sherman & Co. for the amount of these payments. The moneys of the railroad company are remitted simultaneously with the drafts. Duncan, Sherman & Co. paid the drafts of the bank substantially with the moneys of the railroad company. The result is, that the moneys of the railroad company are used to pay Duncan, Sherman & Co.'s floating claims, and Duncan, Sherman & Co. are shown to have used that money to pay the coupons with. In the case of the $48,000 above described, the veil of bookkeeping was not even preserved. The identical moneys of the railroad company desposited by it in the bank of Mobile, were put just where they belonged in that instance, in the coupon account, to pay the first mortgage interest. That was a situation, from which it was difficult to be extricated, but the president of the Bank of Mobile pronounced it an error in bookkeeping. It should have been remitted, that amount of money, he says, to Duncan, Sherman & Co., of New Orleans.

On the above facts, can a Court of conscience justify such an appropriation of trust funds? Is not a trustee, under the law and decisions of this Court, to be held to any different accountability? Is a doctrine for the preservation of subsisting liens to be invoked, to obtain a lien under such circumstances, and the bondholders "put on inquiry," (similiar to that of the Mobile and Ohio R. R. Co., in 1874), in the face of such transactions?

If the doctrine stated in the opinion, and quoted on pages 108 and 109, as to the good faith required from trustees, is to have any application, certainly a stronger case could hardly be presented.

Directors Trustees for Creditors of Corporation.

The trust relation of the directors of a corporation towards its creditors is fully established.

Jackson *a.* Ludeling Wallace.
Aperton Railroad Company *vs.* Blakely, 1 McHenry, 461.
Ashhurst's Appeal, 60 Pennsylvania State, 314.

The principle of these decisions cannot be questioned. A corporation occupies the legal relation of liability, but with no power to act or administer its affairs, save by and through its agents and officials. It is not the debtor that is trustee for the creditors, but it is the instrumentalities through which this character of debtor is necessarily obliged to act, to whom the law attaches the duties and responsibilities of trustees.

In a late case decided in the First Circuit by Judge Shepley, this doctrine was carefully examined, and its application enforced, in a case very similar to the one at bar.

Mr. Farwell was a director of the Boston, Hartford and Erie Railroad.

That corporation having reached a perilous position in its financial experience, and Mr. Farwell being a considerable creditor, obtained from the directors of the corporation, and by the exercise of such influence, apparently of a moral character, as he possessed over the board, an order for a large amount of the assets of the corporation in the shape of available securities. These assets, in pursuance of the warrant of the directors, were applied to the satisfaction of his claims against the company. Subsequently the corporation became bankrupt, and assignees were appoihted. They filed a bill to subject the assets, this received by Mr. Farwell, or their proceeds, to the trust, in favor of the other creditors of the corporation. The validity and the high character of Mr. Farwell's claims against the corporation were not disputed. The proceeding of the assignees was entirely outside of any of the clauses peculiar to the bankrupt laid. They were based upon the ground that the transaction was in fraud of the rights of the other creditors of the corporation.

The Court held that a director could not obtain any advantage over other creditors in the administration and distribution of the assets of an insolvent corporation. Equality is equity.

Barnard *rs.* Farwell, 1 Holmes.

In the light of this decision how are we to regard the obtaining of $364.572\frac{20}{100}$ by Duncan, Sherman & Co. in the year 1874? We have seen that they entered upon that year as large floating creditors of the corporation, having only subordinate and inferior securities. They finished the year 1874 with the satisfaction of nearly all of their claims against the company, by means of the diversion the net earnings of the road from the payment of first mortgage interest to the satisfaction of their own claims. So successfully had they administered the affairs of the trust in this behalf, that on the first of May, 1875, when "*the first open suspension,*" in the language of the opinion occurred, they had brought themselves more than $17,000 into the debt of the company. Instead of losing several hundred thousand dollars, and standing in the same position in wich they stood at the commencement of the year 1874, they claim now, by this course of administration, to have satisfied their inferior floating claims and to have become first mortgage lien-holdholders, entitled to share on the same basis with the bondholders of highest and oldest security. In addition to these delinquencies against good faith, which impress their administration of the corporate affairs with fraud and breach of trust, on the facts and the law, there was a still further special equity against them which prevented their successful manipulation of the trust fund in the manner above described.

Curran v Arkansas 15 How.
Gas Light Co case 10 L. R Eq 368
Drury v Cross 7 Wall.
Bliss v Mattyson 45 N Y

The pledge of the net earnings should be marshalled in favor of the First Mortgage Bondholders.

On the 28th of April, 1874, the following appropriation of the net earnings of the railroad was made by the corporation: "*Resolved*, that the net earnings of the company, after the payment of the current expenses, be pledged for repayment of advances obtained by the president, for the purpose of meeting the May interest." It is conceded that this special appropriation of the particular fund named was afterwards violated. Money enough was earned, as we have shown, which, if applied in accordance with the terms of this appropriation, would have sufficed to discharge the claim of Duncan, Sherman & Co., for their advances to the railway company to pay the first mortgage interest. Duncan says that these misapplications were made by the consent of the directors, and it does appear from the proceedings of the directors' meeting, on the fifth of November, 1874, that they approved the absorption of the earnings by Duncan, Sherman & Co., in violation of the appropriation resolution of April 28th. Our position is, that it was not in the power of the company and of Duncan, Sherman & Co. together, to make such a diversion of the earnings contrary to the trust created at the time the money was advanced.

Duncan was a director at the time See his letter

The rights of the bondholders in this particular are supported by the fundamental principle governing the marshaling of assets. The judgment in this case holds that Duncan, Sherman & Co. acquired the coupons, with a continuance of their first mortgage liens on the railroad. It is conceded that there was likewise a special appropriation of the net earnings. Duncan, Sherman & Co. had, therefore, a charge on two funds, on the railroad and the income, and on the fund of the net earnings the bondholders had no charge. It was the duty of Duncan, Sherman & Co. to resort to their special fund of the net earnings, and to satisfy their claims thereout as far as possible before resorting to the common fund, the mortgage liens. The statement of this proposition, it seems to us, is sufficient, without any elaboration of the law involved.

It was not in the power of Duncan, Sherman & Co. to release this fund, even for the benefit of the debtor, or of any third party. If they had done so, they would be debited with the amount so released, and which had thereby been lost to the first mortgage bondholders as a means of satisfying the Duncan coupon claims.

Alston *v.* Mumford, 1 Brockenborough, 265, Marshall, C. J.

Lanoy *v.* Duke of Athol, 2 Atkyn, 446.
Ingalls *v.* Morgan, 6 Selden, 178.
Depeyster *v.* Hildreth, 2 Barb. Ch., 109.
Herman *v.* Spelman Nefi's Appeal, 9 W. & S., 36.
Wright *v.* Petrie, 1 Sm. & M., p. 232.
South *v.* Bloxam, 2 Hern & Mul., 457.
Bridenbecker *v.* Lowell, 32 Barb., p. 9.
Welch *v.* Fames, 22 How. Pr., p. 474.

Upon the principles of marshalling, Duncan having placed the net earnings beyond reach of the bondholders, they are subrogated to his rights as a coupon holder.

Loomas *v.* Wright, 2 Russ & Myl., p. 769.

Far less could Duncan, Sherman & Co., by any arrangement with the corporation, appropriate this trust fund of the net earnings in whose application the first mortgage bondholders had an interest, to the satisfaction of other claims of Duncan, Sherman & Co.

To resort again to the opinion:

" They [referring to the appellants] say that by the resolution of April 24 the earnings of the road were pledged for the May interest, which is the interest represented by one-half of the coupons in question, and that at all events this interest should have been paid. They also insist that the same construction should apply to the November interest. They contend that this was a specific appropriation of funds, and that Duncan, Sherman & Co., occupying the fiduciary relations toward the company which they did, were bound in equity to carry it out, and had no right to assume the role of purchasers of those coupons."

"It is true the resolution of April pledged the earnings of the road for the advances obtained by the president for the purpose of meeting the May interest, but this pledge was only made for his security, and did not prevent him from paying other debts with such earnings, if he found it expedient and for the company's interest to do so, and even if the company could have insisted on such an appropriation, it did not, but asserted to his purchasing the coupons instead of paying them."

It will be observed that the leared justice who pronounced his opinion, does not seem to have considered the deffect of this special appropriation as constituting two funds for the for the payment of these coupons upon the theory of his own opinion. From the moment that this additional fund was created, it became a trust for the benefit of first mortgage bond holders, and in which they had an interest upon the principle of the marshaling of assets. Either Duncan, Sherman & Co. did not acquire a title to the coupons as against the first mortgage bondholders, or, if they did acquire such title, according to the opinion, then this special appropriation created two funds for the payment of those coupons. Duncan, Sherman & Co., having destroyed the special fund, in which the bondholders has no interest, cannot resort for payment to the common fund. In this connection, the fiduciary relations of Duncan, Sherman & Co., to the creditors and as well as their absolute control of the financial affairs of the corporation, and the fact that this release of the special fund was *for their own benefit*, all intensify the application of this doctrine of the marshaling of securities against the claims in this instance.

The approbation of Duncan's course, by the debtor, could not affect the equity of the bondholders in any event; far less, when that approbation was virtually Duncan, Sherman's Co., approval of their own acts through their control of the corporate affairs and finances. The amounts of the special appropriation, diverted to their own benefit on other claims, by Duncan, Sherman & Co., should be deducted from the present coupon claim, if it be held to constitute a first mortgage lien. Moreover, the appropriation was renewed in November, and again violated. We do not deem it necessary to elaborate such a familiar principle.

Commonwealth v Ches & O Canal Co 35 Md p 18.
Miller v Morrill 51 Maine, p 9.

The purchasers of bonds after May, 1874, have superior equities to the claims of Duncan Sherman & Co.

This principle involves the currency and security of negotiable bonds. When the officers of a corporation, conceal the inability of the corporate body to pay its mortgage interest and claim that they have acquired the title to the coupons falling due in the interval when such defaults are concealed; the bonds, it must be remembered, with the next accruing coupons, still remain current and negotiable, and pass from hand to hand. What are the rights and equities of the purchaser of bonds under those circumstances? What are the rights of these bondholders, who are shown by the testimony to have bought Mobile and Ohio bonds after May and November, 1874, without the coupons for those dates attached, and supposing that they acquired a First Mortgage lien on the property for the bond and the succeeding coupons? Can these coupons of 1874, which were detached without any open suspension by the corporation, as stated in the opinion, claim a share of the mortgage, as against purchasers in good faith, who bought their securities, relying upon their condition as they appeared when they were passing current in the market?

The holder of the coupons of 1874, conceding that he has every legal right and every equity in his favor, in all other respects is certainly estopped as against the purchasers of the bonds subsequent to these dates. It is by his act, by his concealment of his purchase, that the buyer subsequently is led to pay his money for the bonds upon the faith of their apparent condition. There is also a fraud perpetrated upon such purchasers, irrespective of the amount of the coupons involved, and arising from the concealment of the insolvency of the corporation. The purchaser is thereby induced to pay for the bonds prices demandable for the securities of a solvent corporotion. But we shall consider this under another point.

The equity of the purchaser of the bond under these circumstances is certainly superior to that of the holder of the detached coupon.

If a bona-fide buyer of railroad coupons desires to preserve his rights as against subsequent purchasers, he should, by agreement with the bondholder, affix some notice on the bond itself by means of which parties buying the instrument subsequently may know that they are subject to share their security with claims not apparent on the face of the instrument. Or at least he should give general information of the default through the ordinary sources of publicity, some such evidence of intent as is required upon the dissolution of a partenership; by circular among the bondholders, or advertisements in the newspapers, as will put dealers in the securities on their guard. The principle involved in these facts was determined substantially as above, in the case of Havens *vs.* The Grand Junction Railroad Company. The Duncan coupons cannot be used as bid money, or paid out of ihe proceeds, until after the specification of the superior equity. 109 Mass. Reports, p. 88.

The Mortgagee's equity to bid for the Property should be enforced through a Trustee, to bid the amount of the First Mortgage.

The position of the appellee is this:

"Whatever may be the decree of the Supreme Court in this cause as to the rights and equities of the respective parties to the litigation, and the priorities of the various incumbrances on the property, we do not care. We will secure a different result, based upon such arrangements as we have chosen to make." They claim that they can so pervert and manipulate the decree that the rights of property secured by the various mortgages, and intended to be enforced by the judgment of the Court, can be entirely nullified and set at defiance by the volition of some of the parties in interest. We regard this as the most important question involved in this litigation. If the theory of the appellees be correct, then an appeal to the Courts of Chancery in the foreclosure of a railroa dmortgage, is absolutely nugatory.

The basis of this position of the appellees, is to be found in this state of facts. They represent a large majority of the First Mortgage claims on the property. They also represent nearly every single contested claim on the property, the coupons and the substitution claims. They represent every claim which this litigation has been prosecuted for two years to defend against. They have obtained what they claim to be an assent from a portion of the paramount incumbrances on the property, to yield a very large measure of their interests in their mortgage.

A new scheme has been devised. It is not the contract of the mortgages in which the appellants acquired their interests. It is confessedly an arrangement designed to do away with the covenants and securities on the faith of which the appellants loaned their money. We shall not now discuss how far the powers given are binding. Those are matters which will come up for adjudication upon a decree of distribution. The only question presented now is, as to the terms which equity, **particularly upon nearly a million dollars of bonds which we represented at Circuit, and whose holders have under the terms of the decree felt reluctantly bound to grant those powers** requires to be incorporated in the decree of sale.

Miller v Rutland 40 V

The property would not bring the an

first mortgage upon the sale under the decree. It is, therefore, apparent, say the appellees, that we will become the purchasers of this property, because we can bid more in first mortgage bonds than anyone would bid in cash ; those first mortgage bonds that we hold say Hays, Dupuy & Pierson, have empowered us to make a new contract with the contested claims; we will carry out this new scheme which has been devised. Those first mortgage bondholders who are desirous to avail themselves of the equity which is conceded in the decree of bidding in the property for bonds that are paramount liens on the estate must necessarily yield to the terms which we have devised under our new scheme, or the privilege which is accorded of bidding in bonds will be absolutely useless to them as a minority, as we have a fixed majority of a limited circulation and issue of the first mortgage securities. Furthermore, as we, Hays, Dupuy & Pierson, have such a large preponderance of the first mortgage claims, as would render it absolutely certain that under the present decree we must become the owners of the property, no one can bid against us. We can bid, say they, more than $7,000,000, out of first mortgage liens of $8,000,000, or in a still larger proportion, perhaps. As the property is not saleable for any amount of cash approaching the sum of $7,000,000, the sale so called under the decree must simply amount to a transfer of this railroad to our ownership.

Therefore, says these appellees, why invoke the decision of the Supreme Court of the United States as to what your rights are, when we say we can turn that decision into a *brutum fulmen*, and settle your rights as we choose, and on behalf of those very contested and inferior claims in respect of which you have expended thousand of dollars and years of litigation in obtaining an adjudication.

This is substantially the position assumed by our opponents in this litigation, and it requires only the statement of that position to show the Court how very serious its consequences would be, if it is held to be tenable. If such a result was capable of consummation irrespective of judicial proceedings, it would have to be suffered.

But the claim is that **this is to be attained by and through judicial process, by so framing the Decrees of a Court of Chancery as to secure the desruction** t **of the very equities it has adjudged.** We do not think that a court of conscience is so impotent as to be unable to prevent itself from being made the instrument of such an inequitable proceeding. The question presented by the situation of this case is involved in many of the railroad foreclosures now pending in the various courts throughout the country. It seems to be assumed by the promoters of these various schemes for the enforcement of a new contract different from that provided in the mortgages executed by the corporations that it is within their power to impose these new conditions upon the bondholders, and that the latter are entirely remediless as against a majority. A first mortgage bond upon a railroad is claimed not to be a security for an aliquot interest in the mortgage property, each bond according to its proportion of the entire issue under the mortgage. But it is sought by arrangements devised, pending the foreclosure proceedings, to compel the first mortgage bondholders by a species of *quasi* judicial duress, to surrender their liens and rights, upon the supposition, and under a theory, which they are fearful to combat, because if combated unsuccessfully the result would be so disastrous. They are told that as the purchasing committee, on behalf of the new scheme for readjusting the liabilities secured on the property, will be the sole bidder at the sale, under a system of bidding in bonds they can obtain title for a mere pittance, and the non-assenting bondholder, who will not give up what he supposed was the best security in which a man could invest his money, a first mortgage bond, on terms dictated by them, will receive a mere trifle in cash. On this account concessions are made by bondholders, accepting a new security or obligation which, though for a much smaller amount than the original security of the bondholder, is still for a much larger nominal amount than they would receive by way of cash dividend on the sale, if the theory of the appellees in this case be correct. Hays, DuPuy and Pierson, propose on behalf of a majority of the bondholders, to issue a new First Mortgage bond of $440 for each outstanding First Mortgage bond of $1,000. The balance of the first mortgage is proposed to be given to claims, which these appellants have been resisting, namely, coupons and substitution claims. This litigation, Hays, Dupuy and Pierson say, can result in nothing substantial for the appellants, because they will bid in the property for the bonds, who have assented to this reduction of their claims.

It will be at once seen that a First Mortgage railroad bond has no secure value, if the theory of the appellees be correct. Considering that there are nearly as many miles of of railroad in this country as in all the rest of the civilized world combined, and considering the large amount of American and foreign capital invested in these enterprises, upon the supposed security of a First Mortgage, the theory propounded is certainly full of vital consequences. Considering further the character of these investments, in many instances for the benefit of trusts, and, in some of the states, held to be legitimate investments for trust estates, as being based upon the security of land, the theory of appellees requires the most careful scrutiny. When a purchaser of these first mortgage railroad bonds intends to lay out his money, his first inquiry is, "what is the amount of the mortgage? How many thousands of dollars of bonds are issued upon each mile of road?" These are the elements that constitute the security—the extent of the property and the amount of the mortgage. When Charles Moran purchased his Mobile and Ohio Railroad bonds, he did so upon the faith of holding a certain number of obligations out of 6,000 obligations constituting the number of bonds issusd to make up a $6,000,000 mortgage. But in this case, as in many other of the railroad foreclosure proceedings that have been initiated since the financial disasters in 1873, the holders of these bonds have been prostrated into submission to these schemes of purchase which, they have been told, were so devised under judicial sanction, that the matter is reduced now to the condition of things in this case. The holder of a $1,000 first mortgage bond of the Mobile and Ohio Railroad is told that he must accept a bond for $440; and this, not because the property is claimed to be unable to bear amount of the sterling bond mortgage, not for any purposes of admistrative benefit which would address themselves to the moral and business convictions of the first mortgage bond holders, but in order that the difference, the loss of his cupital, shall be divided among claims which he considers and inequitable, and which the Court may so consider. Not only is it claimed that the first mortgage bondholders must yield to this partition of their security, but that the distributive proportions must be such as are dictated by a majority.

Does the foreclosure of a railroad mortgage, necessarily produce such a result? If it does, we had far better adopt the English system of jurisprudence on this subject, and hold railroad properties to be so far public instrumentalities, that the sole remedy shall be by the appointment of a receiver, and the farming and perception of the revenues. At least, by this arrangement, the bondholders would get the produce of the property. His paper claims would be unimpaired; the adjudications of the Courts, as to the liens and equities, could be obtained, and when the property reached a more prosperous condition, the benefit of those adjudications could be secured for those who were successful in the contest. But the result above claimed has no legal, logical or practical reason in its support.

Object of Allowing Mortgagees to bid at Foreclosures.

It is quite true that there can be no sale, in any di ju~~id~~cial or practical sense of that term, of a railroad property of the extent of the Mobile and Ohio Railroad. There can be no bidders, except to a very limited number, for a railroad 500 miles long. Few persons have the ability to bid any adequate price for a property with $15,000,000 of incmbrance upon it. The theory of judicial sales is, that there is a market for the property to be sold. A judicial sale is an auction sale—a sale to the highest bidder. Bidders are presumed to exist. Competition is supposed to arise. When the railroad system had developed and railroad foreclosures were initiated, it became apparent that such a sale of properties of this such magnitude, under the forms of judicial process, could produce only some wholly inadequate price in cash, which might be paid by a speculator who saw that the mortgagee was incompetent to protect himself.

The results were, therefore, more disastrous to the bondholders who were enforcing railroad mortgages than to any other interest. They were a scattered body, generally holding inconsiderable interests, and in many instances incapable of providing even their small proportion of cash to make up the amount of a bid. As these peculiar difficulties surrounding any attempt to sell property of such magnitude became apparent to the courts, the situation was met by the application of a familiar practice of Courts of Chancery. As the dividend which would be produced by the sale would, after discharging the costs of the proceeding, be distributed among the bondholders themselves, it was clearly innocuous and highly beneficial to permit the mortgagee representing the bondholders to satisfy any bid which he might make for the property in the bonds which would eventually have to be surrendered to the Master. In this way the mortgagee for the bondholders was enabled to protect the property to the amount of the mortgage. This was a highly beneficent provision. No one was injured by its terms. As all the proceeds of the sale would go to the first mortgage to the amount due upon it, no injury was done to the subordinate incumbrancers or the mortgagor. The speculative public had, of course, no equity whatsoever, and no standing in the litigation.

The analysis and clear understanding of this rule, will support the position for which we contend. The object of this provision in decrees of railroad foreclosure and sale, was clearly for the protection of the paramount incumbrances against the fatal effects of an unguarded sale under a chancery decree. It was a protection to the mortgagees against the speculative public. It was, moreover, a protection accorded to all the parties in interest in the paramount incumbrances, proportionately to the amounts of their bonds, and according to the terms of the incumbrances. The execution of such a decree, would simply place the property in the ownership of the first mortgagees, through a trustee according to their equitable interests under the mortgage. If there were 1,000 bonds of $1,000 each, outtstanding, each holder of a bond would have a one-thousandth interest in the fee of the property. The equity of redemption would be foreclosed and cut off by the sale, and if no one bid higher than the amount of the mortgage, the bondholders would become owners of the fee of the railroad as tenants in common, or rather the road would be held by the purchasing trustee for them on that basis.

Mortgagee's privilege of bidding, should be secured to all the bondholders, according to the equities of the Deed of Trust.

We will quote from the opinion of the Circuit Court, premising that it seems to us to sustain in principle fully the position for which we here contend:

" Bondholders secured by a common mortgage have equal rights in the common security, proportionately to the amount held by each. If the mortgage property be sold to a stranger, the proceeds are equally distributed, and perfect justice is done to all. If bondholders putchase the entire property they have an equitable rignt, after satisfying the costs and charges of the litigation and trust to pay the balance in bonds, so far as their own proportion of such balance extends, for it is to come to them. But it is evident that those who singly, or in combination, hold a large portion of the bonds, have a great advantage over the minority, for they can pay their own proportion of the purchase money, which is much the largest in bonds, and have only a small amount of cash to pay, whilst the minority can only pay a small proportion in bonds, and have a large amount to pay in cash, which, as a generality, they are totally unable to pay. This practically puts it in the power of the majority to get the property at a !asge sacrifice, and turn the minority off with a mere pittance. This is inequitible, and to be avoided, if possible."

It appears from the above extract that the learned chancellor perceived that the same result which it was intended to avoid as against the speculative public, by providing for a bid by the mortgagee on the property, would again arise in a different form under an unguarded decree for bond bidding. Whereas, the power given to the mortgagee to bid was intended to protect all the bondholders under the mortgage against a sacrifice of the property to a stranger; the unrestricted ability to bid in bonds, placed it in the power of a combination of a part oj the bondholders to subject the other portion of the interests under the mortgage to their own terms, and probably place them in a worse position than if they had been left to the tender mercies of the speculators who might bid at the sale outside of the mortgage. If the holders of a majority of the First Mortgage Bonds likewise owned the inferior securities, the minority would be at their mercy, and there would practically be a foreclosure against them, instead of in their behalf. This result was apparent, and the only question was as to the means and remedy against it. It will be seen that the opinion concedes that some means should be adopted, and further acknowledges its difficulty in providing for the equities of the case.

It is very palpable, and at the basis of this whole matter, that if the combination of bondholders represented by Hays, Dupuy & Pierson proposed to utilise this power of bidding, given by the decree, according to the terms of the mortgage, there could not possibly be any ground of complaint on the part of the appellants. Hays, DuPuy, and Pierson would then have simply substituted themselves for the trustees of the mortgage, and have become the agents of the bondholders to go through the form of bidding, and would then hold the legal title to the railroad in trust for the security of bondholders under the mortgage, according to its terms, and in the proportion, and with the equities secured by the covenants of the instrument itself, which is the muniment of title for all the proceedings, We say this, even conceding that the claims of Alexander Duncan to the coupons are adjudicated in his favor by this Court. The coupons then would be entitled to an aliquot share of the mortgage estate, according as their amount was proportioned to the entire amount of the first mortgage security. But by an inspection of the record, where the scheme of these appellees is incorporated in a frame work ponderous enough for a new charter for this corporation, it will be seen that this simple result is very far from being adequate to its designs. Furthermore, even conceding the Tennesse substitution claims to be supportedby this Court to their fullest extent, establishing a paramount lien upon the property in Tennessee for the amount claimed by them, it will be seen that this is not sufficient for the purposes of Hays, DuPuy and Pierson. They propose a new mortgage of the entire estate, of which the proportion six-tenths is to be given to the substitution and the Duncan claims, although together these claims amount to less than $2,500,000, while the First Mortgage liens are more than $8,000,000. But the latter are to receive only four-tenths of a new mortgage, while the interest of a minority is to hold six-tenths of such mortgage. There may be, if various reasons and plausible grounds invoked for this new arrangement between the creditors of the corporation. What we contend for here is, that such new covenants among mortgage security holders is a matter for their option and their election, and that no process of a court invoked to enforce the mortgage securities according to the terms and covenants of the original instruments, should be made to subserve the purposes of enforcing a new covenant against those who stand upon their property rights as conserved to them in their original muniments of title.

The very frame work of this scheme of Hays, DuPuy & Pierson, shows that it should become effective only by a mere voluntary action on the part of the bondholders. It purports to be an agreement between the railroad company and its creditors. That is its very ground work. It proposes two means for its accomplishment—one by the unanimous consent of all the creditors and all the stockholders. If that had been obtained, there would have been an end of this litigation. That was an entirely legitimate purpose for an agreement of readjustment of the liabilities of a debtor, and a readjustment among the creditors of their respective claims against a common debtor. Under this head, it purported to address the reason and the convictions of men, in respect of their rights upon this railroad, but in that respect it has been a total failure, and every resource of litigation, which those who were not persuaded and were unwilling to be coerced, have been enabled to invoke, has been invoked against the consummation of the scheme.

But another design is proposed by Hays, DuPuy & Pierson: "If we cannot induce men to give up their rights," say then, "we will force them to do it." If a majority of those who claim first mortgage liens on the property, are willing to unite with us, we will compel the minority to accept those terms." The record shows that they were v~~a~~ery far from succeeding by moral suasion. One million and a half of first mortgage out of an entire outstanding issue of five and a half millions refused to accede to their propositions when the cause was heard at Circuit. As we have shown, the object proposed in allowing the mortgagee to bid for the property, and to satisfy his bid in the bonds of the *cestui que trusts*, was to protect the bondholders against a sacrifice of the property, which would ensue at a sale for cash. The perversion of this equitable decree, proposed by the appellees, is to sacrifice the interests of the first mortgage bondholders, for the benefit of the subordinate claimants on the property, or for the benefit of one class of paramount lien bondholders, like the Tennessee substitution bonds. This was not the design and spirit of permission to satisfy the bid in bonds. That was intended for the equal benefit of all the first mortgage bondholders. so that each bond might secure the same pro- in the bid which he had in the mortgage.

Bradley v Tyson 33 Mich. 392

Remedies which should be applied to secure the benefits ~~of~~ to a mortgagee of the equities decreed and ~~bid~~ the benefit of bonding to all the bondholders proportionately to their interests in the mortgage.

The means and the equitable processes to secure this result are simply and ordinary, and in the accustomed exercise or the powers of a chancellor. The Circuit Court, in order to establish its purpose of protecting the bondholders upon the sale to the amount of their mortgage, could have ordered the property to have been bid in by a trustee for the paramount lien holders who would be authorized to bid the amount of the first lien, with provision for satisfying his bid in first mortgage securities. The purchasing trustee would then hold the property, in trust, for the benefit of all the bondholders, and if the lien of the Duncan coupons is sustained for the benefit likewise of those coupons as a part of the first mortgage. He would be trustee for each security holder under the first mortgage for the amount of his interest in the bonds or coupons as it might be. This would indeed be a fair and just and equitable foreclosure. It would be the accomplishment of the same result as ensued in the case of a strict foreclosure under the usual process of chancery jurisprudence down to a late period. What reasonable objection could be urged to this decree? Who would be injured by it? No first mortgage bondholder, no coupon holder, if his coupons were decided to be a part of the first mortgage, because they would have their exact and just rights according to their interest in the mortgage. The subordinate incumbrancer could not object, he would have his day to redeem, and if he did not redem, it would be either because he did not consider the property worth redeeming, or was unable to redeem. When the time of sale arrived he could bid more than the amount of the first lien. The only objection which could be urged by Hays, DuPuy, and Pierson, to this fair and reasonable execution of a decree of foreclosure would be that certain subordinate or disputed claims which they represented would not have as large an interest in the property, after such a foreclosure as they would have if the Court were to do what they desire, which amounts to nothing more than registering a transfer of the railroad to them, and compelling all the first mortgage bondholders to submit to their dictation as to the *quantum* of interest these shall have in the bid. Hays, DuPuy and Pierson could not object in the sole interest of the first mortgage and the coupon claims they represent to such a method of bidding in the property, except that they would not be the trustees in possession after such a bid.

Their principal objection would probably be on the score of the Tennessee substitution claims, which they represent, on account of the great distributive share it is proposed to give them on the *re*organization. In considering this matter it must be borne in mind that the road is to be bid in as an entirety under the decrees in both of these causes, in Alabama and Tennessee, for the purpose of carrying out this scheme of a new division of the property according to the equities propounded by Hays, Du Puy & Pierson. When the Court has become possessed of the Tennessee case, it will see the great injustice of the scheme proposed. If this Court should decree, as we believe it will, that the Tennessee Substitution Bonds are subordinate claims to the first mortgage bonds, and that the old Tennessee bonds hold the paramount lien on the property in Tennesse, what will the position of the first mortgage bondholders be according to this scheme? Unless such a protection, as we propose be accorded to them, under the decree as it stands, and the transfer of the road to Hays *et al.*, they will have to share an alleged first mortgage on the property with the substitution claims as required by Hays *et al.*, and thereafter be subject to the large lien amounting, with interest, to about $1,500,000, in favor of the old Tennessee bonds. That is, after this Court has decided that the Tennessee substitution claims are subordinate to us, and not, as they claim, to be paramount to the first mortgage, that decision is to be nullified, and we are to be forced to share our incumbrance on the property with a claim which this Court will have decided, belongs to an entirely different class of bonds from the class which is endeavoring in the Tennessee suit to enforce an ownership. We are thereafter to be subject to the real owners of the Tennessee lien.

Some protection should be afforded against this. A trustee should be ordered to stand before the Master at the sale of this property and and execute the intent and purpose of this most benificent provision of a decree of railroad foreclosure, and bid the amount of the First Mortgage payable in bonds, to be delivered to the master within a fixed period of time. It is quite true that it would be a great wrong to all the parties interested in the First Mortgage. that this property should be put up at auction to be sold to the highest cash bidder. None of the bills that have been filed in this case were, therefore, framed solely to aid in the execution of the powers in the mortgage. It was conceded on all hands, that the mere enforcement of those specific powers would not afford sufficient equitable relief to the *cestuis que trust.* The inherent powers of a Court of Chancery were invoked; receivers were constituted; decrees were prayed for and obtained, under the inherent powers of a Court of Equity. The appellees proposed the decree authorizing bond bidding; it is only by leave of Court that any mortgage interest can bid at the sale. There can, therefore, be no question of the power of a Court of Chancery in this case, if in any, to frame this decree, so as to work out that equality, which Courts of Equity love so greatly, and to carry into execution the real purpose which the Chancellor always has in view in permitting the mortgage interest to become bidders for the property. Certainly this Court can make such orders "as the justice of the case may require." The dangers which the decree was calculated to produce, and against which we have appealed to this Court, were presented to the learned Chancellor below. We think that the following language of the opinion of the learned Justice presents a sufficient support for the remedy which we now invoke:

"Perhaps the most equitable mode of disposing of the property when practicable, when it cannot

Jones 1635

May order sale on credit-

Stoney v Shultz

1 Hill Sc. Co. Ch

455. 500

be sold for cash to an amount sufficient to pay the bondholders,* is to decree a strict foreclosure, in which all will participate alike, or to make a sale for the equal benefit of all the bondholders who choose to come in and participate. A strict foreclosure may be attended with difficulties in those States where a mortgage is a mere security and does not give a legal title, besides which, it places the property in the hands of a vast number of beneficiaries, whose consent may be very difficult to obtain in perfecting a new organization for conducting the business, whilst a sale for the benefit of all is attended with the difficulty of determining who shall make the bid. *The Court has sometimes authorized the trustees of the mortgage to bid for the bondholders. In this case it is obvious* that one class or the other of the bondholders *would be dissatisfied with any selection of trustees* which the Court might make."

We are perfectly willing to take this statement as our text. As regards a strict foreclosure we do not think that the objection suggested by the learned Justice is based upon the real state of the jurisprudence of those States where the road runs ; even if that jurisprudence can control the remedial processes of the Federal Courts. In Alabama, where the cause is pending, a strict foreclosure may be had. It is within the powers of the Courts of Equity to decree one, particularly where the property cannot bring the amount of the first mortgage.

This being so, under the decision of this Court, in the case of Miller against Dows, 94 U. S. a perfect title could have been obtained to the road in the several states through which it runs. A conveyance could have been compelled from the corporation, and this would have given a sufficient legal title to the road as an entirety. A somewhat similar case involving the principle was lately decided in the same circuit.

Wilmar *vs.* Atlanta & Richmond Air
Line Railroad Co., 2 Woods.

But if there be any difficulty in a strict foreclosure, under the local laws of any jurisdiction controlling this property, all the beneficial results to be obtained from a strict foreclosure will be secured by a sale at which a trustee will be ordered to bid the amount of the first mortgage. The suggestion in the opinion that there might be some dissatisfaction with the selection of the trustees to make this bid seems to be about the only objection that was in the mind of the Court. Probably the appointment of anyone of the litigants in this case to make that bid and execute the trust connected with it would be unsatisfactory to the other litigants. But certainly this cannot be claimed to be a tenable reason why a Court of Equity should not provide for the execution of such a trust. Certainly, if the Court deemed that it was equitable and just that the first mortgage bondholders should be protected equally and all alike, and that this could be accomplished by selecting a trustee who should bid in the road for them under the terms and on the basis of their mortgage, and hold the property in trust for them, and administer it until they gave further directions and agreed upon a new trust. Certainly such a vital measure of protection and justice should not be allowed to fail by a Court of Equity for want of a trustee. If neither Duncan nor Ketcham did satisfy the respective parties, certainly a special trustee could be nominated to execute this decree. It is fundamental that a Court of Equity will not allow a trust to fail for want of a trustee. The remainder of the reasoning contained in the opinion of the Circuit Court in favor of the new contracts proposed in lieu of the first mortgage contract under which we claim probably furnishes the key to the decision of the Circuit Court. We regret that the learned justice arrived at the conclusion which he reached, in reference to the character of this scheme of reorganization proposed by Hays, DuPay and Pierson. He certainly would not have reached that conclusion, if he had heard the Tennessee branch of the case, which is an integral part of the whole determination of the equities of this litigation. But certainly it cannot be urged, that because we differ from the Circuit Court in our estimate of the fairness and equitable character of the new contracts, which the appellees have proposed to us, that, therefore, we should not have the same full measure of protection which the Circuit Court deemed just and proper, in Chancery decrees of this character. We should be treated just the same as if there had been no scheme of reorganization. We claim that that is a matter entirely outside of this case. It is not the contract under which we loaned our money. It is not the security which we took. To have saved the expense of the annoyances of litigation, certainly our clients would have yielded to the terms proposed by our opponents, if they could have brought their minds to acknowledge any fairness in it. The appellants did not propose to deprive any one of his interest in this property. They proposed a plan, by which the road could be purchased, and every one have a share in it, according to the legal order of his priority. They believe that the security on which the various creditors of this property loaned their money was not only the legal, but the just and fair and proper measure of their interest in it. They proposed this plan, but they did not propose to force any one to accept it, far less a first mortgage bondholder. But all plans for the future administration of this property have really no bearing upon the issues in a Court sitting to enforce the security as it now stands. We merely call attention to the remarks of the Circuit Court in reference to this new scheme or reorganization, so called, in connection with the following sentence of the opinion.

"Looking at the difficulties which beset the subject on every side, we think that if we allow the non-subscribing bondholders to participate in the purchase of the property, should it be made in behalf of the mortgaging combination, on an equal footing with those who have joined it, that we shall have done all that we can do under the circumstances to protect their interests."

Our position is that we should not be placed on an equal footing with "a mortgaging combination." We should be placed on the footing of our mortgage security as it stands and not as it is proposed that it may stand after the sale of this property. We revert again to the remarks of the Circuit Court:

"Perhaps the most equitable mode of disposing of the property when practicable, &c., is to make a sale for the equal benefit of all the bondholders who choose to come in and participate."

"A sale for the benefit of all is attended with the difficulty of determining who shall make the bid."

When the difficulty is so very slight, and the equities to be subserved so very great, we submit that the course out of the difficulty is by the broad and straight path, and not by the narrow and crooked one, which Hays, Du Puy & Pierson proposed to us.

There is no practicable objection to such a measure. It is too common for the practical objections to be very great. Of course, if there is a single mortgagee and he bids in the property, he has the sole control of it. If the property is bid in trust for a hundred bondholders interested in the mortgage, the trustees hold for them according as their interests are fixed by their contract of mortgage and by the number of bonds that they own.

Suppose Hays, DuPuy and Pierson bid in this property, they would likewise hold it as trustees but for the benefit of the subscribers to their agreement. They would have to run the railroad, and administer its affairs as individual trustees under their combination. they would have to obtain acts of incorporation. They would have to do just what any single or any three special trustees who might be nominated to bid in this property according to the adjudication of the priorities made by this Court would do.

The difference in the results is that in the one case the priorities, whatever they may be as determined by the Court, will be secured to the *cestuis que trust;* in the other the remedies provided for the above purpose will be made to subserve the overturning of the adjudicated equities.

Certainly whatever doubt might be in this respect to the powers of the Circuit Court in regard to the framing of a decree to work out the adjudicated equities, there can be no question of the power of this Court in the premises. The 701st section of the revised statutes providing for decrees of this Court on review empower it to reverse, modify or *make such other order as the justice of the case may require.* We have had in this very cause a pronouncement upon the breadth and depth of that power.

Requiring that the road shall not be sold for less than an upset price, affords an alternative remedy for the protection of all the bondholders.

There is but one other modicum of justice which might be proved in lieu of a trustee bid for the first mortgage bondholders. That is a provision, that the property shall not be sold for less than the amount of the first mortgage bonds and interest, making the amount of the first mortgage as adjudicated by this Court the Upset Price below which the property shall not be sold. This would afford those bondholders, those who are specially appellants, as well as those who have not united with either party to this cause, with some measure of protection as against being forced to become bidders, according to the reduction of their rights, produced by Hays DuPuy.

If the protection is not to be accorded of a mortgagee bid in trust, for the equal benefit of the mortgage interest as it now stands, and bondholders do not choose to enter into a new contract for the surrender of six-tenths of their interests in the property, those who do propose such a new contract, should not be allowed to do as the learned judge said, they might "turn the minority off with a mere pittance," they getting the property at a large sacrifice. They propose to divide the property among all classes of claims, placing contested claims on an equality with the first mortgage. In carrying out this project it is but just and fair that they are like all other bidders on the property should not be allowed to use this decree as a process against first mortgage bondholders for the benefit, either of subordinate incumbrances, or even any one class of First Mortgage bondholders, like the Substitution Claims against the First Mortgage bondholders. To provide against this result, an upset price affords a relief, as between the alternative of a bid in trust for all the first mortgage lienholders. So far as Hays, DuPuy & Pierson represent first mortgage lien holders, an upset price is equivalent to a trust bid for the general benefit, and would be as beneficial to them, as to all the bondholders getting their *aliquat* share of the security. Whereas, if an upset price is required to be bid, and Hays, DuPuy, & Pierson desire to carry out their scheme for the benefit of subordinate claims, they would have to provide enough cash to pay the appellants their bonds and interest in full, or at such rate as the Court deems a reasonable upset price.

As a minium relief, Appellants should be allowed to participate in any Bond bid.

If all other relief be denied appellants, they should be admitted in the purchasing scheme lastly. However, the Court may decide the equities of this cause, if everything be adjudged against the appellants; we mean that if not only the priorities of lien be affixed, as the appellees claim, in respect to the coupons and the substitution bonds, but if in addition this Court should refuse our appeal in respect of the above equitable terms and methods for the enforcement of the decree according to the existing contracts, and should leave the practical determination of the equities of the *cestuis que trust* to Hays, Dupuy & Pierson, then we claim not to be sacrificed to the enforcement of our right of appeal to the Supreme Court of the United States. The record shows that we represented at circuit about a million dollars of the first mortgage bonds, for all of them we sought an appeal to this Court. For all of them we sought the protection which we deemed Courts of Equity had always accorded to every *cestui que trust* in similar cases--the option to participate in such a mortgaging combination, as described in the opinion, down to the time of its enforcement. The Circuit Court first held, or to be more accurate, suggested that we should have, down to the day of sale, to elect, whether to accept this new contract, or the pittance that would be left for us if we did not accept. The learned Justice seemed to be under the impression that he had no power to compel the general admission of the first mortgage bondholders into this scheme of bidding under the decree, and upon opposition from Hays, Dupuy & Pierson, the time was limited to the first of September, 1877. The appeal was prosecuted, and of course it was apparent that it conld not be heard by the first of September, because the Supreme Court did not meet until the middle of October.

Moran Brothers and those bond holders who desire no more than the rights of any American citizen, a hearing before this Court cannot now of the decree, even get the new purchase money bonds for 44cents on the dollar for their claims, but it is claimed must take the pittance of cash dividend to accrue. They will thus have suffered greviously by exercising their rights of appeal. This is not the result, we think, which this Court will pernit. The doubts of which the Court, in reference to its power to enforce the fullest liberty of participating in any scheme of purchase, coupled with the use of bonds as bid money, by leave of the Court, were not, we think, justified by the authorities. But, as we have stated above, certainly this Court, under the power to make such order as the justice of the case may require, is entirely unhampered by any such restrictions.

E. L. ANDREWS,
GEORGE HOADLY,
E. H. GRANDIN,
Of Counsel.

Supreme Court United States.

No. 879.

MORRIS KETCHUM

vs.

WILLIAM BUTLER DUNCAN AND OTHERS.

ARGUMENT ON BEHALF OF

CARLTON C. RANDALL,

Petitioner.

— BY —

JNO. J. MACKINNON,
LEOPOLD WALLACH,
Counsel.

Thomas McGill & Co., Printers.

STATEMENT.

The question presented by the petition is: Whether a State, while acting as trustee for creditors of a railroad company, in pursuance of a statute, in the nature of a contract, passed by the legislature of the State, and giving such creditors a *specific*, paramount, first and prior *lien* on the railroad and property of the company, for the payment of money by the company, can or has the right or power, before the debt is satisfied, to annul the *lien* by a subsequent statute, and irreparably destroy the vested rights of the creditors, without their knowledge, consent, or assent, and against their will?

This is exactly what the State of Tennessee, while acting as trustee, under a statute of its own Legislature, attempted to do *for the railroad companies therein* as against the *creditors* holding such *liens*.

The petitioner, and those holding like rights and liens, are the victims of this action.

Learning this fact within a few weeks past for the first time, and being advised that this act is attempted to be further solemnized by practicing a fraud on this honorable court, these creditors, "*amicus curiæ*," filed their petition herein, and most respectfully ask to be heard by their counsel, that the fraud thus attempted may be presented and made known to the court, and that upon consideration of the facts—each and all of which are fully supported and corroborated by the record and exhibits referred to in the principal case—

the court will pass upon and give construction to the statute under which this paramount first and prior lien is asserted.

FACTS.

The facts are few, plain, and simple. They will be presented in chronological order.

On the 11th day of February, A. D. 1852, the Legislature of Tennessee passed an act entitled "*An act to establish a system of internal improvements in this State.*"

The first section of this act recites, in substance, that whenever a chartered railroad company should have procured *bona-fide* subscriptions for the capital stock thereof to an amount sufficient to grade, bridge, and prepare for the iron rails the whole of the trunk line proposed to be constructed in the State of Tennessee, and it should be shown by the company to the Governor that the subscriptions were good and solvent, and that the company had graded, bridged, and was ready to put down timbers for rails, and fully prepared a section of thirty miles of the road at either terminus in a good and substantial manner, with good material, and the Governor should be notified of these facts, *and that said section or any part thereof was not subject to any lien whatever other than those created in favor of the State by the acts of* 1851–52, that then the Governor should issue to said company coupon-bonds of the State of Tennessee to an amount not exceeding eight thousand dollars per mile—and on no other condition—which bonds should be payable at such place in the United States *as the* *president of the company* might designate, bearing interest at six per cent. per annum, payable semi-annually, and not having more than forty or less than thirty years to mature.

The third section reads as follows:

> "SEC. 3. *Be it enacted*, That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, THEY *shall constitute a lien* on said section so prepared as aforesaid, including the road bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered. And the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, *shall be invested with said lien or mortgage* without a deed from the company, *for the payment by the company of said bonds, with the interest thereon as the same becomes due.*"

The fourth section of the act directs, that upon the completion of a second section, or any additional number of sections, of twenty miles, in accordance with the requirements of section one, the Governor should issue in like manner bonds of the State to the company.

It is further declared by section four as follows:

> "And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over or come in conflict with the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, and the said lien or mortgage of the State shall have priority over all other claims existing, or to exist, against said company."

Section *five* of the act declares:

> "SEC. 5. *Be it enacted*, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville,

at least fifteen days before the interest becomes due from time to time upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange and necessary commissions, *or satisfactory evidence that said interest has been paid or provided for;* and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that fact to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, AND PAY OVER *the same*, under the direction of the Governor, *towards the liquidation of such unpaid interest.*"

Section four further directs that if the company should fail or refuse to deliver the road and property to such receiver, that then the Governor should issue his warrant to the sheriffs of the counties through which the road should run, and that the sheriffs should at once put the receiver in possession.

Section *four* further directs as follows:

> "The Comptroller is authorized, *and it is made his duty*, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on *such* bonds as provided for in this act."

Section *six* provides a remedy, by application to the Court of Chancery or Circuit Courts, to enforce payment of SAID bonds when THEY fall due:

> "SEC. 6. *Be it enacted*, That if said company shall fail or refuse *to pay any of* SAID BONDS *when* THEY *fall due*, it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact, and thereupon said Attorney-General shall forthwith file a bill against said company, in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said court shall make all such orders and decrees in said cause as may be deemed necessary by the court, to receive the payment of

said bonds, with the interest thereon, AND TO INDEMNIFY THE STATE OF TENNESSEE AGAINST ANY LOSS ON ACCOUNT OF THE ISSUANCE OF SAID BONDS, by ordering the said railroad to be placed in the hands of a receiver, ordering the sale of said road and all the property and assets attached thereto or belonging to said company, or in such other manner as the court may deem best for the interest of the State."

Section 7 reads as follows:

"SEC. 7. *Be it enacted*, That, at the end of five years after the completion of said road, said company shall set apart one *per centum per annum* upon the amount of bonds issued to the company, and shall use the same in the purchase of *bonds of the State of Tennessee*, which bonds the company shall pay into the treasury of the State, AFTER ASSIGNING THEM to the Governor, and for which said Governor shall give said company a receipt; and as *between* the *State* and said *company*, the *bonds* so paid in shall be a credit on the bonds issued to the company. *And bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking-fund for the bonds issued to the company*, and should said company *repurchase any of the bonds issued to it under the provisions of this act*, THEY shall be a credit as aforesaid and CANCELED."

The 12th section of this act reads as follows:

"SEC. 12. *Be it enacted*, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State against any loss in consequence of the issuance of bonds under the provisions of this act, but in such manner as not to impair the vested rights of the stockholders of the company."

The acts amendatory, referred to in the petition, in no manner or way alter, abridge, or repeal the act of February 11, 1852, *except* by giving to the railroad companies more bonds and longer time for completion of their roads than they were entitled to under that act. Each and all of the acts amendatory refer to the act of February 11, 1852, and distinctly state that the additional privileges granted are and shall be subject to that act.

These acts amendatory will be found in the following session laws of the State of Tennessee:

Act December 16, 1853, Session Laws 1853–'54, p. 208.

Act February 8, 1854, Session Laws 1854–'55, p. 205.

Act February 8, 1855, Session Laws 1855–'56, pp. 63–67, 92, 467.

Act October 31, 1855, Session Laws 1855–'56, p. 41.

Act March 14, 1860, Session Laws 1860–'61, p. 56.

Under, in pursuance of, and in strict accordance with the act of February 11, 1852, and acts amendatory and prior to the 6th day of July, A. D. 1861, the State of Tennessee issued and delivered to the Mobile and Ohio Railroad Company 1,296 bonds, each for the sum of $1,000, payable thirty years after date thereof, with interest semi-annually, at the rate of six per centum per annum. The railroad company, *accepted*, *received*, and *sold* these bonds, *and, with the money obtained therefor*, finished and equipped its railroad, which has ever since been in successful operation.

On the 25th day of February, A. D. 1869, the Legislature of Tennessee *passed* an act entitled "*An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee.*" (Session Laws, , p. .)

The object of this act, as between the State and the railroad company, is no concern of ours, except so far as it is *pretended and claimed* that it had the effect to destroy and annul our lien under the act of February 11, 1852.

That *our vested rights* could thus, without our knowledge, consent, or assent, be destroyed, we most emphatically and respectfully deny.

At the commencement of the late rebellion the State of Tennessee had an outstanding bond indebtedness of about $23,000,000.

At the date of the act of February 25, 1869, the debt of the State of Tennessee had so increased as to amount to about $46,000,000.

In view of the magnitude of this most extravagant debt, the State of Tennessee concluded to do something to relieve itself. Therefore the Legislature passed the act of February 25, 1869. Obviously, the object of this act was, in effect, to destroy the security of the holders of the original bonds, and compel them to accept bonds from the railroad companies.

Many holders of the original bonds, including petitioner, who believed that they had and possessed a paramount first and prior lien on the railroad and property of the company as a vested contract right, that could not be taken away or destroyed by any subsequent act of the Legislature, refused to accept bonds under the act of February 25, 1869, in lieu of the bonds held by them and issued under the act of February 11, 1852.

The *scheme* of the act of February 25, 1869, was very adroit, and, although intended, *probably*, as a means to relieve the State, was, at the same time, a plan of operation whereby *the railroad manipulators* of that day were to be enabled to obtain a large property at a nominal cost.

This feature *unblushingly* presents itself with *cloven-foot* throughout the entire record.

As appears by the petition, there is now due and owing from the Mobile and Ohio Railroad Company to petitioner, and other like holders of the bonds issued under the act of February 11, A. D. 1852, a very large amount of interest, which interest-money, by virtue and by the express terms of that act, constitutes a paramount first and prior lien on the road and property of the company in the State of Tennessee, and which the company and the State neglect, fail, and refuse to pay.

With the other litigants in the case we have no concern. Their rights, whatever they may be, accrued *subsequent* to our *lien*, and by express terms thereof, as well as by the act of February 11, 1852, are *subject* and *secondary* to the *lien of our bonds.*

As presented and made known by the petition, Carlton C. Randall was not in anywise made a party to these proceedings, and had no knowledge, notice, or information thereof, until long after the appeal from the Circuit Court of the United States for the western district of Tennessee to this honorable court. Consequently, it was impossible for him to make application to be permitted to become a party in the suit before the Circuit Court. Therefore he makes application here, at the earliest possible moment, as "*amicus curiæ*," and as such most respectfully asks to be heard by his counsel.

ARGUMENT.

The general questions presented by the petition may be thus resolved:

1st. *The statute of Tennessee. entitled* "AN ACT TO ESTABLISH A SYSTEM OF INTERNAL IMPROVEMENTS IN THIS STATE, PASSED FEBRUARY 11, 1852," *constituted and made the bonds issued thereunder to railroad companies in the State a first, paramount, and prior lien on the railroads and property of the company to which they were issued.*

2d. *The bonds issued in aid of railroad companies in and by the State of Tennessee, under and in pursuance of the act of the Legislature of that State passed February* 11, 1852, *entitled* "AN ACT TO ESTABLISH A SYSTEM OF INTERNAL IMPROVEMENTS IN THIS STATE," *when issued by the State and received and sold by the companies, were contracts, and as such constituted express liens, in the nature of a mortgage, on the railroad and other property of the companies, and could not be affected by any subsequent act of the Legislature, without the consent or assent of the holders of such bonds.*

These propositions will be discussed in their order.

I.

THE STATUTE OF TENNESSEE, ENTITLED "AN ACT TO ESTABLISH A SYSTEM OF INTERNAL IMPROVEMENTS IN THIS STATE. PASSED FEBRUARY 11, 1852," CONSTITUTED AND MADE THE BONDS ISSUED THEREUNDER TO RAILROAD COMPANIES OF THE STATE A FIRST, PARAMOUNT, AND PRIOR LIEN ON THE RAILROAD AND PROPERTY OF THE COMPANY TO WHICH THEY WERE ISSUED.

That the bonds issued to the Mobile and Ohio Railroad Company by the State of Tennessee, under and in pursuance of the act of February 11, 1852, and now outstanding, do constitute a first, paramount, and prior lien on the road and all property of the company in the State, needs only a reference to the act as it stands on the statute-book—a public law, giving notice to all the world:

> "SEC. 3. *Be it enacted*, That *so soon* as the bonds of the State shall have been issued for the first section of the road as aforesaid, THEY shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company and upon said iron rails, chairs, spikes, and equipments when purchased; and the State of Tennessee, upon the issuance of said bonds and by virtue of the same, shall be invested with said lien or mortgage, for the payment by said company of said bonds, with interest thereon as the same becomes due."

Can there by any doubt, in view of this plain language, *written in pure English*, what constitutes the *lien*, or on what the *lien* is intended to fasten?

What *thing*, according to the act, gives the lien? Let the words of the act answer:

> "*So soon as the bonds of the State shall have been issued*, THEY *shall constitute a lien.*"

Then, according to the language of the act, *the bonds are the* THING *that in fact constitute the lien.*

The *bonds* are made the PRINCIPAL THING; the *lien* the *incident*. According to every rule of law, logic, and equity, the *principal* is superior to the *incident*. Without the bonds there would be no lien. The issuance by the State and acceptance of the bonds by the railroad company are *what* created the *lien* in accordance with the declaration of the statute. THEY are the *lien*.

What property is covered by and subject to this *lien?* The statute, section 3, says the lien is upon—

> "*The road-bed, right of way, grading, bridges, and masonry, all stock subscribed for in said company, the iron rails, chairs, spikes, and equipment, when purchased and delivered.*"

It is positively declared that although the bonds constitute the *lien*, that lien is not directly *invested* in the bondholders. The law *invests* the State with the lien. As the *lien* is merely the *incident* and the bond the *principal*, it may with propriety be asked for what purpose was the State vested with this lien? and in answer to this inquiry, we again beg leave to refer to the statute:

> "And the State of Tennessee, upon the issuance of said bonds and by virtue of the same, shall be invested with said *lien* or mortgage, without a deed from the company, FOR THE PAYMENT BY SAID COMPANY OF SAID BONDS, WITH INTEREST THEREON AS THE SAME BECOMES DUE."

Thus it appears that the object and purpose for which the State of Tennessee, by the statute, became invested with this *lien*, was "*for the payment by said company of said bonds, with interest thereon as the same becomes due.*"

Here, then, we have, in clear, defined, and well-expressed language, the *thing* that of itself constitutes, and was made by the statutory contract, the *lien*. Next we have the *thing* to which this lien attached. Then we have the name of the trustee—the State, which was and is invested with the lien; and, lastly, we have, in clear and distinct terms, the object for which the State was so invested.

Is further argument necessary to show that the bonds constitute and make the lien? That the bonds are the *principal*, the lien the incident; that the bonds are *the thing* that gave the lien; that the railroad and property of the company was subject to that lien; that the State, as trustee for the bondholders, and for its own *indemnity*, was invested as trustee with that lien; and that the object of the lien was to secure the payment of the bonds and interest by the railroad company?

But these facts are further demonstrated by the act of February 11, 1852.

SECTION 5 declares "*That it shall be the duty of the company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due, from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been paid or provided for.*"

For whose benefit was this money to be deposited or paid—the bondholders'? It was to be paid by the railroad company, not by the State. Thus again it appears that the debt created by the issuance of the *particular* bonds is not A DEBT of the State, but A DEBT of the railroad company.

As further evidence of this fact, we refer to section six of the act:

"SECTION 6. *Be it enacted*, That if said company shall fail or refuse to pay *any* of said bonds when they fall due, it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of the company of the fact, and thereupon the Attorney-General shall forthwith file a bill against said company, in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, *setting forth the facts*, and thereupon said

court shall make all such orders and decrees in said cause as may be deemed necessary by the court *to receive the payment of said bonds, with the interest thereon, and* TO INDEMNIFY the State of Tennessee *against any loss on account of the issuance of said bonds.*"

In view of these plain, positive, and unmistakable declarations of the statute, we most respectfully ask, is argument or the citation of authorities required to elucidate the proposition that the act of February 11, 1852, is a contract as between the State, the railroad company, and holders of the bonds, or that the *particular* bonds issued to and received by the Mobile and Ohio Railroad Company, under and in pursuance of that act, constitute liens on the railroad and all property of the company in the State of Tennessee, and that each and every holder and owner of such bonds now outstanding has a first, paramount, and prior lien thereon for the payment of said bonds?

"A contract," says Judge Marshall, in the case of Fletcher *v.* Peck, 6 Cranch, 137, "is a compact between two or more persons, and is either executory or executed. An executory contract is one in which a party binds himself to do or not to do a particular thing. A contract executed is one in which the object of the contract is performed, and this, says Blackstone, differs in nothing from a grant. A contract executed, as well as one that is executory, contains obligations binding on the parties. A grant in its own nature amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert the right."

This language was used in reference to a grant of land by the Governor of a State under a legislative act. These *bonds* were issued and delivered by the Governor of Tennessee, under an act of the Legislature of that State, passed February 11, 1852. This definition, like all things said by the great jurist who delivered the opinion of the cuurt, is simple and unambiguous, and determines in an unequivocal manner that the grant of powers or privileges by a State is a contract within the restrictive clause of the Constitution, and implies an agreement not to resume the rights granted. Is the act under consideration wanting in any of the elements of a good contract?

Probably the most accurate definition of a contract by legislative grant, anywhere to be met with, is that laid down by Mr. Justice Washington, in the great case of Dartmouth College *v.* Woodward, 4 Wheaton, 643.

The learned judge, after stating that the question was whether the charter granted to Dartmouth College on the 13th of December, 1769, was to be considered as a contract, then asks what is a contract? —and in answer says:

> "It may be defined to be a transaction between two or more persons, in which each party comes under obligation to the other, and each reciprocally acquires a right to whatever is promised by the other. The ingredients necessary to form a contract are: parties, consent, and obligation to be created and dissolved."

Apply this definition to the case at bar:

First, we have the act, or grant of legislative aid to the railroad.

Then the act makes this *aid*, when granted, a *lien* on the railroad and property of the company.

Next, we have the declaration of the act, that the railroad company shall pay the interest and principal on the bonds of the State giving such aid, and that if the railroad company neglects, fails, or refuses so to do, *it* shall be put into the hands of a receiver, and compelled so to do. To enforce this duty, the State, as trustee for the bondholders and as indemnity to itself, is invested with plenary powers.

Is not this a contract between the State, the railroad company, and the holders and owners of the *particular* bonds issued by the State to the railroad company, and by the railroad company sold on the faith that the act gave the purchasers a first, paramount, and prior lien?

Here we have the legislative authority or grant, parties, consent, and obligation. What other ingredients are needed? *None!*

By the express words of the statute, the *bonds constitute the lien.*

The lien is on the railroad and property of the company in Tennessee.

True, the lien is *invested* in the State; but for what purpose? To secure payment of the interest and principal by the railroad company of the bonds at maturity *to the holders,* and indemnify the State against loss on account of the issuance thereof. Like the prayer of a bill in chancery, it is the object and purpose of a law that determines its character. The debt evidenced by the bonds is the debt of the railroad company, not the debt of the State.

The railroad company accepted and received the bonds as a matter of AID in the days of its *need.* It sold the bonds, took the money proceeds thereof, and with it built and equipped its railroad; and now, like an *honest corporation,* turns to its creditors, and says it does not owe the bonds; you must look to the State; and the State, being bankrupt, cannot pay.

It is a rule of equality, old as the hills, and equitable as it is ancient, "That whosoever taketh the benefit, should also share the burden;" *"Cujus est commodum ejus debet esse incommodum."*

That the outstanding bonds issued by the State of Tennessee to the Mobile and Ohio Railroad Company constitute and are first, paramount, and prior liens on the road and property of the company, in the nature of contracts, that cannot be annulled by any subsequent act of the Legislature, is fully established by analogy of fact and the profound reasoning of the following cases:

Wabash and Erie Railroad Company *v.* Breds, 2 Black, 453.
Von Hoffman *v.* The City of Quincy, 4 Wall., 535.
Bailey *v.* The Mayor and City of New York, 3 Hill, 539.
Moodalay *v.* The East India Co., 1 Brown's Ch. R., 469.
Saylors *v.* Saylors *et al.*, 3 Tennessee, 525.
Moses *v.* Murgalroyd, 1 Johns. Ch. R., 119.
Phillips *v.* Thompson, 2 Johns. Ch. R., 418.
Ten Eyck *v.* Holmes, 3 Sandford's Ch., 428.
Aldrich *v.* Martin, 4 R. I., 520.
Keys *v.* Brush, 2 Paige, 311.
Everston *v.* Booth, 19 Johns., 486.
Pratt *v.* Adams, 7 Paige, 628.
Byler *v.* Monholland, 2 Sandf., 478.
Daniel *v.* Joiner *et al.*, 3 Iredell's Eq., 520.

The word "*lien*" is a *generic* term; defined, "A hold or claim which one person has on the property of another as a security for some debt or charge."

Can it be said, in view of this definition, that the outstanding bonds of the State of Tennessee, issued to the Mobile and Ohio Railroad Company under and in pursuance of the act of February 11, 1852, do not constitute liens on the railroad and property of the company in accordance with this definition?

They are liens by the highest order of contract: a *grant* of the State of Tennessee, by an act of its Legislature.

II.

THE BONDS ISSUED IN AID OF RAILROAD COMPANIES IN AND BY THE STATE OF TENNESSEE, UNDER AND IN PURSUANCE OF THE ACT OF THE LEGISLATURE OF THAT STATE, PASSED FEBRUARY 11, 1852, ENTITLED "AN ACT TO ESTABLISH A SYSTEM OF INTERNAL IMPROVEMENTS IN THIS STATE," WHEN ISSUED BY THE STATE AND RECEIVED AND SOLD BY THE COMPANIES, WERE CONTRACTS, AND AS SUCH CONSTITUTE EXPRESS LIENS, IN THE NATURE OF A MORTGAGE, ON THE RAILROAD AND OTHER PROPERTY OF THE COMPANIES, THAT COULD NOT BE AFFECTED BY ANY SUBSEQUENT ACT OF THE LEGISLATURE, WITHOUT THE CONSENT OR ASSENT OF THE HOLDERS OF SUCH BONDS.

Before discussing the proposition, it may be well to dispose of an objection that will possibly be suggested with reference to the right of parties to appeal to this court, in view of the fact that the act has given a specific remedy in the courts of the State. This court, and others of high authority, having so often passed on the question, we deem it unnecessary to comment thereon, except to cite some few cases, wherein the subject has been fully determined:

Payne *v.* Hook, 7 Wall., 425.
McNutt *v.* Bland, 2 Howard, U. S., 10.

In view of the statute authorizing the issue of these bonds, and under which they were issued, and that, when issued, they constituted, and still constitute, first, paramount, and prior liens on the railroad and property of the company; which liens the railroad company undertook, agreed, and obligated itself to pay, with interest, at maturity, and the further fact that the question presented by the proposition has so often been passed upon by this court, surely it is not necessary to offer any elaborate discussion or cite authorities to elucidate it.

When an act of the Legislature of a State is in its nature a contract, and authorizes or grants privileges or powers to a private corporation, and, in pursuance of such act, rights have vested *bona fide* in third parties, it is not in the power of the State, by a subsequent act, to annul, repeal, or change the act so as to impair or destroy such vested rights.

Von Hoffman *v.* The City of Quincy, 4 Wall., 535.
Butz *v.* Muscatine, 8 Wall., 575.
Lee County *v.* Rogers, 7 Wall., 175.
Furman *v.* Nichol, 8 Wall., 44.
Woodruff *v.* Trapnall, 10 How., 208.
Bronson *v.* Kinzie, 1 How., 316.
Lansing *v.* County Treasurer, 1 Dillon, Cr. C. R., 522.

Muscatine *v.* Railroad Company, 1 Dillon, 536.
State *v.* Milwaukee, 25 Wis., 122.
Brooklyn Park Company *v.* Armstrong, 45 N. Y., 234.
Western Savings Fund Society *v.* Philadelphia, 31 Pa. St., 175.
Gelpcke *v.* Dubuque, 1 Wall., 175.

Having shown that the statute of February 11, 1852, authorizing the issuance of these bonds, made and constituted the bonds liens on the railroad and property of the company, in the nature of contracts between the State, the railroad company and the owners of the bonds falling directly within the constitutional prohibition, that "*no State shall pass any law impairing the obligation of contracts,*" we will conclude by a citation from a great MASTER, on the doctrine of *order*, which is the correct definition of the word "*law*":

> "One of the tests that a contract has been impaired is that its value has, by legislation, been diminished. *It is not, by the Constitution, to be impaired at all.* This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

Planters' Bank *v.* Sharp, 6 How., 327.
Von Hoffman *v.* City of Quincy, 4 Wall., 553.

JNO. J. MacKINNON,
LEOPOLD WALLACK,
Counsel for C. C. Randall.

Supreme Court of the United States.

Appeal from Circuit Court of the United States.

SOUTHERN DISTRICT OF ALABAMA.

MORRIS KETCHUM ET AL.

versus

MOBILE & OHIO RAILROAD COMPANY ET AL.

JOHN A. CAMPBELL,
PETER HAMILTON,
Solicitors for DUNCAN & ELLIOTT, *Trustees.*

Supreme Court of the United States.

ON APPEAL FROM

SOUTHERN DISTRICT OF ALABAMA.

MORRIS KETCHUM

versus

MOBILE & OHIO RAILROAD COMPANY ET. AL.

The pleas and answers of the defendants propound, as a bar to the claim of the plaintiff to maintain any suit as a trustee under the deed of trust executed by the Mobile & Ohio Railroad Company, at Mobile, the first day of November, 1853, the final order and decree of the Court of Chancery, of the State of Alabama, held in that City in April, 1863, rendered in a suit of the Mobile & Ohio Railroad Company against said Ketchum, which, upon the matters contained in the bill, removed the said Morris Ketchum from the trusteeship designated in that deed, and substituted for him, and his associates in it (who had died), other persons, and clothed them with all the rights, powers and privileges named in the said deed, and charge them vith all the duties by the said deed imposed to the same ex- nt, as though they had been the original appointees; that s decree has been executed, has never been impaired nor ted, and that the plaintiff, with notice of the same, has iesced therein, submitted to its mandate, and has never performed a duty as trustee from the date thereof until the filing of the bill, nor offered to do so.

The decree is appended to the bill. The court takes cognizance of the constitution and laws of Alabama, the organization of her judiciary, and the jurisdiction of her tribunals. The court knows that the Court of Chancery, prior to the date of this deed of trust, and at the time of this decree, had *jurisdiction of suits* against non-residents wherein the object of the suit, concerns an estate, lien, or charge upon lands, or the disposition of lands, or interest in, title to, or incumbrance on personal property within the State, or where the cause of action arose, or the act on which it was predicated, was to have been performed in the State. It had jurisdiction under statutes, of the appointment and removal of trustees, whether under deeds or wills.

Ala. Code, 1852, Sections 2872, 2999, 3000.

The description of the chancery jurisdiction in respect to non-residents is precise, and the powers granted to the Court of Chancery did not exceed the limit of the judicial power of the State. The case before the Court of Chancery, in 1863, concerned a deed of trust executed by a railroad corporation chartered by the State, and having its political and commercial domicil in the State where the deed was executed. The franchises, faculties, powers of the corporation, as well as its real and personal estates are conveyed in the deed under an authority derived from its charter. The duties which the trustees had to perform presently, as well as contingently, brought them into immediate contact with the corporation, with its rights and estates within the State. The code authorized the Court of Chancery to remove a trustee for violation or threatened violations of the trust, for insolvency or impending insolvency, for removal from the State, or other cause rendering him unsuitable.

This Code prescribed a method of procedure for subjectin
the non-resident to accountability within its jurisdiction.
provided for the publication of the fact, that the cause exis
and that the defendant was a party and was required to at
This was to be posted on the door of the court, and adve

in a paper to be designated by the court. The decree of the court if rendered on a default, remained provisional for eighteen months, subject to be opened on an application. Besides there were periods for appeal, and for filing bills of review.

Ala. Code, Sections 2945, 2946.

When Morris Ketchum accepted the office of trustee under a deed which exacts continuous intercourse and co-operation with the corporation in the performance of responsible acts, and which empowered him with his associates upon certain contingencies, which have happened, to take possession and control of its franchises and faculties, as a corporation, and the fulfilment of its public duties and obligations within the State of Alabama, and for the State; of the management of the administration, the collection of tolls, freights, rents, incomes, for the benefit of the beneficiaries of the trust, he must have known that by the terms of his contract, he was submitted the jurisdiction of the Court of Chancery of the State, whether resident or non-resident, friend or enemy, in all the matters which concerned the administration of the property, the performance of duties, or the tenure of the office.

This court had a jurisdiction over him, more extensive than that of any other Court of Chancery. No court in New York, the place of his domicil, could remove him from the trust for insolvency, unsuitableness, removal from the State, or for breaches of trust. Such a court might call him to account for trust property, as for breaches of duty in the administration, but none could simply arraign, convict and dismiss him, but the Court of Alabama. This peculiar and particular jurisdiction is that which the Court of Chancery in Mobile exercised in the year 1863. The only enquiry competent to any other tribunal to make, is, did the Code of the State of Alabama vest this jurisdiction in the court. Was the mode of notifying the defendant—if notice were necessary—authorized. These being ascertained, and the decree of the court determines a right arising on a deed made under the authority of the laws of the State, and primarily affecting persons and things under its risdiction. The common equity of civilized nations compels em to lend their aid to maintain the right so judicially ascertained. This plaintiff, the subject of the decree, cannot object to the jurisdiction, for it was implied when he accepted the deed that he was to account to the court, according to the law of the court. Nor would any tribunal of any State or country, hesitate to recognize, internationally, the rights which had been so declared by the courts of Alabama. The intrinsic lawfulness and rightfulness of a jurisdiction so vested and declared, gives to the decrees an irresistible claim to respect and sanction. Nor is there anything like exorbitance or novelty in the nature or degree of the jurisdiction, to excite alarm, awaken surprise or arouse to opposition. The Supreme Court of the United States have repeatedly referred to the jurisdiction of Courts of Chancery, to remove trustees for any suitable cases as belonging to it.

Suydam *vs.* Williamson, 6 Wall, 723.

The Court of Chancery has, independent of any statutory authority, power to displace a trustee for sufficient cause, and to substitute another in his stead. It was objected that he could only be displaced by a bill, and that the court could not do it on a petition. But a departure from the usual practice of the court in doing an act which the court has authority to do, does not render the act void. It may be irregular or erroneous, and may be set aside or reversed by a direct proceeding, but its validity cannot be impeached in a collateral action.

People *vs.* Norton, 9 N. Y. R., 176.

Courts of Chancery have removed trustees for a violation of their duty as such: for a negligent management of trust property; because they have become incapable of action; or when the trustees are so incompatible that they cannot act together as such.

2 Story Eq., 1287, 8, 9.
Billings *vs.* Billings, 110 Mass., 225.
10 Allen, 124; Perry on Trusts, Sec. 276.

The cases are abundant to show that a removal from t

State, or being out of the jurisdiction of the court, or becoming an alien enemy, is sufficient.

Collum *vs.* Bank of Alabama, 23 Ala. Rep., 797.
2 Young and Coll., 529; 37 Maryland Rep., 25; 8 Hare, 101.
60 Barb., 9; 7 L. Rep. Ch., 224; 3 Bro Ch., 191.

The jurisdiction is assumed for the protection and the preservation of the trust estate, the appointment and removal of trustees, and whenever a sufficient cause arises the Chancellor exercises a sound discretion.

The commission granted to the Chancellor in Alabama is, to ascertain whether the trustee is suitable for the position in which he has been placed.

This judgment of his cannot be revised by any other tribunal, unless perpaps upon an appeal to the Supreme Court of the State. There can be no impeachment collaterally.

Perry on Trusts, Sec. 276.

The bill filed by the Mobile & Ohio R. Co., contains a lucid statement of the untrustworthy character of this plaintiff. He seemed to have no other purpose than to force the corporation into providing him with a sinecure charging the money of the corporation. He was greedy, extortionate, unfaithful. The bill makes a recital of fact and instance of derelictions, shortcomings and *mala fides*, which justify their indisposition to have any connection with him.

The bill charges him with violations of his trust; converting property to his own use; failure to perform duty; and the fact that he resided beyond the State, and that the extraordinary circumstances of the existing war disabled him from performing the duties imposed upon him by the deed. The Code of the State, made prior to the date of the deed, contained the rules of procedure which experience had dictated in the matter of non-resident defendants. There was a publication of the fact an existing suit for a length of time, sufficient to warrant a clusion that it may come to the knowledge of the party. warrants the preliminary proceedings in the cause. The e remains provisional for a term of eighteen months after, and on application a re-hearing can be obtained. A bill of review is allowable at any time for three years, In this procedure the decree *pro confesso* is—as it is under the rules of the Supreme Court of United States in equity—a confession of the statement of facts contained in the bill.

The bill in the Court of Chancery, at Mobile, was filed in January, 1862; the decree was rendered in April, 1863. It seems then that Morris Ketchum had under the existing laws a power to apply by bill of review, after he had been notified of the decree, and after the war had terminated and intercourse resumed among the States.

The United States during this period passed an act for the confiscation of the property of certain persons charged with rebellion. The mode of procedure was that of a seizure of the property, and the publication for fourteen days of the fact and admonishing parties interested to appear and show cause. In a very large proportion, if not all of the suits, the parties interested were entirely unable to appear, and were in fact ignorant of the proceeding. The cases after the war were scrutinized, and in some, writs of error were taken. The mode of procedure was canvassed and criticised. It was successfully argued in the case of Miller *vs.* United States, 11 Wall. 268: 'That the notice to Miller being constructive, did not and could not change the legal regularity of the proceedings. Constructive notice, according to the lawful practice of the Court, is to all intents and purposes, just as effectual as actual notice. It is not good or bad, as there may or may not be reason to believe that it covered actual notice to the claimant. The only redress is, either by some application to the Court or by appeal or writ of error."

The Supreme Court adopted that argument and applied it in all the cases which were afterwards brought before it. If the notice by publication were regularly given according to the order of the Court, it was sufficient. Strictness was required as to this.

Mc Veigh *vs.* Earle, 1 Otto, 503.

The Supreme Court applies the same principle in dea with the judgments or decrees of the State Courts, four upon process of a similar description.

If the publication or other form of constructive notice be regular, they accord to judgments recognition and support; as lawful and binding. The only enquiry has been whether the publication came fairly within the purview of the State law, and had been accurately and properly made and proved. This being ascertained, the judgment was declared to be operative.

Hollingsworth *vs.* Barbour, 4 Pet. 475.
Nations *vs.* Johnson, 24 How. 195.
Earle *vs.* McVeigh, 1 Otto, 503, 506.
Galpin *vs.* Page, 18 Wall, 350.

These orders of publication usually have been made in cases where some estate, lien or charge, or disposition of land is involved in the suit, or some contract made in the State, or act to be performed in the State, gave rise to the proceedings.

Boswell *vs.* Otis, 9 How. 350.
Hunt *vs.* Wickliff, 2 Pet. 214.
Jackson *vs.* Turman, 10 Yerg. 172.
Fletcher *vs.* Ferrill, 9 Dana, 372.

The States of the United States have the same power to regulate the modes of proceeding in their courts as the United States have to regulate proceedings in their own courts. The judgments of the courts of a State are to be treated as null and void for no other reason than the judgments of courts of the United States are to be treated as null and void in the State courts.

Suppose a decree of the Circuit Court of the United States were in question, a decree founded upon an order of publication of that court in a cause wherein the object of the suit was to enforce some "legal or equitable lien upon, or claim to, or to remove the cloud from real or personal property" within the district, according to the act of Congress of 1875; the defendant is in a foreign State, at war with the United States; the court passes the order, hears the cause, allows eighteen nonths for the defendant to show cause against the decree, nd then enlarges the time till it exceeds six years from the te of the decree.

Suppose a suit afterwards to be brought in a State court and this decree to be impeached as a nullity, for that the party could not have appeared and defended the cause, and that the court cannot take jurisdiction of a party under such a condition of facts.

The answer to this whole argument would be what was answered in the case of Miller, as I have quoted from the argument. The power belongs to every Legislature to determine the method of proceeding in their courts, and the courts within the same jurisdiction must respect and acknowledge the judgments so rendered as valid for considerations of public order, and the domestic tranquillity and safety of property and respect for laws.

It is the power of the law which determines the validity of the procedure and the sufficiency of the notice to bind the party. The case we have suggested as likely to arise under the law of the United States, demonstrates the weakness of the objection to the decree we have pleaded. The act of Congress of the 3d of March, 1875, is analogous to the articles we have cited from the Code of Alabama. Constructive service has been employed by the United States in the same class of cases, from necessity. The judgments to be given under that statute will derive their efficacy at home and abroad from this statute law. The courts of other States and countries will say wherever civil government exists, men both by right and fact make their contracts and determine their relations with reference to the positive law of the place where the contract is made and to be performed, and with a distinct understanding of the rights of the parties under the contract, and how those may be modified, changed or destroyed by these laws, including the capacity and state of the parties themselves. This deed of trust was made in Alabama. The corporate powers, franchises and duties as a public carrier, with the corporate property, under a law of the State were conveyed in trust; the trustee, under some circumstances, might under the deed become an owner for other persons. He was at once to co-operate with the corporation in disposing of property. The la reserved to the courts the power to remove him on the app cation of a party interested. The duties correlative to rights conveyed, were determined by the law of the State, the remedies in case the duties were not performed, or the trustee became incapable or untrustworthy, were already prepared and in the repository of the Court of Chancery. When a state of facts arose which disabled the trustee, living beyond the jurisdiction and power of the Court of Chancery to enforce the trust, his displacement became an appropriate function of the court upon a demand made by a party in interest.

The English Court of Chancery had this power before the passage of the trustee acts in 1850.

Under those acts summary methods are provided to remove trustees who go abroad.

In re Joyce's estate, 2 Eq. Cases, 576, a new trustee was appointed in the place of a bankrupt who had not been heard of for some years.

In re Renshaw, 4 Ch. Ap. 783, 167, notice to the trustee was dispensed with.

10 Ch. App. 272, 273, 4 De. Mc. & G. 839.

Non-residence a sufficient cause for removal.

Cullom *vs.* Bank of Alabama, 23 Alabama, 797.
Maxwell *vs.* Fennie, 7 Caldwell, 434.

In Dorsey *vs.* Thompson, 37 Maryland R. 25: The case was that of a trustee who had left the State at the beginning of the war and remained two or three years. He was removed after an order of publication, as an enemy and one not likely to return to the State in any definite period.

The Court of Appeals of Maryland sustained the decree for the removal of the trustee as an unsuitable person under the circumstances, and referred to a series of cases in that State in which appointments had been made because of absence, without notice to the trustee.

2 Bland. Ch. R. 221, 398; 10 G. & J. 183.

The statute of Alabama is very nearly the same as that of Maryland, but larger power is given to the court and to the Register of the Court. The Supreme Court held that an appointment made by a Register could not be collaterally impeached.

Gaines *vs.* Harvin, 19 Ala. 491.

Neither Code regards the trustee as a permanent owner of the property, or as inseparable from the trust.

He is a mandatary with specific duties, which terminated the property passes from him to the beneficiaries by operation of the law. The authors of the trust and the beneficiaries are particular objects of the protecting jurisdiction of the court. It is for them that he holds or administers the estate. He is not allowed to make a profit from it at their expense, nor to place his interest in opposition to theirs; nor can he look cunningly for advantages or emoluments for himself. In a case where the trustee had pertinaciously held on to the trusteeship to the discomfort of the co-trustees and damage to the estate, the Chancellor said: He liked not that a man should be ambitious of a trust when he could get nothing by it, and for no other reason he was removed.

Lewin on Trusts, 712.

Whenever a trustee becomes unsuitable for the trust he can be removed. Whenever the interests of the estate requires, a Court of Chancery may remove him. But on the principle laid down, a case where the disability is absolute and inexorable, the case where .the trustee cannot have intercourse with the author of the trust, or the property of the trust, and is beyond the jurisdiction of the court, the trustee cannot be removed at all. The power of the court is paralyzed. When the legislation allowed of trustees and trust estates, they come under legislative control. Before this trust estate or trustee existed, the law was made to suit the case. The court existed and the formulary existed to afford a remedy in that case.

All States prescribe modes of proceeding for their courts and declare the effect and operation of their judgments and decrees. The general rule is that the judgment and decree of a court in a cause submitted to its jurisdiction is conclusive between the parties and privies. The order and repose of society, and the security of property and persons demand that such judgments be respected as guarantees of order and repose. How can a court of Alabama repudiate the decree of a court invested with jurisdiction by the constitution and laws of the

State to dispose of the subject matter of the suit, and which court has faithfully pursued the mode of proceeding prescribed to it, and has accurately and considerately applied the law to the precise case?

The pleas and answers which bring this decree to the notice of the court, and discover to the court that its obligation and effect has not been diminished or disturbed, are without a more conclusive answer to the bill, and so the Hon. the Judge of the Circuit Court has decided.

II.

We propose to consider the operation and effect of the ordinances and statutes of the State of Alabama, which, after hostilities had terminated, confirmed and ratified under certain conditions the judgments and decrees that had been rendered by the courts of the State during the war.

The policy and propriety of the legislation is not to be gainsaid. There had been discord, confusion, disturbance and quarrel for some years. These ordinances were composing, benignant and just, and were suited to the conditions which called them into life. The State had been placed in an abnormal condition in respect to the Constitution of the United States and the Union; it devolved on the people of the State in placing the State in its normal condition with respect to these, forthwith to define the legal operation and effect of the legislative and judicial proceedings which had been conducted and matured into acts during that period. The powers of municipal sovereignty and jurisdiction possessed by the people, were delegated to the conventions by them with the consent of the United States.

The only enactments in respect to the judgments and decrees rendered by the State courts during this period are those adopted by the State conventions and State Legislatures.

Congress made no provision on the subject, probably satisfied with the action of the States themselves. Congress did provide that the State laws of limitation or prescription should not be employed to defeat the claims of creditors who had not access to the courts, and no other statute seems to have been framed to obviate difficulty or controversy.

Ross *vs.* Jones, 22 Wall., 576.

It was competent for Congress to have passed a law to authorize parties to remove the suits from the State courts which had gone to judgment during the war by a default, or to have provided for another trial. This act was passed in a number of the State Conventions which were called after the war.

The cases which have come before the Supreme Court of the United States since the war were decided on these special circumstances.

Dean *vs.* Wilson, 10 Wall, 172.
McQuiddy *vs.* Ware, 20 Wall, 14.
Ludlow *vs.* Ramsey, 11 Wall, 582.
Lasere *vs.* Rochereau, 17 Wall., 437.

The principle deducible from these decisions has a limited operation and explains but a few cases.

In two of them it appeared that a person had been violently expelled by the authorities of the United States from their homes and prohibited to return, and while under this duress the local tribunals had made seizures and sales of their property as absentees from the jurisdiction. The court regarded the suits as invalid. In other cases there was an attempt to be relieved from the operation of judgments against the plaintiff as absentees.

The absence was a voluntary abandonment of the jurisdiction, without coercion. The relief was not granted in these cases.

The Supreme Court have not decided that the laws under which the proceedings in the Court of Chancery at Mobile, against Ketchum were suspended in their operation, or that the judgments and decrees so rendered were inoperative. Congress has left them without denunciation of any kind. It has not provided for a removal of the suits which had passed into judgments to the Courts of the United States, or for any revision there. Probably, the ordinances which were adopted by the State Conventions relative to the confirmation and ratification of the judgments and decrees, with a provision for re-hearings and new trials, were suggested to them as necessary and proper to meet the exigencies of the case, and prevented federal legislation. Those adopted in Alabama, and the legislation which followed extending the term were comprehensive and liberal acts of statesmanship. Society required after such commotions that the empire of justice and right should be restored, and that moderation and fair dealing should prevail, even to the defeat of expectations or acquisitions obtained in this period. Usually a judgment terminates litigation, and to grant a new trial after the judgment is an act of interference. The legislation is retroactive. But when the laws guarantee security, inspire confidence promote quiet, the retroaction is not a ground of reproach. Such acts are essential at such times to promote peace and restore order. They violate the obligation of no contract, impair no right of property, invade no principle of natural justice. They provide simply that where society has been in conditions of disorder, so that the regular and tranquil administration of justice has not existed, that persons injured thereby shall not be concluded by the judgment or decree. Ketchum had no cause of complaint against these acts. The Mobile & Ohio Railroad Company could not properly have complained. The precedents fully establish the lawfulness and the wisdom of such enactments.

The American history furnishes a striking instance. Sequestration laws, and laws requiring debts due to British creditors, were passed in the States, and large payments were made by the debtors to the State Governments during the war of the revolution. The treaty of peace of 1783, at the end of the war, provided that no impediment should be interposed to the collection of debts due to the creditors of either nation. The Constitution in 1787, provided that treaties made by the United States should be the supreme law of the land. So that the payments to the States under State laws were invalidated.

Ware *vs.* Hylton, 3 Dall., 199.

An executor in New Hampshire procured an order of court for the sale of the lands of the succession for the payment of the debts of the succession. The executor sold lands in Rhode Island, to which State his authority did not extend. The Legislature of Rhode Island ratified and confirmed the sale, and thus validated the deed.

2 Peter, 627.
10 Peters, 291.
114 Mass., 181.

Sales made by certain married women in Pennsylvania were void, because they were not in conformity to the law. The Legislature of Pennsylvania, without any consent of the grantors, passed laws curing the defects in the deed. The laws were sustained as constitutional.

2 Peters, 380.
8 Peters, 88.

For a number of years there had been an erroneous celebration of the rite of marriage in the State of Connecticut. The Legislature passed acts for confirming the marriages. The acts were valid.

4 Conn., 226.
7 Conn., 319, 371.
6 Conn., 88.

The Statutes of the State of New York requiring the recordation of certain land titles in a military district, and the annulment of those not recorded, was held to be constitutional.

3 Peters, 280.

The Supreme Court of the United States, in Calder *vs.* Bull, 3 Dall., 391, says: "It is a good general rule that a law should not have a retrospect. But there are cases in which laws may justly, and for the benefit of the community, and also of individuals, relate to a time antecedent to their commencement." And again, the court say: "It has been repeatedly decided in this court that the retrospective operation of such a law forms no objection to it. Almost every law providing a new remedy affects and operates upon causes of action existing at the time the law is passed."

7 Peters, 222.

The Statutes which confirm judgments of courts, and afford opportunity to the losing party to have a new trial, are supported upon the principal of these cases.

In Phillips *vs.* Eyre the question arose upon an act of the Colonial Legislature of Jamaica, which indemnified an officer who, during a civil commotion in the island, had proclaimed martial law, and had arrested and imprisoned the plaintiff in this suit. The question was whether the act was valid as a defence against the action. The Court of Exchequer Chamber, on writ of error, sustained the validity of the statute. The court quote the case of Calder *vs.* Bull, in the Supreme Court of the United States (3 Dall, 391): "The result of which is that a State law may be retrospective in its character, and may divest vested rights, and yet not violate the Constitution of the United States." And the court says: "The authority of the Supreme Court of the United States, so much relied on as illustrating the general principles of law upon which the decision of the question depends, turns out to be favorable to the validity of the colonial act." The court then say: "In fine, allowing the general inexpediency of retrospective legislation, it cannot be pronounced naturally or necessarily unjust. There may be occasions or circumstances involving the safety of the State, or even the conduct of individual subjects, the justice of which prospective laws, made for ordinary occasions and the usual exigencies of society, for want of provision, fail to meet, and in which the execution of the law as it stood at the time, may involve practical public inconvenience and wrong. *Summa jus summa injuria.*"

L. R. 6 Q. B., p. 1.

The argument made was that a subject could not be deprived of his right of action for a wrong done, by a retrospective statute. The Congress of the United States, by an act of 2d March, 1867, Ch. 155, passed an act prohibiting actions for acts done during the war, under color of authority, as comprehensive as that of Jamaica. The acts of the Conventions of Georgia, Louisiana and Alabama are of the same import. They confirmed the judgments and decrees of the tribunals and subjected the plaintiffs to a condition that they should be opened for parties to make a defence, on application. It is not for a party to complain of oppression, tyranny or injustice, where such an overture was thrice offered, and when it was kept open for near four years for his acceptance, and at each offer refused—when others performed duties and incurred responsibilities on the faith of the decree of the court—when acquiescence in the decree has been universal, and no one complains but a senile old man in the custody of an attorney. The validity of these acts has been confirmed by judicial decisions of the State of Alabama—have been affirmed in a series of legislative enactments. The people of the State have acted upon them in the daily walks of life. They were statutes of repose, to maintain social order and promote domestic tranquility, and work injustice to no one.

The record and proceedings in the Court of Chancery at Mobile, disclose a cause within the ordinary jurisdiction of the State, and a course of proceeding adapted to the case, and sanctioned by the regular course of procedure which had long existed in the State. The Code does not make any exception in its articles, in reference to their incapacity or inability to appear. The cases to which the jurisdiction extends arises either out of the fact that the contract had been made and was to be performed in the State, or that property and rights under the jurisdiction of the State was to be affected by the suit. But, it is said that the jurisdiction of the court cannot extend to an alien enemy, and that no suit can include him as a party. But the statement of law, or fact, is destitute of any legal foundation. An alien enemy can be sued and can defend a suit. The decisions of the Supreme Court are decisive of the point.

McVeigh *vs.* United States, 11 Wall., 257.
University *vs.* Finch, 18 Wall., 106.
United States *vs.* Miller, 11 Wall., 268.

No writer upon practice or pleading has furnished any precedent of a plea of a defendant, that he was an alien enemy, and in general, both at law and in equity, pleas by a party of his own disability are not allowed.

Arch. Civil Ple., 303.
1 Dan. Ch. Pr., 156.

It sometimes happens that a foreign court will not enforce a judgment when the defendant did not reside in the State and was not subject to its process, and had no notice of the pendency of the proceedings. In such cases the courts say, that the judgments cannot operate *extra territoriam.* But that class of cases is limited to personal judgments, and in this class is limited to the cases where the defendant had no connection with the State or its laws and was in no manner bound to obey the mandates of its courts, or to submit to their jurisdiction. But the principle has no application to the courts of the States themselves, and when the defendant had rendered himself amenable to the laws and the jurisdiction of the courts. Morris Ketchum was a trustee, appointed in Alabama, by one of its corporations.

His contract bound him to the performance of duties and the care of property in the State. Though not a disqualification for the position of trustee, that he was a non-resident, it was a serious objection, and with other circumstances, a cause for removal. Non-residence placed him out of the reach of the jurisdiction of the court for purposes connected with the performance of his duties. If that non-residence became permanent and obstructive, nothing more was required. A decree for removal from office of a trustee, would not be denied or obstructed in any other court. Story, in his Conflict of Laws, says: "That foreign jurists strongly contend that the decree of a foreign court declaring the state of a person, and placing him as an idiot or minor, or prodigal, ought to be deemed of universal authority and obligation." Judge Story agrees to this and says: "And so it ought and doubtless would be deemed in regard to all acts done and authority exercised within the jurisdiction which appointed him."

Conflict of Laws, 787.

But the remarkable case here, is that of a court in the same jurisdiction, being called upon to denounce as null and void, the sentence of a court which has the sole and exclusive jurisdiction to remove a trustee appointed in the State, and whose duties were all to be performed in the State.

The extravagance of the demand is increased by the fact, that the sentences are in accordance with the laws which have never been called in question, and by a procedure which is correspondent to that used in all of the States, and in a large class of the cases in the courts of the United States. The plaintiff who brings this suit, brings before the court persons by publication. The people of the State in convention have affirmed the authority which made the decrees, and have afforded to the party complaining, a time, place, and mode of redress for any defect in the process or procedure. There has been a full execution of the decree before it was ever called in question, and an entire acquiescence in its conditions for the full period of prescription under the law of the State. If this had been a foreign judgment, such a consequence could not have followed as is here claimed. Justice Story says, where a foreign judgment is pleaded as a bar to proceedings, the court in which it is pleaded accepts it as valid:

"For if it has been pronounced by a competent tribunal, and carried into effect, the losing party has no right to institute a new suit elsewhere, and thus to bring the matter again into controversy; and the other party is not to lose the protection which the foreign judgment gave him. It is then, *res judicata*, which ought to be received as conclusive of right; and the *exceptio rei judicatæ*, under such circumstances is entitled to universal conclusiveness and respect. The distinction has been frequently recognized as having a just foundation in international justice.

Story Confl., Sec. 598.

It is stated in an English case that there is only one case in which the sentence or judgment of a foreign State is examinable in our courts, and that is when the party who claims the benefit of it, applies to our courts to enforce it. * * * In all other cases we give entire faith and credit to the sentences of foreign courts, and consider them as conclusive upon us.

Phillips *vs.* Hunter, 2 H. B. 410.

The jurisdiction of the Circuit Courts of the United States, is a concurrent jurisdiction with that of the Courts of Law and Chancery of the States. There is no capacity in the former to entertain bills of review, motions for rehearing, or new trials, or appeals, or writs of error, in respect to the judgments or decrees of the latter. In a few cases, they have a common superior—the Supreme Court of the United States; but generally they are distinct and co-ordinate jurisdictions. Each is entitled to respect and consideration for the other.

In a long list of cases the Supreme Court of the United States has laid down rules for preventing conflicts of authority among them, and for preserving to each their due weight in the judicial administration of the State.

Taylor *vs.* Carryl, 20 H., 584.
Jeter *vs.* Hewitt, 22 H. 352.

In another class of cases the Supreme Court of the United States have shown that it could recede from an untenable position and gracefully yield to the Supreme Court of a State its just pre-eminence in dealing with a class of cases to which the case under consideration belongs. In Snyder *vs.* Williamson, 24 H. 427—the Supreme Court considered a case in which it appeared that the trustee appointed in New York had administered and had sold portions of the trust estate by authority of the Chancellor in New York. The beneficiaries of the trust were minors who when they became of age sued to recover the property sold, because the Chancellor's orders were null and void, as not conforming to the authority of the statute. A number of suits were heard and decided by the Supreme Court of the United States, and are reported in 8 How. 495, 565, 566, and were elaborately examined, and the judgments of the court were adverse to the validity of the orders of the Chancellor of the State of New York. Other suits involving the same questions were instituted in the courts of the State of New York, and the judgment of the tribunals of that State sanctioned the acts of the Chancellor as valid. In the case before the Supreme Court of the United States above cited, the question arose which court was the final arbiter of the question, and the court determined that the question belonged to the supreme cognizance of the courts of New York.

The language of the court in that opinion was:

* * * * * * *

"The subject of the dispute is real property situated within the State of New York, and her laws exclusively govern in respect to the rights of the parties, the modes of the transfer, and the solemnities which should accompany them. *Communi et recta sententia est in rebus immobilibus servandum esse jus loci in quo bona sunt sita.* Every sovereign has the exclusive right to command within his own territory; and the laws which originate rights to real property are commands addressed to the members of the State, requiring them to abstain from any interference with the proprietary right they recognize or establish; and in respect to this subject the sovereignty of New York has not been impaired by her adoption of the sovereignty of the Federal Constitution.

"The power to establish federal courts, and to endow them with a jurisdiction to determine controversies between certain parties, affords no pretext for abrogating any established law of property, or for removing any obligation of her citizens to submit to the rule of the local sovereign. The title of the devisees of Mary Clarke was divested of authority conferred by the legislature of the State, which was exercised subject to the oversight of her own tribunals. The persons affected by this authority were natives of the State—children under the superintending care of the parental jurisdiction of the State. It was in the constitutional exercise of this supreme and exclusive jurisdiction that this title was disturbed. It behooves every other State to enforce or maintain rights which have thus originated in laws operating within their legitimate sphere, and which defeat no policy of their own; and the jurisprudence of this court attests the care with which this court has observed the general obligation (of which this is a particular instance), in its administration throughout the Union."

24 How. U. S., 433.

The case before this court, is that of a trustee appointed to a trust, by a corporation of this State. He was a non-resident at the time of his appointment, and at the time of his removal. When application for his removal was made, he was in the jurisdiction of the State of New York, and unable to reach Alabama for any peaceful purpose. He was charged with the violation of his duties; with non-residence and incapacity to do his duty, and as a man unsuitable. Orderly proceedings were had in the cause, and a final judgment rendered against him in April, 1863. He made no appeal, nor did he take any steps to annul the decree. His successor was appointed, and has performed the duties, without a challenge from any one, till March, 1876, when this suit was brought by the plaintiff in the Circuit Court of the United States.

The conventions of the people of the State, and the legislature of the State, and this judicial tribunal of this State, have uniformly maintained the authority of the State courts to render such judgments. At one time there was some variety of opinion among judges, but the firm and settled opinion of the State, of the legal profession and of the Supreme Court is settled, never again to be agitated anew.

The conclusion therefore is, that the decree is valid in operation, and not to be called in question collaterally.

The period in which it could be directly attached expired in 1869.

III.

The inviolability of the decree made in the Court of Chancery at Mobile in April, 1863, against the plaintiff in the courts of the State of Alabama, having been established, the question arises, whether the Government of the United States, or the courts of the United States are under any obligation, or have any prerogative or other jurisdiction, to declare this judgment to be null and void.

There is no act of Congress that prohibited the sitting of State Courts during the civil war, nor any for the nullification of any class of their judgments. On the contrary, a general recognition of those judgments has been made in tribunals of the States and of the Union. They have been affirmed or reversed in the Supreme Court of the United States, on writs of error. Nor is there anything in the subject of this decree to entitle it to the peculiar disfavor of the United States.

There is not among the Statutes of the United States, one which relates to the appointment or the removal of trustees under a deed or will in any one of the States of this Union.

All that relates to their appointment, accountability and removal, must be ascertained from the municipal laws of the several and respective States of the Union. The State of Louisiana only recognizes them as a class of mandataries, and as subject to that law only.

The Statutes of Alabama have reduced their proportions. Their appointment cannot descend. They cannot remove from the State, they can be discarded for insolvency, and displaced when unsuitable. The law which authorized the appointment of Ketchum is an Alabama law, and the source of his responsibility and the tenure of his appointment are to be found in the Code of this State. The Court of Chancery of the United States would hold him to account on the principles of her jurisprudence. If the removal of Ketchum by a Court of Alabama, had been made in the most arbitrary manner, and for the most frivolous and fantastical reasons, there could not be any redress from the Supreme Court of the United States by any writ of error to this court. That court would never have granted a writ of error upon application. If the Supreme Court had had jurisdiction, Ketchum might have sued out such a writ at any time for three years after hostilities had ceased. The judgment became final in November, 1864, and until November, 1869, a writ of error would have been exigible. But the case shows a decree without a flaw on the face of it, made upon a cause wholly municipal and administrative in its character, conservatory and considerate in its purpose, which the sovereign and legislative authorities of the State have confirmed and ratified on constitutional principles, which the tribunals recognize to be valid; against which no review has been claimed, no appeal sought, and which has remained executed for a period of thirteen years without question.

The defendants ask this decree to be treated as a nullity upon some ground of public policy.

The Circuit Court of the United States is not a court of review. It has no superintending or controlling jurisdiction over the Courts of Alabama. The Courts of Chancery in Alabama have a jurisdiction as large in all respects as the Courts of the

United States in matters of Chancery jurisdiction, and it is only in a few cases that the Supreme Court of the United States can revise their decrees on writ of error. It is not affirmed that this decree could have been resisted in this Court of Chancery. No affidavit has been submitted there, that there was or is a meritorious defence. All the rules that regulate the relations between the Courts of the United States and State Courts would be subverted were this court to entertain the jurisdiction which is implied in the prayer of this bill. The precise form of the objection is, that Morris Ketchum, a citizen of the State of New York, was made a party to a suit in the State of Alabama, by a publication during a time of war, at a time when he could not fairly be expected to appear to suit. But the answer is, that the suit concerned property, duty and rights which had their origin in Alabama, were subject to her laws, and that Ketchum became connected with them by a deed executed in that State and accepted by him. The *lex loci* as well as the *lex fori* had not been changed. He had become incapacitated from performing obligations and duties the law imposed, and the court appointed, as it was authorized, his substitute.

Such a decree is entitled to credit everywhere,

The admininistration of laws through regular tribunals is not a merely municipal concern, but is of universal interest and necessity, without which no civilization can exist ; and the division of mankind into nations and States for political, administrative or physical causes, is subordinate to the general interest of universal civil society. The jurisdiction of all countries has, therefore, continually tended to discountenance the principle that they should obstruct and thwart one another, but on the contrary, that jurisdiction should be exerted to promote and to assist each other.

The nature of judicial functions implies that every suit and prosecution should have a solution, and that solution should be executed even against the will of the unsuccessful party. Whether the judgment be right or wrong, it declares and defines the rights of the parties conclusively.

It is not only final and conclusive in the particular suit, but is conclusive between them in every other suit and in every other court. It is only in the great exigencies of society that legislatures interfere with the sanctity or authority of the *res judicata*. The Congress of the United States did not deem it necessary to make any nullifying statutes in respect to the legislative administration of the States during the war, as it affected persons, save only in respect to the State debts. It made no statute at all in respect to the judgments and decrees of the State courts. At the termination of hostilities, the political authorities of the United States submitted to the people of those insurgent States themselves, the power and duty of restoring civil and social order and political administration. The President of the United States addressed this language to the Governor of Alabama: "That in obedience to the high and solemn duty imposed upon him by the Constitution of the United States, and to enable the loyal people of the State to organize a State government, whereby justice may be established, domestic tranquility restored, and loyal citizens protected in all their rights of life, liberty, and property." "The Governor should convene a convention composed of loyal citizens only, for the purpose of altering and amending the Constitution of the State; and with authority to exercise within the limits of the State of Alabama all the powers necessary and proper to enable such loyal people to restore said State to constitutional relations to the Federal Government, and to present such a Republican form of government as will entitle the State to the guarantee of the United States therefor." The Ordinance 26, relative to the confirmation of judgments and decrees of courts, under the condition we have mentioned, was adopted by this convention. Subsequently another convention was held in December, 1867, under authority of Congress, and an ordinance of similar import, being Ordinance 39, was then adopted. These are embodied in legislative acts.

Code of 1867, §§ 2825, 2827, 2832; Acts 1868: 186, 187, 415.

The convention parliament of Great Britain in April and May, 1660, preparatory to the restoration of Charles II. to the throne, adopted a similar ordinance. The courts which had been setting since 1648, were obnoxious to the same imputations as the courts of the States we have mentioned. They did not acknowledge the authority nor hold the commission of the king.

Their judgments would not have been enforceable without his authority.

The restoration of the Union to its normal condition followed upon the adoption of the ordinances and acts we have mentioned.

The jurisprudence of the United States has uniformly recognized the principle embodied in these ordinances. No case exists in which the Supreme Court has enquired into the commission of the judge who has occupied a State court, or whether the court recognized the confederacy, or the United States. They have treated them as competent courts to render judgments binding *inter partes.*

Nor has there been any general principle formulated, which will enable us at once to declare that any of the judgments would be annulled or disregarded. The cases of Dean *vs.* Nelson, 10 Wall. 158, and Lasere *vs.* Rochereau, 17 Wall. 437, presented instances of persons expelled forcibly from the limits of the jurisdiction of the court, which tried the causes by the authority of military officers of the United States as enemies, and prohibited to return. Their property was seized and sold under judicial proceedings of a local court in their absence, having notice of the facts. The judgments were not respected. In Lockhart *vs.* Horn, 17 Wall. 570, 1 Woods, 628, a judgment under a decree of a court of probate, directing payment to the heirs of a decedent in the bonds of the Confederate States, issued to aid them to carry on their war, was disregarded as illegal, and not bending upon an absent legatee.

The court has refused to interfere with judgments rendered against persons who were proceeded against as absentees by their creditors, who had gone into the Confederate States after the war had begun.

Ludlow *vs.* Ramsey, 11 Wall.
McQuiddy *vs.* Ware, 20 Wall. 15.

The court held that Congress could empower the courts of the United States to proceed, as courts having common law jurisdiction, to confiscate the property of persons engaged in rebellion, and that seizure and publications were appropriate proceedings to acquire jurisdiction of the party. No constitutional restriction was contravened by such process.

Confiscation cases, 20 Wall. 92, 114, 115.

In these cases it was determined that suits could be brought against enemies in the hostile territory, or who were abroad.

11 Wall. 259; 18 Wall. 106.

This assertion of sovereign power on the part of the United States needs no vindication. But when we notice those proceedings, we are at a loss to find any argument upon which the decree of the court of Alabama to remove Ketchum from his trust, can be impugned. The power of a court to employ this form of proceeding is sanctioned by the practice of all of the States and of the Union.

The only reply which has been made to these instances is, that the tribunals of the Southern States were limited in their jurisdiction to cases of domestic interest and of local operation; to cases between citizens of the States. But no such limitation has been announced by Congress and none by the international law. The opinion of the court in Horn *vs.* Lockhart, 17 Wall. 570, states the principle broadly: "That the acts of the several States in their individual capacities, and of the different departments of government, executive, judicial and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the national authority or the just rights of citizens under the constitution, are in general to be treated as valid and binding."

It is obvious that the decree against Ketchum does not relate to any matter of national concernment, and that he has not been deprived of any sort of a right which a citizen of the United States is endowed with. The removal of a trustee is one of municipal jurisdiction, and was applied in a case plainly warranted by the law. The court say: "The existence of a State of insurrection and war did not loosen the bonds of society, or do away with civil government or the regular administration of the laws: order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated precisely as in time of peace." That class of rights and duties which grow out of the deed of trust we have been discussing are, as we have shown, constantly subject to the governmental care of the States and not of the Federal Government. In this case there were wrongs done and rights violated that justified the suit. In the plea that was made of the decree in this case, every fact pleaded was admitted. The jurisdiction of the court over the subject of the suit, the regularity of the course of procedure, the identity of the causes set out in the bill and the decree with those which the statute declares to be sufficiency, the authority of the court to pronounce the decree, are all confessed in setting down the plea for a hearing on its sufficiency. No averment can be made against the decree itself for error or mistake. The decree imports absolute verity.

The only question was, whether the court had a power to remove from the place for any cause whatsoever, by this process. The causes specified are those the law sanctions as sufficient.

In the case of Sprott *vs.* United States, 20 Wall., 464; the Supreme Court discriminates between the acts and proceedings of the State Governments during the war, and those of their common head, the Confederate Government. The recognition of the existence and the validity of the acts of the so-called Confederate Government, and that of the States which yielded a temporary support to that government, stand on very different grounds, and are governed by very different considerations, is the conclusion of the Supreme Court.

The court says of the State Governments: "The same constitutions, the same laws for the protection of property and personal rights remained, and were administered by the same officers. These laws, necessary in their recognition and administration to the existence of organized society were the same with slight exceptions, whether the authorities of the State acknowledge allegiance to the true or the false federal power. They were the fundamental principles for which civil society is organized into government in all countries, and must be respected in their administration under whatever dominant authority they may be exercised."

The court with great emphasis declares the exception: It was when the powers were perverted to the aim or the end of giving aid to the rebellion, that the act would be disregarded as null and void.

The same high tribunal in a still later case repeat these distinct declarations with approbation, and in respect to the legislative acts of the States, say: "All the enactments of the *de facto* legislatures in the insurrectionary States during the war which were not hostile to the Union, or to the authority of the general government, and which were not in conflict with the Constitution of the United States or of the States, have the same validity as if they had been enactments of legitimate legislations. Any other doctrine than this would work great and unnecessary hardship upon the people of those States without any corresponding benefit to the citizens of other States, and without advantage to the national government."

United States *vs.* Ins. Company, 22 Wall., 99-103.

It is impossible to draw a rational distinction between the case before this court, and that before the Supreme Court of the United States, in the application of a principle. The principle includes a sanction to all laws and all judicial proceedings which are domestic in their nature, and which affect only the municipal concerns and interests of the State itself. The decree rendered in the Court of Chancery at Mobile, we have shown to have been of this character.

A long list of cases may be made in which the Supreme Court have affirmed the potency of the decisions of the courts of a country in the possession of jurisdiction and control. The Congress of the United States claimed the land from the Iberville to the Perdido, including the whole coast from the latter river to the Island of Orleans. Spain rĕtained possession untill 1813, even of Mobile.

But no judgment or decree of the courts was ever disturbed. On the contrary, the proceedings of the courts, as well as the administrative acts of the government, were affirmed.

Keene *vs.* McDonough, 8, P. 508.
Pollard *vs.* Kibbe, 14. P. 353.

The convention parliament which restored Charles II, was held about one month before the return of the king. The judicial proceedings in the courts during the period of rebellion and usurpation, were all recognized as valid. No question has ever been raised in the courts of Great Britain as to the cases embraced in the confirmatory act. Upon the restoration of Louis the XVIII. to the throne of France, the civil code of Napoleon, the existing laws, the ordinary courts and tribunals, the rights of person and property, were deliberately confirmed. These public declarations demonstrate that the common understanding of civilized nations accord with the opinions of the Supreme Court in all their latitude, and that the declarations were made that order and tranquillity might be promoted and insured. The acts of the conventions of the State, and of the Legislature of the State, were formed in the broadest statesmanship. An opportunity was afforded to every person to correct any irregularity, error or vice in the judgments or decrees confirmed.

No man was concluded who was willing to affirm there was a meritorious defence.

Four years from the removal of every obstacle to appearance in the courts *were* granted to every person to obtain redress against any wrong. During that period neither Ketchum nor any holder of bonds of the company objected to the decree.

The successors appointed by the court performed their duties under that decree, from 1863 to 1876, unchallenged by Ketchum or any bondholder. Duncan & Elliott went into possession as successors unchallenged, and so continued until the cause was at issue and a master appointed to make a report of the debts due by the corporation. When Ketchum was inquired for, his constituents—his list of bondholders who required his services—Belloni was the only one named, the holder of six bonds; while the holders of about eight-elevenths of the debt of the company brand his pretensions not only with contempt, but as mischievous.

He has nobody to support him thus far but Belloni, and, possibly, Moran.

His pretensions were revived, not by the call of bondholders, but at the instigation of an attorney who sought him out. Up to that date he had made no protest, opposition, assertion or claim, but acquiescence full and entire. The corporation had demanded his removal, the bondholders approved and now rise up to confirm. He submitted.

Since 1863, there has been default after default on the part of the Mobile and Ohio Railroad Company. When the war ended, its railroads, equipments, estates, were dilapidated. There was conference after conference with creditors, and respites and delays were granted. There were inspections of its securities and titles. Ketchum had no share or participation in all of this. He had been removed. Others were in the place of the nominees in the deed. Ketchum never asked for admittance.

He knew of the decree, and he made no effort to cause its rescision. He suffered all the periods for appeal or other defence to pass. The decree was not only *res judicata*, but irreversible. It is not necessary, in order to render a transaction unimpeachable, that any positive act of confirmation or release should take place. It is enough if proof can be given of a fixed and unbiassed determination not to impeach the transaction. This may be proved either by acts evidencing acquiescence, or by the mere lapse of time, during which the transaction has been allowed to stand.

Stone *vs.* Godfrey, 5 D. Mc. G., 86.
Phillips *vs.* Gatling, 7 Hare, 525.
Stafford *vs.* Stafford, 1 D. & G., 202.
Bowman *vs.* Watkin, 1 How., 189.
Wagner *vs.* Baird, 7 H., 234.
Askew *vs.* Hooper, 28 Ala., 634.
Johnson *vs.* Toulmin, 18 Ala., 50.

Acquiescence is not merely inaction. It is where a person having a right stands by and sees another dealing with the property in a manner inconsistent with the right, and if he makes no objection while the act is in progress, he cannot afterwards complain. This is the proper sense of the word acquiescence.

Duke of Leeds *vs.* Amherst, 2 Phil., 117.

The doctrine of carrying equities by acquiescence I consider to be one of the most important to be attended to, for otherwise there is a great danger of the principles of a Court of Equity thus improperly exercised producing great injustice. A man who with full knowledge of his case does not complain, but deals with his adversary as if he had no case against him, builds up from day to day, a wall of protection for such opponent which will probably defeat any attack upon him.

Vigus *vs.* Pike, 8 C. & F., 562.

The deed of trust shows a million of acres for sale by corporation, and trustee to pay bonds year by year, as the land can be sold; sales have been made and the bonds reduced by such sales, as the accounts show, several hundred thousand dollars. Since 1863 there has been continuous default, with the exception of three years; the funded debt, consisting of unpaid coupons, for interest, is nearly half as much as the amount of bonds, and yet, since 1863, and during this period of embarrassment, there has been between Ketchum and the corporation and the creditors, no intercourse, counsel, co-operation.

If the decree were at all open to animadversion, this conduct would make it impossible for him to assail it. He has made an outer wall around the decree which he can never surmount. The doctrines of a Court of Equity oppose themselves to the covert and cunning attempts of bad persons to bring forward stale claims for sordid and personal aims. Ketchum has no sort of interest in the corporation or the bonds of the company. He has been withdrawn from all intercourse with it since 1861. He knows nothing of its business. Other persons have been performing duties which were incumbent upon him, had he not acquiesced in the decree of the Court of Chancery. He has known of this. He has never settled the account with the corporation for the eighteen bonds. He has eschewed the company. He has known that his successors had been appointed and were acting, and were in possession of the property. Their bonds have been given, their bills filed in court, their cause was at issue when Ketchum makes his appearance on the conditions disclosed by himself in his deposition. The Supreme

Court of the United States says in reference to a claim so presented: "A Court of Chancery refuses its assistance to sustain a stale claim. There must be reasonable diligence as well as good faith, to call the powers of the court into activity, and, if there be wanting diligence or good faith, the court will remain passive and refuse its assistance. If the plaintiff shows laches, he is not entitled to any aid from the court. The proof is conclusive on this subject."

McNight *vs.* Taylor, 1 How., 161.
Maxwell *vs.* Kennedy, 8 How., 211.

The doctrine of acquiescence applies as well to the force of judgments as to the confirmation of legal rights against outstanding equities, or the establishment of equitable rights against a legal title.

A party by a release of errors, may preclude any objection to the validity of the judgment—such as want of notice.

21 Ill. Rep. 274.

A person who has taken a benefit from a judgment is not allowed afterwards to impeach its validity.

Horn *vs.* Lockhart, 17 Wall., 570.
24 La. Rep., 289.

Defendant who has assisted in the execution of the order of sale, will not be permitted to impeach the sale.

Erwin *vs.* Lowery, 7 How., 173.

This decree has been executed, the period for attack by appeal, bill of reviewed petition for re-hearing, has long ago expired. The longest statute of limitations in respect to the enjoyment of property, had become operative before the bill was filed. The time given by the State Conventions for assailing the decree had elapsed, and the confirmation by these had become absolute and unconditional.

The question, then, finally comes whether a court of the United States, within the limits of the State, can allow an impeachment of all of these judicial and legislative acts collaterally.

The Supreme Court of the United States may correct a judgment or a decree in a court of a State, by sending a writ of error to that court, for errors apparent in the record and proceedings, within the terms of an act of Congress on the subject.

That the court might reverse a decree or judgment affirming the confirmatory power of the State statutes we have referred to. But no court has the power to say that a judgment or decree within the ordinary jurisdiction of the State court, under a State law, and when the procedure has been correspondent to State statutes, is not binding between the parties to that judgment or decree after the period for a review according to law, has expired.

JOHN A. CAMPBELL,
Sol. for Plaintiffs.

Andrews, Clifford

Bangs

~~Morris~~

Morris

Hoadley

Ala

Supreme Court of the United States.

NO. 879.

MORRIS KETCHUM, et al.

vs.

WILLIAM B. DUNCAN, et al.

PETITION ON ORDER SUSPENDING SUPERSEDEAS.

GEORGE HOADLY,
P. PHILLIPS,
E. H. GRANDIN,
E. L. ANDREWS,
Of Counsel.

December, 1877.

R. O. Polkinhorn, Printer, 632 and 634 D Street, Washington, D. C.

Jan 21 1878 Supersedeas application denied

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Supreme Court of the United States.

MORRIS KETCHUM, et al.

vs.

WILLIAM B. DUNCAN, et al.

Petition upon order suspending Supersedeas.

The appellants respectfully petition for a hearing upon the order affecting the supersedeas, for the following reasons:

They have not had any hearing in respect thereof, *either oral or on paper*.

The first motion made by appellees was for the vacation or modification of the supersedeas. This application was denied by the court after oral hearing.

The appellees then moved to dismiss the appeal. In replying to the papers served on that motion, coupled as it was with the repetition of motion to vacate supersedeas, the appellants had not supposed, under the rules, that the motion to vacate supersedeas could be re-argued without leave, nor were they willing to relinquish their right to oral argument on that motion. The appellants did not therefore discuss the question of vacating the supersedeas, supposing that that question had been determined.

Greatly to the surprise of the appellants, the court, in denying the motion to dismiss the appeal, took occasion to suspend the supersedeas. Hence this is the first occasion on which the appellants have been heard on the question decided.

First. The court has no power to affect the statutory right of supersedeas, obtained by compliance with the acts of Congress. (Sec. 1007 Rev. Stat.)

This writ does not obtain by virtue of the inherent judicial powers of this court, but is derived entirely from the statutes.

"Appeals and writs of error do not become a supersedeas and stay execution in the court where the judgment or decree remains by virtue of process issued by this court, merely as such, but they are constituted such by the act of Congress when the conditions prescribed in the twenty-third section of the Judiciary Act are fulfilled. When those conditions are complied with the act of Congress operates to suspend the jurisdiction of the court, to which the writ is addressed, and stay execution in the case pending the writ of error until *the case is determined or remanded.*" (Slaughter House Cases, 10 Wallace, per. Clifford J.)

Congress has enacted that, upon furnishing security for "all damages and costs," a party "may" obtain—which is here equivalent to shall obtain—a supersedeas. And the statute proceeds to declare that in such cases "execution shall not issue until the expiration of ten days." Could there be a clearer indication of the intent of Congress, that when security *was* furnished execution shall not issue? Why prohibit the Circuit Court, if this court can immediately award execution?

How can this court dispense with this right? The exercise of it may sometimes operate harshly, but Congress has said that the compensation of the injured appellee shall be sought on the bond.

Certainly the power of the court cannot be sought in the granting of writs necessary to the exercise of its appellate jurisdiction. That may be aided by granting a supersedeas, but not by avoiding one.

Not a single case, it is believed, can be found in the history of this court where the dispensing with the statute exercised in this case has ever previously been imposed. It is submitted that the absence of any such exercise of power among the numerous Chancery causes which have come before this court is to be taken as strongly indicating a judicial recognition of the absence of the power. Indeed, the statutory provisions in relation to appeals, by which they are made to conform to writs of error, preclude the existence of any power to dispense with the supersedeas. To permit execution in a common law cause, negatives the idea of a supersedeas. In equity, the full limit of power to interfere with the *res* pending supersedeas, is when necessary for its preservation, which cannot be predicated except of perishable property. For reasons of public policy to guard appellate rights, the legislative power has purposely constituted a supersedeas an absolute and inflexible right. Moreover, as we shall show, one of the very errors here complained of is the ordering of a sale by the Circuit Court under the circumstances of this case. To prevent that erroneous sale, the supersedeas was given. To take away the supersedeas and allow the sale, is really to prevent any correction, and to nullify the appeal.

Second. We respectfully submit that, conceding the power to supersede the supersedeas, it most oppressively operates against the appellants by the order made.

The only adequate security to compensate the appellants for the loss of their supersedeas, is the deposit of money sufficient to cover the principal ($365,000) and interest of their bonds, with costs.

The coupon question is the least important in respect of the amount involved, among all the errors complained of in the decree below.

Another error is as follows:

The bills filed by the appellants in Alabama, had for their object, to declare the first mortgage bonds to be paramount liens on the entire road, from the Ohio River to the Gulf of Mexico. Principally, it was sought to have their priority decreed over some two millions of dollars of claims on the one hundred and eighteen miles of the road in Tennessee. On the other hand, these claims, known as substitution bonds, had filed their bill of foreclosure in Tennessee. When the cause came on for hearing in Alabama, it was found that personal jurisdiction could not be obtained in that district so as to determine the question of the priorities as between the first mortgage bonds and the substitution bonds. Under those circumstances, these appellants contended below that no decree of sale should be made of the entire road, including the Tennessee section, until it had been determined whether these two millions of dollars of claims were superior or inferior to the mortgage about to be foreclosed. Without the settlement of these priorities it would be impossible to have a fair sale, or obtain any adequate bid upon the sale of the road. No one could bid at a sale under our mortgage without knowing whether he was obtaining a property burdened with two millions of encumbrances. But the court below ordered a sale, subject to the Tennessee lien as it might be finally determined.

We submit that there is abundant authority to show error in a decree so made. The proportion of these claims to the first mortgage is fully one-third, and in this percentage, will the appellants suffer in respect of that item if the sale be allowed to proceed? This was an error we proposed to show, and this was the sale ordered without determination of priorities that we superseded. Correction of error and supersedeas are thus inextricably mingled.

It must also be borne in mind that the circumstances of the litigation have greatly changed since the supersedeas was granted. A decree in favor of the substitution bonds, declaring them a paramount lien on the road in Tennessee, has been lately entered, and that cause is likewise now in this court. If the road be now sold, it must *necessarily* be burthened with this two-million dollar lien, and will produce at least one-third less upon a sale under our mortgage. If our appeal and supersedeas of the Tennessee decree hereafter results in our favor, we can gain nothing by it, because the whole road, under this order, will be sold subject to that lien. When it is remembered that these parties, seeking to force that unjust result, are holders of nearly every dollar of the Tennessee claims, their object is apparent.

Third. As the order stands the appellants must inevitably lose all the principal of their bonds—four hundred thousand dollars of first mortgage principal and interest owned and represented by Moran Brothers, and fully before this Court.

Such a result arises in the following manner: Hays and Dupuy representing a large amount of bonds, applied below for leave to use them in bidding as so much cash. As this mortgage did not confer such a privilege as the covenants of more modern mortgages do, the Court coupled with the privilege of such use of the bonds, the requirement that all first mortgage bondholders should have the right to participate in the bid in bonds, and on the terms of such bid. The time within which such participation could be elected by any bondholder was originally fixed "at any time down to the day of sale." This was subsequently altered so as to limit the time for the use of the bonds by those who had not joined the Hays' party (they having the preponderating amount) to September 1st, 1877.

These appellants were afterwards granted their supersedeas, and *relying upon that*, they have not availed themselves of this provision of the decree. By the order, just granted, they are deprived of all benefit of the supersedeas which stayed this mode of bidding But by their reliance upon the efficacy of the supersedeas, they have lost the vital protection secured to them.

The Hayes' party still retain this privilege accorded them, but through no fault of the appellants, the time for their election is gone by, and they are, by the present order deprived of the alternative right which they sought by appeal with supersedeas. The Hay's party can now bid in the road for bonds alone, and the appellants would not get a dollar of dividend.

This is not like a case of merely changing the character of the fund with the retention of a continuing lien on the proceeds. But it is taking away the mortgaged property, which is to be obtained for obligations of the debtor itself to be delivered as bid tokens on the sale, and by such delivery becoming *ipso facto* worthless. These appellants would thus lose their lien on the railroad, and there would be nothing to represent their security but cancelled bonds. If the amount of the first mortgage as undisputed were fixed as an upset price, the appellants would have some protection, because the amount of their bonds, and, in fact, the entire $836,000, not in the scheme of reorganization, would have to be met by cash moneys in the bid. This was applied for below as a part of the decree, and its refusal is assigned as error here.

If the decree were now modified in that respect, there would then be really a change in the fund by a sale. If the court should annul our supersedeas, we only ask what will secure us the money called for by our bond and mortgage.

Fourth. *The amount of money to be deposited to cover the* four hundred thousand dollars now in the appeal, should also be increased by providing for a similar deposit to secure the bondholders who have not joined either plan of reorganization of whom there are $471,000 first mortgage, besides the $365,000 in this appeal, making $865,000 first mortgage bonds. They are legally represented by the trustees, and many of them, as shown in the papers, relied upon, this stay and abstained from availing themselves of the clause of the decree in reference to using their bonds for bidding. The present order leaves them naked,—forced to lose everything. They are *cestuie que trust* entitled to the protection of chancery, and they should be secured by a similar deposit of money. Of course "the Hays' party may be willing that this Court should now make an order giving an extension of the time for others to participate in their bid, as contemplated by the decree. But this would end the appeal as well as the supersedeas by cancelling all the bonds, when used, on the bid, and we would be thus driven against our appeal and supersedeas to take a new first mortgage bond for $440, in lieu of our mortgage for $1,000, which is what is offered by this scheme of reorganization. This is a favor which we do not covet, and which it would be eminently unjust by vacating our stay, without securing the principal of our bonds, to force us to yield to. We submit that the court would not grant the favor to the appellees of destroying our supersedeas when we will then be forced to give up our appeal, also, in order to save anything on our bonds at the sale. To avoid this result, the only safe course offering any security to appellants and saving their right of appeal, is to require deposit of the face of their securities. If the appellees are deemed to have any claim to this favor, it is but fair and just that we be secured the amount of our interest in the property, particularly as we claim that the decision of the appeals in our favor will so reduce the liens as to make the first-mortgage bonds good security, dollar for dollar. If the appellant obtain a sale before this determination, and without our fault, we should be secured fully. The unusual nature of the order should also be considered in securing us.

The appellants have furnished bond for one hundred thousand dollars. By means of that bond, they have stayed the sale for six months. They are liable to be held in the above sum, since the order of this Court substantially vacating the stay. At least some cancellation of this bond should be provided for in the order, as the Court has held the bond good as supersedeas, and the vacation of the stay is matter of favor. The bond is of no good to appellants as a stay, if the order be continued. Stay sureties should be released, and the appellants allowed to file an ordinary appeal bond. But why all these complications to aid in an alleged desire for a sale of the property, when those who were successful below are offered the opportunity to submit both branches of the case to this court, without delay, on printed argument?

Without a hearing on the merits, with our security and position unimpaired, justice cannot be done to the one and a half million dollars of bonds of various series who have not trusted in the scheme of purchase sought to be practically and irrevocably accomplished in advance of the knowledge of their rights, as against that number of bondholders who are waiting the decision of this court.

Your petitioners pray that the order should be vacated for want of power, or the appellees required to deposit $400,000 in the registry of the Court, to secure the appellants, instead of $14,000 as in the present order.

GEORGE HOADLY,
E. H. GRANDIN,
P. PHILLIPS,
E. L. ANDREWS.
of Counsel.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1877.

No. 879.

MORRIS KETCHUM et al.,
Appellants,

vs.

WILLIAM BUTLER DUNCAN et al.,
Appellees.

Motion for leave to discontinue Appeal of De Watteville, Ziegler, and (in part) Chuffard.

F. N. BANGS,
For Motion.

NEW YORK:
Evening Post Steam Presses, 208 Broadway, corner of Fulton Street.
1878.

IN THE

Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 1877. No. 879.

MORRIS KETCHUM AND AL.,
Appellants,

vs.

WILLIAM BUTLER DUNCAN AND AL.,
Appellees.

To the Honorable the Supreme Court of the United States, &c.:

The petition of William H. Hays, William S. Pierson, T. Haskins Du Puy, and William Butler Duncan, respectfully shows as follows:

This appeal was originally taken by Morris Ketchum, D'Orelli Ziegler, Bernard De Watteville, Masson Chavannes, Henry Jump, Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, each of the said appellants, except the said Morris Ketchum, claiming to be a holder, in his own right, of first mortgage bonds of the Mobile and Ohio Railroad Company, these petitioners, Hays, Pierson and Du Puy, being now the holders of upwards of five millions of dollars of bonds, and the said Hays, Pierson and Du

Puy being also the holders of coupons maturing in the year 1874, to the principal amount of five hundred and thirty-five thousand dollars; and the matter in controversy in this cause and on this appeal being, the continuing obligation and lien of said coupons of 1874.

These petitioners further say that this appeal is from a decree rendered upon the consolidation of three suits in equity, pending in the Circuit Court of the United States for the Southern District of Alabama, in one of which suits the said D'Orelli Ziegler, Bernard De Watteville, Henry Jump and Masson Chavannes were plaintiffs, as bondholders bringing their suit on their own behalf and on the behalf of such other bondholders as should come in and contribute to the expense of the action. These petitioners, Hays, Pierson and Du Puy, as holders of said coupons, were hostile in interest to such appellants on this appeal. In said action in which D'Orelli Ziegler and others were plaintiffs in the court below, Charles Moran appeared as the attorney in fact of the said Ziegler, De Watteville, Jump and Chavannes. The said Charles Moran and his copartners in the firm of Moran Brothers, namely, D. Comyn Moran and Amedee D. Moran were examined as witnesses in the said suit of D'Orelli Ziegler and others, and the said Charles Moran testified that the said Rudolph Merian was the holder of nine first mortgage bonds of two hundred and twenty-five pounds sterling, or one thousand dollars each, numbered respectively, 4,823, 5,792, 2,839, 2,841, 3,251, 2,844, 3,337, 3,519, and 3,520; and the said Charles Moran further testified that the said Eugene Renevier was the owner and holder of five first mortgage bonds for two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively 4,501, 4,502, 4,503, 4,535, and 2,691; and the said Charles Moran further testified that the said Charles Carrard was the owner of twelve first mortgage bonds of two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively 703 to 705, 3,883 to 3,886, 3,817, 5,916, 1,854, 5,069, and 4,849; and the said Charles Moran further testified that the said Cephise Chuffard was the holder of fourteen first mortgage bonds of two hundred and twenty-five pounds sterling, or one thousand-dollars,each, numbered respectively, 953, 1,298, 2,215, 3,491. 4,054, 4,193 to 4,196, 4,514, 4,518, 4,520, 4,640, and 4,894; and the said Charles Moran further testified that the said Henry Jump was the holder of fourteen first mortgage bonds of two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively, 3,420, 1,471, 4,266, 4,273, 4,473, 4,053, 4,057, 4,575, 4,687, 4,992, 5,073, 5,926, 5,072, and 5,506, and of arrearage interest bonds, three for one thousand dollars each, and four for five hundred dollars each, numbered respectively, 47, 48, 49, 45, 111, 112, 312; and the said Charles Moran further testified that Masson Chavannes was the holder of seventeen first mortgage bonds for two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively, 297½, 3,530, 3,562, 3,947, 5,681, 736, 1,374, 1,444, 1,545, 1,761, 2,684, 2,773. 2,780, 3,321, 4,357, and 5,928; and the said Charles Moran further testified that the said D'Orelli Ziegler was the holder of eighteen first mortgage bonds for two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively, 2,112, 3,487, 4,247, 3,960, 3,950, 4,466, 4,494, 4,856, 4,878, 5,504, 4,868 to 4870, inclusive, altogether eighteen bonds; and the said Charles Moran further testified, that thesaid Bernard De Watteville was the holder of ninety-seven of said first mortgage bonds, for two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively as follows: 613. 646, 740 1,419, 1,752, 1,822, 1,930, 1,931, 1,939, 1,942. 1,955, 2,144, 2,550, 2,648, 2,699 2,798, 2,817, 2,818, 3,262, 3,294, 3,298, 3,299, 3,312, 3,339, 3,404, 3,410, 3,423, 3,548, 3,568, 3,576, 3,599, 3,601, 3,661, 3,662, 3,663, 3,766, 3,769, 3,770, 3,879, 3906, 3,907, 3,909, 3,910, 3,959, 4,116, 4,180, 4,187, 4,381, 4,383, 4,385, 4,476, 4,477, 4,478, 4,479, 4,497, 4,794, 4,882, 4,883, 5,017, 5,028, 5,029, 5,030, 5,031, 5,070, 5,218, 5,270, 5,284, 5,412, 5,413, 5,430, 5,469, 5,524, 5,560, 5,569, 5,656, 5,688, 5,689, 5,690, 5,691, 5,767, 5,769, 5,771, 4,962, 4,983, 4,984, 4,985, 4,986, 5,736, 5,737, 5,738, 5,739, 5,740, 5,744, 5,745, 5,746, 5,747, and 5,748; but these petitioners say, that of the said bonds so sworn to as belonging to the said D'Orelli Ziegler, only ten were proved before the master in the court below, which were proved in the name of Moran Brothers, and your petitioners are informed and believe that those numbered 4,868 to 4,870, 501 to 506, inclusive, were not proved before the master in the court below.

And these petitioners further say that the said D'Orelli Ziegler has assigned, transferred and delivered to the said Hays, Pierson and Du Puy, eighteen of said First Mortgage Bonds, including those so proved before the master as aforesaid; and that the said Bernard de Watteville has transferred, assigned and delivered to the said Hays, Pierson and Du Puy one hundred and two of the said First Mortgage Bonds, including the ninety-seven so sworn to as belonging to him by the said Charles Moran as aforesaid.

And these petitioners further say that of the said bonds so sworn to as belonging to the said Cephise Chuffard, ten have been transferred, assigned and delivered to the said Hays, Pierson and Du Puy, and are now held by them, numbered respectively 953, 1298, 2215, 3491, 4054, 4193, 4194, 4195, 4196 and 4514.

These petitioners, Hays, Pierson and Du Puy further say, that the said bonds of the said De Watteville, Chuffard and Ziegler respectively, which were transferred and delivered to them, were transferred simultaneously with the signature and delivery to them of a printed agreement of and concerning the said bonds so transferred, assigned snd delivered, which printed agreement is dated October 1, 1876, and among other things contains the following clauses and stipulations:

"*First.*—The said William H. Hays, William S. Pierson and T. Haskins Du Puy, are hereby constituted sasignees in trust, agents, managers and attorneys of the said parties hereto, who are creditors of the Mobile & Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing and controlling the same, for the purposes, in the manner, and with the powers hereinafter specified.

"*Second.*—Each of the parties hereto, being a creditor of the said Mobile & Ohio Railroad Company at the time of the execution of this instrument, assigns, transfers, delivers, and makes over to the said William H. Hays, William S. Pierson and T. Haskins Du Puy, all the evidences of debt issued by said company, and claims against said company, now held by such subscribers hereto, whether in the shape of bond, coupon, note, judgment, open account, unliquidated demand, unpaid voucher or otherwise, to be held by the said Hays, Pierson and Du Puy, as such assignees, agents, managers and attorneys, in the manner and for the purposes, and upon the trusts, so hereinafter declared concerning the same.

"*Fifteenth.*—And the said assignees and attorneys, as transferees and assignees of the subscribers to this instrument, shall have the same rights and relations to the foreclosure suits now pending, and to the complainants in said foreclosure suits, and to the receivers in said suits, and to the funds in their hands, which the subscribers to this agreement now have or would have if they continued to be holders of the bonds and claims subscribed hereto, and shall be entitled to the same share of the proceeds of the present management of the said company, and to the same share of the proceeds of the sale of such property which their assignors would have upon a discontinuance of said foreclusure suits, and upon an accounting, or upon a sale or distribution of the proceeds."

And these petitioners, Hays, Pierson and Du Puy further say that they have given notice and information of their ownership of the said bonds so as aforesaid formerly held by the said D'Orelli Zeigler and Bernard de Watteville respectively, to E. L. Andrews, Esq., claiming to be solicitor for the appellants on this appeal.

Therefore these petitioners pray the court for an order withdrawing and discontinuing this appeal so far as it respects the said D'Orelli Ziegler and the said Bernard De Watteville, and so far as it respects the bonds formerly held by them, and so far as it respects the said bonds formerly held by the said Cephise Chuffard, and numbered respectively 953, 1208, 2215, 3491, 4054, 5193, 4194, 4195, 4196 and 4514; and that the names of the said Bernard De Watteville and D'Orelli Ziegler may be stricken from the record as appellants on this appeal; and that a minute be made of record on this appeal, in this court, that your petitioners, Hays, Pierson and Du Puy have succeeded to the rights of the said Bernard De Watteville and D'Orelli Ziegler respectively, as creditors under said mortgage, and to the rights of the said Cephise Chuffard, as a creditor under said mortgage upon the said ten bonds last hereinabove mentioned, and that such further or other or different relief may be granted to your petitioners as may be proper in the premises, and as the nature of the case may require.

And your petitioners will ever pray, &c.

William H. Hays,
William S. Pierson,
T. Haskins Du Puy,
W. Butler Duncan.
By F. N. Bangs, their Counsel.

United States of America, } ss.:
Southern District of New York. }

William H. Hays, William S. Pierson, T. Haskins Du Puy and William Butler Duncan, being duly and severally sworn, do depose and say, and each for himself says, that he has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

Wm. S. Pierson,
W. H. Hays,
T. Haskins Du Puy,
W. Butler Duncan.

Sworn to before me, this 5th day of January, 1878,
Lucius W. How,
(124) Notary Public,
N. Y. Co.

Gentlemen,—You will please to take notice that upon the foregoing petition, and upon the papers on the files of this court, on this appeal, the court will be moved on the fourteenth day of January, 1878, on behalf of the petitioners, and of Bernard De Watteville, D'Orelli Ziegler and Cephise Chuffard, for a rule or order in conformity with the prayer of the said petition.

Dated New York, January 5th, 1878.

Yours, &c.,
F. N. Bangs,
Solicitor and of Counsel
for petitioners.

To E. L. Andrews, Esq.,
Of Counsel, &c.

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IN THE

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, 1877.

RUDOLPH MERIAN et al.,
Appellants,
vs.
ADRIAN ISELIN et al.,
Appellees.

AFFIDAVIT ON MOTION.

New York:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON ST.

1878.

IN THE

Supreme Court 1

OF THE UNITED STATES.

OCTOBER TERM, 1877.

RUDOLPH MERIAN, AND AL.
Appellants,
vs.
ADRIAN ISELIN, RICHARD T. WILSON, William Butler Duncan, 2
Trustees, &c.,
Appellees.

UNITED STATES OF AMERICA,
Southern District of New York. } ss:

William H. Hays, William S. Pierson, and T. Haskins Du Puy, being duly sworn, do severally depose and say as follows:

This appeal is taken from a decree of the Circuit Court of the United States, for the Western District of Tennessee, in a suit in equity, brought in the said court by the appellees, for the purpose of foreclosing a 3 mortgage commonly known as the Tennessee substitution mortgage.

The said mortgage was executed by the Mobile & Ohio Railroad Company, in the year 1871, to the said trustees, to declare and continue a lien, previously

4 created, and for the protection of an issue of bonds commonly known as Tennessee substitution bonds, upon which there is due, for principal and interest, about the sum of two millions of dollars.

The said mortgage covers 118 miles of road belonging to the said Railroad Company, and situate within the state of Tennessee, but does not cover any property ouside of the state of Tennessee, although the entire road of said company extends from Mobile, in the State of Alabama, through the States of Alabama, Mississippi, Tennessee and Kentucky, to Columbus in the State of Kentucky.

Said road is incumbered by other mortgages, covering 5 the entire length of the road from Mobile to Columbus, one of which is known as the mortgage of 1853; but while the actual lien of the said Tennessee substitution mortgage upon so much of the road as is situated within the State of Tennessee is not disputed, the question upon this appeal is, whether the same is prior in lien to said mortgage made by the said company in the year 1853, covering the entire road.

In any event, so much of the said road as lies within the state of Tennessee must be the subject of a separate sale, inasmuch as that part of the road is separately mortgaged to the said Iselin, Wilson and Duncan as trustees as aforesaid. The said Hays, Pierson and Du Puy are the owners of all but sixty thousand 6 dollars of the indebtedness secured by the said Tennessee substitution mortgage, and are the parties possessing nearly the entire interest represented on this appeal by the appellees; and the said Hays, Pierson and Du Puy are also the holders of about ninety per cent. of the indebtedness secured by the mortgage of 1853, which covers the entire road as aforesaid; and it is almost a matter of but little importance to these deponents which of said mortgages is decreed to have priority over the other.

There was lately pending in the Circuit Court of the United States, for the Southern District of Alabama, an action in equity to foreclose said

mortgage of 1853, in which action D'Orelli Ziegler, 7
Bernard de Watteville, Masson Chavannes and Henry
Jump were co-plaintiffs, and in said action, Charles
Moran, the attorney in fact of the appellants, Rudolph
Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, was examined as a witness, and his deposition was taken under commission; and in said deposition the said Charles Moran testified that the said Rudolph Merian was the holder of nine first mortgage bonds for two hundred and twenty-five pounds sterling or one thousand dollars, each, numbered respectively 4,823, 5,792, 2,839, 2,841, 2,844, 3,251, 3,337, 3,519 and 3,520; and the said Charles Moran further
testified that the said Eugene Renevier was the holder 8
of five first mortgage bonds for two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively 4,501, 4,502, 4,503, 4,535, 2,691; and the said Charles Moran further testified, that the said Charles Carrard was the owner of twelve first mortgage bonds for two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively 703 to 705, 3,883 to 3,886, 3,817, 5,916, 1,854, 5,069 and 4,849; and the said Charles Moran further testified, that the said Cephise Chuffard was the owner of fourteen first mortgage bonds of two hundred and twenty five pounds sterling, or one thousand dollars, each, numbered respectively 953,
1,298, 2,215, 3,491, 4,054, 4,193 to 4,196, 4,514, 4,518, 9
4[illegible]0, 4,640, 4,894.

And these deponents say that there have been transferred, assigned and delivered to them, and there are now held by them, ten of the bonds so sworn to as belonging to Cephise Chuffard, namely, 953, 1298, 2215, 3491, 4054, 4193, 4194, 4195, 4196 and 4514, reducing her apparent ownership to four bonds.

And these deponents further say that the said ten bonds were assigned, transferred and delivered to these deponents, accompanied by a printed agreement, signed by the holder of said bonds, dated Oct. 1, 1876, containing on its face the following terms and stipulations:

10 "*First.*—The said William H. Hays, William S. Pierson and T. Haskins Du Puy are hereby constituted assignees in trust, agents, managers and attorneys of the said parties hereto, who are creditors of the Mobile & Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing and controlling the same, for the purposes, in the manner, and with the powers, hereinafter specified.

"*Second.*—Each of the parties hereto, being a creditor of the said Mobile & Ohio Railroad Company at
the time of the execution of this instrument, assigns,
transfers, delivers, and makes over to the said William
11 H. Hays, William S. Pierson and T. Haskins Du Puy
all the evidences of debt issued by said company, and
claims against said company, now held by such subscribers hereto, whether in the shape of bond, coupon,
note, judgment, open account, unliquidated demand,
unpaid voucher or otherwise, to be held by the said
Hays, Pierson and Du Puy, as such assignees, agents,
managers and attorneys, in the manner and for the
purposes and upon the trusts so hereinafter declared
concerning the same.

"*Fifteenth.*—The said assignees and attorneys, as
transferees and assignees of the subscribers to this
instrument, shall have the same rights and relations
to the foreclosure suits now pending, and to the complainants in said foreclosure suits, and to the receivers
12 in said suits, and to the funds in their hands, which
the subscribers to this agreement now have or would
have if they continued to be holders of the bonds and
claims subscribed hereto, and shall be entitled to the
same share of the proceeds of the present management
of the property of said company, and to the same
share of the proceeds of the sale of such property
which their assignors would have upon a discontinuance of said foreclosure suits, or upon an accounting,
or upon a sale or distribution of the proceeds."

These deponents further say that they have authorized the said Iselin, Wilson and Duncan, as trustees of said substitution mortgage, to consent and agree that in case the supersedeas granted on this appeal shall

be vacated, the sum of forty thousand dollars shall be 13
reserved out of the proceeds of the sale of the mortgaged property situated within the State of Tennessee, to abide the event of this appeal, for the security of the said appellants against such damage as they may sustain in case the decree below should be executed pending this appeal, and in case, upon this appeal, it should be decreed that said Tennessee substitution mortgage is subordinate in lien to the said first mortgage of 1853; and these deponents now offer to consent to, approve, and ratify such an agreement, and they join in the prayer of the said Wilson, Iselin and Duncan, to have the said supersedeas vacated, and to permit the decree below to be executed upon such terms as 14
this court may deem just for the security of the said appellants as aforesaid.

Wm. S. Pierson,
W. H. Hays,
T. Haskins Du Puy,

Sworn to this 5th day of January, 1878, before me,

Lucius W. How,
(124) Notary Public,
N. Y. Co.

Supreme Court of the United States.

WM. BUTLER DUNCAN, R. T. WILSON & ADRIAN ISELIN,

TRUSTEES,

VS.

Mobile & Ohio Railroad, Et Al.

ON APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

BRIEF OF HUMES & POSTON,

FOR COMPLAINANTS,

ON MOTION TO VACATE OR MODIFY THE SUPERSEDEAS GRANTED IN THIS CAUSE.

MEMPHIS, TENN.:
Price, Jones & Co., Printers and Binders, 12 Jefferson Street.
1878.

SUPREME COURT OF UNITED STATES.

WILLIAM BUTLER DUNCAN,
R. T. WILSON, and
ADRIAN ISELIN, TRUSTEES,
vs.
MOBILE & OHIO RAILROAD CO.

An Appeal from Circuit Court of United States for Western District of Tennessee.

BRIEF OF HUMES & POSTON, FOR COMPLAINANTS,

ON MOTION TO MODIFY OR VACATE THE SUPERSEDEAS IN THIS CAUSE.

This is a motion by the Appellees, William Butler Duncan, R. T. Wilson and Adrian Iselin, to vacate and set aside, or modify a supersedeas directing a stay of all proceedings, under a decree of the Circuit Court of the United States for the Western District of Tennessee, foreclosing a mortgage on property of the Mobile and Ohio Railroad Company, situated in Tennessee, and for a sale of the same.

The approval of the Appeal bond and order for supersedeas was made and signed by his Honor, Judge Swayne, on the 3d of December, 1877.

The bond is in the penalty of $20,000, and signed alone by Charles Moran.

The bill for the foreclosure and sale was filed by the Appellees, as trustees in a deed of trust and mortgage against the Mobile and Ohio Railroad Company, J. Foster Elliot, and others, the trustees under the second and third mortgages.

Subsequently, Rodolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, bondholders under a junior mortgage, were allowed to intervene as defendants and file their joint answer, claiming to be the owners of $40,000 of bonds, secured by the mortgage of November 1, 1853, called the second mortgage.

The mortgage sought to be foreclosed on the Tennessee road and property by this bill, was executed under these circumstances: The State of Tennessee, by an Act passed 11th February, 1852, and amendments thereto, determined to lend its aid, in State bonds, to this and other railroad companies for the completion of their roads. By this Act, a first lien in favor of the State was reserved to the State on all the property of said companies in the State, to secure the debt so created to the State. Under this Act the Mobile and Ohio Railroad Company obtained from the State its bonds, which amounted, principal and interest, on May 25, 1871, to about $1,684,000. In the 12th Section of the Act of 1852, the State, as part of its lien, expressly reserved the authority to enact such future legislation as might be deemed necessary to secure and indemnify the State. In 1869, the State, by enactments, agreed to receive from the railroad companies, respectively, an amount of State bonds equal to the amount issued to them, and authorized the companies to issue a like amount of their own bonds in lieu of the State bonds, and upon delivering to the State the State bonds, and the issuance of a like amount of the company bonds in lieu of the former, the State could transfer its lien and mortgage to and for the security of the holders of these substitution company bonds.

The Mobile and Ohio Railroad Company accepted this proposed method of adjusting its debt to the State, and on the 1st of July, 1871, issued its bonds, and with their proceeds took up and delivered to the State bonds of the State to the full amount of its debt. At the same time the State transferred its lien, and the company executed the deed of trust to the Appellees, as trustees, to secure the payment of these substitution bonds.

It was this lien and mortgage, which Appellees sought by their bill to foreclose by sale, and have declared a first and paramount lien. The Appellants claimed to be holders of $40,000 of bonds, secured by the Company's mortgage of November 1, 1853.

The case was heard on the bill, the answers of the original defendants, and of the Appellants, and the agreed state of facts set forth in the record; and on the 12th of November, 1877, the Court below entered a decree foreclosing the mortgage as prayed, and declaring the lien paramount. No appeal from this decree, or any part of it, was prayed in the Court below by any of the parties; but, on the 3d of December, 1877, the Appellants filed their petition for the allowance of an appeal and for a supersedeas, both of which were allowed by his Honor, Judge Swayne.

The Appellees insist that this supersedeas should be vacated—or so modified as to allow the sale to proceed, and sufficient of the proceeds retained to cover the entire claim of the Appellants. In support of this motion we submit the following reasons :

The Appellants only claim $40,000 of the second mortgage bonds, and by their supersedeas are staying the collection of $2,000,000. The Appellees, the trustees, will comply with any order of the Court to secure the claims of Appellants, by deposit of money or bonds to the full amount of their claims, or consent that, by order of this Court, the proceeds be held to cover them.

We submit, that this Court has jurisdiction and power to modify and regulate the supersedeas, so as to accomplish effectually the perfect security of the Appellants against loss, and at the same time inflict no unnecessary injury on the Appellees. While the Statutes and rules of this Court broadly provide that parties complying with the conditions imposed by the Acts of Congress, shall have a supersedeas, yet, as this supersedeas is granted simply to prevent injury to the Appellants, pending the appeal, the remedy should only have this extent. A sound, well-settled rule of construction, is, "that the terms are always to be understood as having a regard to the subject matter." Fanciful and absurd interpretations of Statutes would surely and frequently result from a disregard of this rule.

Potter's Dwarris on Statutes, p. 201.

No stronger illustration can be given than the case before the Court—where parties with a claim of $40,000, by appeal would stay the sale of $2,000,000 of property for two or three years, against the wish and interest of all other claimants.

This Court has held: "The meaning of the Legislature may be extended beyond the precise words used in the law, *from the reason or motive upon which the Legislature proceeded—from the end in view—or the purpose which was designed;* the limitation of the rule being, that to extend the meaning to any case not included in the words, the case must be shown to come within the *same reason* upon which the law-maker proceeded."

United States vs. Freeman, 3 Howard R., 565.

The facts of the case just cited are very dissimilar to the one before the Court, but the exact applicability of the rule and reasons to the case at bar, are manifest and palpable.

When the object and intent of a Statute is obvious and palpable, the grammatical sense of the words will be controlled by this intent.

Potter's Dwarris, p. 202;
Dorousseau vs. U. S., 6 Cranch R., 314.

The foregoing rules and reasons seem to us should be more readily applied in the case at bar, because the matters of supersedeas are addressed to a Court of superior and general jurisdiction, and not to a special tribunal—and to a Court, too, that has the most plenary powers, under Acts of Congress, to prescribe rules of practice and proceedure for itself, and the inferior Courts of the United States, also.

This Court has asserted its power to modify, add to, and change the extent of a supersedeas after it has been granted, either for the preservation of the "*res*," or to effectuate the exercise of its jurisdiction. This being so, the extent of this control must be discretionary in the Court.

Goddard vs. Ordway, 4 Otto R., 672.

This identical motion has recently, at the present term, been granted, and the supersedeas modified as is desired herein, in the case of The Mobile & Ohio R. R. Co. vs. Ketchum and others, on appeal, from Southern District of Alabama, at Mobile.

We insist, also, that under the agreement on which this case was tried, the parties stipulated to confer upon the Court and Judges a full discretion in this matter; and that the attention of his Honor, Judge Swayne, was not called to this stipulation. This stipulation is found at p. 29, clause 3, of Agreement No. 3, viz.: "The parties agree, that in case of a decree in favor of the plaintiffs, besides the power belonging to the parties to the suit to appeal, any bondholders owning a sufficient number of bonds, upon application to the Court or Judges, shall have liberty to appeal to the Supreme Court of the United States, without opposition from the Plaintiffs or other trustees, *upon such terms as the Court or Judges shall prescribe to such applicant*."

We submit, that the purpose of this stipulation was to protect the plaintiffs below from the ruinous effects of appeals and supersedeases on inconsiderable amounts of bonds.

The request, in the answer to file the answer for $600,000 of other bondholders, did not make them parties, and they are not parties to this appeal.

HUMES & POSTON,
Attorneys for Motion.

No. 879

Jany 14 1878

Morrison & Nathan, Law Printers, 23 Dey Street, N. Y,

UNITED STATES SUPREME COURT.

Morris Ketchum et al.,

versus

William B. Duncan et al.

Petition of Second Mortgage Bondholders to vacate Order suspending Supersedeas.

To the Honorable the Judges of the Supreme Court of the United States:

The petition of the Rogers Locomotive and Machine Works and other holders of two hundred and twenty thousand dollars of second mortgage bonds of the Mobile and Ohio Railroad Company respectfully shows:

That they are greviously injured by an order made by this Honorable Court for the suspension or vacation of the supersedeas which has been pending in this cause for nearly six months past.

Your petitioners show that the Answer of the Second Mortgage Trustees in this cause at Circuit, was put in under instructions from these petitioners, and so purports on its face. That answer sets up the same objections to the Tennessee Substitution Claims and the Duncan Coupons as the bills and pleadings of Morris Ketchum and the First Mortgage Bondholders rep-

Your petitioner shows that the Second Mortgage Bondholders aforesaid, have acted in unison with the appellants throughout the litigation.

They did not deem it necessary to supersede the execution of the decree of the Circuit Court, inasmuch as they relied upon the supersedeas obtained by the representatives of the First Mortgage Bondholders.

Your petitioners further show that the order permitting the sale of the railroad to proceed has been a total surprise to them, and leaves them without protection for the above amount of their bonds, inasmuch as the time to obtain a supersedeas on their own behalf has expired.

Your petitioners show that any consent, if such there be, by the trustees of the Second Mortgage to the sale of the Trust estate, was given without the knowledge of these petitioners, and was a breach of duty towards them, the said trustees, purporting to act on their behalf on the record. W. D. Dunn, one of petitioners trustees, is largely interested as a floating creditor of the corporation in the success of Hays and Dupuy's efforts to obtain a sale of the property.

Your petitioners show that until the determination of the contested liens and priorities on the property involving the amount of three millions of dollars, no fair or proper sale can be had, at which any adequate price is obtainable on behalf of the First and Second Mortgage Bonds. Your petitioners adopt all the allegations of the petition of the appellants herein in that behalf without repeating them here at length.

Your petitioners show that it is impossible to determine what amount of cash deposit less than the face of their securities, would be requisite to protect their Second Mortgage Bonds, and as a substitute for the security of the railroad in case the property be sold

Your petitioners respectfully submit that they should not be deprived of the security on which they loaned their money, and as respects some of these petitioners, supplied the company with its rolling stock. No place of banking deposit for any money could possibly be as safe as the realty and corpus of the trust itself, and which the supersedeas secures to answer the judgment of this Court.

Your petitioners unite with the appellants in the prayer that the cause be advanced, and that the order superseding the supersedeas be vacated; but if that order be not revoked, and if the mortgaged property be sold, that the amount of two hundred and seventy-five thousand dollars, the principal and interest of their bonds and costs, be required to be deposited to secure them and be paid to them, in case the appeals are successful; but if the appeals be unsuccessful, that they be entitled to participate in any plan of purchase of the property on the same terms as other Second Mortgage Bondholders.

~~E. H. GRANDEN~~, E. H. Grandin

Solicitor for Petitioners.

security of the rai

Supreme Court of the United States,

MORRIS KETCHUM,

VS.

WILLIAM B. DUNCAN.

BRIEF.

On power to suspend Supersedeas.

GEORGE HOADLY,
E. H. GRANDIN,
P. PHILLIPS,
E. L. ANDREWS,
Of Counsel.

MORRISON & NATHAN,
Printers and Blank Book Manufacturers,
23 Dey Street, N. Y.

UNITED STATES SUPREME COURT.

MORRIS KETCHUM ET AL.,

versus

WILLIAM B. DUNCAN ET AL.

Brief on power to suspend Supersedeas.

Appellate powers of the Supreme Court are only those conferred by Act of Congress. The second section of Article Third of the Constitution provides as follows: "In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and *under such regulations as the Congress shall make.*" Among the regulations of the appellate power is that contained in Section 1007 Revised Satutes. "In any case where a writ of error may be a supersedeas, the defendant may obtain such supersedeas by serving the writ of error by lodging a copy thereof for the adverse party in the Clerk's office where the record remains within sixty days, Sunday exclusive, after the recording of the judgment complained of, and giving the security required by law on the issuing of the citation, but if he *desires* to stay process on the judgment he may, having served his writ of error as aforesaid, give the security required by law within sixty days after rendition of such judgment or afterward with the permission of a Justice or Judge of the Appellate Court, and in such cases where a writ of error may be a supersedeas, execution shall not issue until the expiration of ten days." In connection with the above, it is provided in Section 1000, Revised Statutes. "BOND IN ERROR AND ON APPEAL. **Every Justice or Judge signing citation or any** writ of error shall, except in cases brought up by the United States or by the direction of any department of the Government, take good and sufficient security that the plaintiff in error or the appellant, shall prosecute his writ or appeal to effect, and if he fail to make his plea good, shall answer all damages and costs *where the writ is a supersedeas and stays execution*, or all costs only were it is not a supersedeasas aforesaid."

It is apparent from the foregoing provisions of the Statutes and of the Constitution the of United States that the appellate power of the Supreme Court is not an inherent judicial power such as may pertain to the Ancient Common Law Courts of appeal, but that it is derived entirely from the force of specific legislation and is limited thereby. Among the regulations provided by law under which the exercise of this appellate power exists are those relating to the stay of execution upon the decree rendered below. This stay is fixed and secured by virtue of the Statute. No interference therewith is granted to this Court among the grants of appellate power. The supersedeas does not proceed from this Court, but from the law itself, and so this Court has decided as follows: "Appeals and writs of error do not become a supersedeas and stay execution in the Court where the judgment or decree remains by virtue of process issued by the Court merely as such, but they are constituted such by the Acts of Congress when the Constitutions prescribed in the 23d Section of the Judiciary Act act as fulfilled. When these conditions are complied with, the *Act of Congress* operates to suspend the jurisdiction of the Court to which the writ is addressed and *stay execution in the case*, under the writ of error until *the case is determined or* remanded.

Slaughter House Cases, 10 Wallace, per Clifford, J.

It follows therefore that the source of the right to supersedeas and the conditions of the exercise being legislative, it can be abrogated or dispensed with only by warrant derived from statute, and in the absence of such warrant cannot be impaired.

In order that this court can assert the right to interfere with this statutory process which belongs to an appellant upon compliance with the requirements of the Act, we must be referred to some legislative provision conferring such jurisdiction upon the Supreme Court in its appellate character. A brief examination of the nature of the process of supersedeas, and of the manner in which it is obtained under the Acts of Congress, will satisfy the Court that interference with the functions of this writ is no part of the appellate power of this Court. By Sections 1000 and 1007, it appears that the granting of a supersedeas is not the act of the Court below, but that the Statute distinctly provides that the allowance of it shall be made by a Justice or Judge, including any Justice of the Appellate Court, The allowance of it does not enter into the judgment or decree or orders of the Court below, but it is a proceeding after the decree having no connection with the merits of the decree and being an auxiliary writ, not coming up before this Court as any part of the matter to be reviewed by it.

Now an examination of the statutes shows that no power to review the granting of such a writ is conferred on said Court.

It is provided as follows by section 690 of the Revised Statutes: "APPELLATE JURISDICTION. The Supreme Court shall have appellate jurisdiction *in the cases hereinafter specially provided for.*

Section 701: "JUDGMENT OR DECREE ON REVIEW. The Supreme Court may affirm, modify or reverse any judgment, decree or order of a Circuit Court, or of a District Court in prize causes, *lawfully brought before it for review*, or may direct such judgment, decree or order to be rendered, or such further procedings to be had by the inferior Courts as the justice of the case may require."

An allowance of this supersedeas is not an order of the Circuit Court lawfully brought before this Court for review. It is an order of a Justice of this Court, not sitting as the Circuit Court, but granting the writ under this particular authority of the Statute, as a Judge.

appellate power, as is apparent from the section above quoted.

The only question in reference to supersedeas over which this Court has jurisdiction, is to determine whether or not there is a supersedeas; whether or not there has been a compliance with the Acts of Congress in substance or in form. The Supreme Court in this very cause has determined that the appellants have complied in every respect with the requirements of the law, and that they have a good supersedeas. With that inquiry determined, their jurisdiction over the subject matter of the supersedeas ceased, because there can be nothing else to review as appears on the face of the Statute.

This Court may think that the supersedeas operates harshly, but the Legislature has thought that it provides indemnity in the bond required. This security being given, the Judge was bound to comply with the law. Hence what is there to review? Even if this Court in the exercise of an original power, would not have granted it, they cannot for that reason vacate it through appellate power.

The power to vacate, or suspend or modify the supersedeas cannot be claimed under the following Section, because that provision of law is the very negation of such a claim. We refer to the following provision of the Revised Statutes: Section 716. "POWER TO ISSUE WRITS. The Supreme Court and the Circuit and District Courts shall have power to issue writs of *scire facias;* they shall also have power to issue all writs not specifically provided for by Statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." It cannot be claimed that it is necessary for the exercise of the juridiction of the Supreme Court over this cause, that the railroad should be sold away. The Supreme Court may and frequently has issued writs of supersedeas in the enforcement and for the exercise of its appellate power, but no one has ever yet before claimed that it could destroy the stay of execution under the above provision. The opinion seems based on the idea that this Court has jurisdiction of the cause and the parties. But what jurisdiction? Only an appellate jurisdiction, limited and confined under the "regulations" of the Statutes.

The language of Section 1007 is peculiarly broad in conferring an absolute right to stay execution upon compliance with its provisons. It reads "But if he *desires* to stay process on the judgment he may, having served his writ of error, &c." Further on in the same section, "And in such cases where a writ of error may be a supersedeas execution shall not issue until the expiration of ten days." It is the "*desire*" of the appellant under the act which is to control the question of supersedeas. If he desires to stay process, and complies with the law he has a supersedeas.

In addition the Court below is prohibited from issuing execution for ten days to give him time to express his "desire" to supersede, and to comply with the Statute. It cannot be consistently claimed that while the successful party is stayed for ten days merely by operation of the Statute and without giving any security whatsoever; that after giving such security and complying with the positive direction of the law, he may on the next day be deprived of his supersedeas, either by the Circuit Court or the Appellate Court. Certainly such a construction is contrary to the spirit and language of the legislation of Congress.

There is a further illustration derived from the Statutes against the existence of such a power. Most of the sections of the Revised Statutes which control the questions under consideration relate in terms to writs of error, and it is provided as follows by Section 1012: "APPEALS FROM CIRCUIT COURTS TO SUPREME COURT." Appeals from Circuit Courts and District Courts acting as Circuit Courts and from District Courts in prize cases, *shall be subjected to the same rules, regulations and restrictions* as are or may be prescribed in law in case of writs of error." We have therefore, the legislation in reference to the superseding of writs of error, provided as the standard to control parties litigant, and thereupon the subsequent section above quoted assimilates proceedings on appeals to those on writs of error. Now, if anything were needed to show more clearly the intent of Congress that the right to a supersedeas should be absolute and unqualified, it is this scheme of legislation on the subject. How could there be any dispensation of a supersedeas lawfully obtained against the execution of a common law judgments. To permit execution in such a case upon mere deposit of money or any other security negatives the whole idea and theory of supersedeas.

The power of this Appellate Court to interfere with the supersedeas cannot be sought in any jurisdiction for the care or preservation of the property or the conversion of the assets. If the property be perishable in its nature, so that it is required to be sold, such a sale of it is a part of the administrative functions of the Court having the custody of it. Undoubtedly the Receivers in this case, acting under the direction of the Circuit Court, or perhaps of this Court, as it may be, may sell any portion of the property pertaining to this railroad, which is perishable in its character, if such a state of things can exist in reference to a property of this nature. Furthermore, the Court having the custody of this property may, in the exercise of its administrative powers, dispose of any portion of its material which it may deem proper and necessary or discreet to dispose of in the cause, and for the purpose of the administration of the Trust estate. But all this must be for the purpose of preserving and administering the estate. It has no reference to any execution of a final decree. It is purely interlocutory process to save the assets from perishing, or to convert them and change their form for objects of utility *in the course of administration*. That is a very clear and broad destruction which can be easily seen. Such a course of administration of the estate would not and does not require any interference with the supersedeas, or any

The theory of the law in reference to this matter is that a party litigant shall be entitled to hold the *res* absolved from final process until he can obtain the judgment of this Court upon the merits of the controversy. This result he can attain by giving the full and ample security which the law requires to be given to the appellees. The cause is not fully litigated until a hearing has been had before this Court, and the law proceed upon the presumption of a right to such a hearing under the "regulations prescribed by Congress," for securing the property in controversy, until the decision of the Supreme Court.

The wisdom of this course can clearly be demonstrated. There is no security which can possibly be offered to the appellants in this cause, which can approach, the absolute indemnity of the real estate which is the subject of controversy, and on the security of which they hold their incumbrance. Under the order allowed in this cause a certain amount of money is provided to be deposited.

We insist that is not equal in rank and character to the security of the real estate involved in this litigation. It is possible that the registry of the Circuit Court may not be a safe place of deposit. The money may be stolen; the clerk of the Court may prove a defaulter. If the money be deposited in bank, the bank may fail, or if placed in special deposit the officers of the bank may violate their trust. But no such contingencies can possibly happen to the land grant or the railroad securing these bondholders. That was the security upon which they loaned their money, and it must be apparent from the legislation above quoted that that was the security which the Acts of Congress intended they should be entitled to retain until they had a hearing before this Court. The legislation indicates a system of public policy to offer the fullest protection in the excercise of the appellate rights of litigants in the Federal Courts.

The legislative power has purposely made the right of supersedeas absolute and inflexible. If any other have been to have provided in section 688 or 716 or in any of the other provisioes of the Statutes specially conferring the power to issue various classes of orders upon this Court, that the Supreme Court might vacate or modify a supersedeas upon terms or without terms, as in its discretion it might see fit. But neither in any of the sections, nor in the section providing for the supersedeas, is there the slighstst indication of legislative intent that this right should be other than *ex debito Justitiae.* On the contrary from the various sections of the Revised Statutes above quoted, it was the apparent intent of Congress to re-assert by legislative declaration the Constitutional provisions that the appellate power of this Court shall be excused only and "specifically" with such exceptions and under such regulations as the Congress shall make.

It has been a well honored argument in this Court against the granting of any writ applied for, that the traditions and precedents of the Supreme Court did not furnish any authority for its issuance. We can confidently invoke all the various appeals before this Court in Chancery causes, and the full discussions that have ensued in regard to the exercise of the right of supersedeas, and we think not a single precedent can be found for the exercise of a power, if such there had been, to interfere with the right given by law to supersede the execution of the decree of the subordinate Court.

We refer to the petitions on this hearing to show that no human foresight can provide security for appellants proportioned to the various contingencies dependent on the price obtained on the sale of the railroad and the eventualities of the litigation. Practical experience and the total absence of the exercise of the power herein claimed, coroborates the wisdom of Congress in withholding any grant of power over the right to supersede as secured by its own legislation.

GEORGE HOADLEY,
E. H. GRANDIN,
P. PHILLIPS,
E. L. ANDREWS,

U. S. Supreme Court.

MORRIS KETCHUM et al.,
Appellants,

vs.

WILLIAM BUTLER DUNCAN et al.,
Appellees.

AFFIDAVIT IN OPPOSITION TO MOTION TO VACATE ORDER OF DECEMBER 10, 1877.

New York:
Evening Post Steam Presses, 208 Broadway, cor. Fulton Street.

1878.

U. S. Supreme Court. 1

OCTOBER TERM, 1877.

MORRIS KETCHUM ET AL.,
Appellants,
vs.
WILLIAM BUTLER DUNCAN ET AL.,
Appellees.

No. 879.

UNITED STATES OF AMERICA, } ss.: 2
Southern District of New York, }

William H. Hays, *William S. Pierson*, and *T. Haskins Dupuy*, being duly sworn, depose and say: That at the time of the rendering of the decree from which this appeal is taken, in the Circuit Court of the United States for the Southern District of Alabama, namely, on the fifteenth day of June, 1877, these deponents were owners of the first mortgage bonds of the Mobile & Ohio Railroad Company to the aggregate principal sum of not less than $3,931,000 dollars, with all the unpaid coupons attached thereto; and deponents were also owners of detached coupons of 1874 3 amounting to $535,000, of which many were detached from bonds not held by these deponents.

These deponents further say, that since the taking of this appeal a change in the circumstances of the case and in the situation of the parties, and in the in-

4 terests of these deponents, has taken place, the particulars of such change being as follows: D'Orelli Ziegler, one of the appellants, has assigned, transferred, and delivered bonds held by him, and proved by him before the Master in the Court below, amounting to the principal sum of eighteen thousand dollars, to these deponents; the appellant Bernard DeWatteville has transferred, assigned, and delivered to these deponents all the first mortgage bonds held by him, amounting to the principal sum of one hundred and two thousand dollars; and the said Bernard DeWatteville and D'Orelli Ziegler have no longer any interest adverse to these deponents; and these deponents have caused to
5 be delivered to E. L. Andrews, Esq., who formerly claimed to act as counsel for said Bernard DeWatteville and D'Orelli Ziegler, notices in the following words, namely:

IN THE
SUPREME COURT OF THE UNITED STATES,

No. 879—October Term, 1877.

Morris Ketchum and al.,
Appellants,
6 *agt.*
William Butler Duncan and al.,
Appellees.

Sir,—This is to give you notice that Bernard de Watteville has assigned, transferred, delivered and made over to William H. Hays, William S. Pierson, and T. Haskins Du Puy, all the evidences of debt issued by the Mobile and Ohio Railroad Company and claims against said company, heretofore held by him,

whether in the shape of bond, coupon, note, judgment, 7
open account, unliquidated demand, unpaid voucher, or otherwise; and you are hereby forbidden to prosecute this appeal any further for him, and you are also hereby forbidden to continue the making of any motion on his behalf to vacate the order made by this court on this appeal on the tenth day of December, 1877; and you are forbidden in any manner to assume to act for or represent him on this appeal or in this litigation.

Dated New York, December 24, 1877.

Yours, &c.,
A. Iselin & Co.,
Agents for Bernard de Watteville. 8

To E. L. Andrews, Esq., Counsellor at Law.

IN THE
SUPREME COURT OF THE UNITED STATES,

No. 879—October Term, 1877.

Morris Ketchum and al.,
Appellants,
agt. 9
William Butler Duncan and al.,
Appellees.

Sir,—This is to give you notice that Bernard de Watteville has assigned, transferred, delivered and made over to us, William H. Hays, William S. Pierson and T. Haskins Du Puy, all the evidences of debt issued by the Mobile and Ohio Railroad Company and claims against said company, held by said De Watteville, whether in the shape of bond, coupon, note, jugdment, 10 open account, unliquidated demand, unpaid voucher, or otherwise, and said claims and demands are now in our possession; and you are hereby forbidden to continue to prosecute any appeal in respect to said bonds, or to make any motion in respect thereto, or to undertake to represent the said bonds or claims in any manner on this appeal or otherwise.

Dated New York, December 24, 1877.

Yours, etc.,
William H. Hays, William S. Pierson and T. Haskins Du Puy,
By F. N. Bangs, their attorney.

To E. L. Andrews, Esq., Counsellor at Law.

11 These deponents further say that besides said Ziegler and said DeWatteville, other holders of first mortgage bonds and coupons have since the making of the said decree assigned their claims to these deponents, so that at the time of the making of this affidavit the ownership or proprietorship of these deponents in the first mortgage bonds of the said company has increased from the aggregate sum of $3,931,000 in June, 1877, to the aggregate sum of $5,008,000 on the 31st December, 1877, and the probability and prospect of damage to these deponents arising from the delay in the execution of the decree below has proportionately increased since the taking and allowance of said appeal.

12 These deponents further say that in the suit in which D'Orelli Ziegler and others were originally plaintiffs, mentioned in the papers now on file in this court, an order was made soon after the commencement of that suit for the issue of a commission to a commissioner in the City of New York to take the depositions of Charles Moran, D. Comyn Moran and Amedee D. Moran, parties composing the firm of Moran Brothers of this city, said Moran Brothers having put themselves forward in the litigation in the court below as the attorneys in fact of D'Orelli Ziegler, Bernard De Watteville, Henry Jump, Masson Chavannes, Rodolph

Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard; 13 and the bill of complaint of the said Ziegler and his co-plaintiffs having been verified by said Charles Moran as attorney in fact of the said Ziegler and his co-plaintiffs; and the application of the said Eugene Renevier, Rodolph Merian, Charles Carrard and Cephise Chuffard to be made parties to the litigation having been verified by the said Charles Moran as attorney in fact of the said applicants.

And deponents say, that under said commission the depositions of the said Charles Moran, D. Comyn Moran, and Amedee D. Moran were taken and sworn to and returned to, and are on the files of, the Circuit Court of the United States for the Southern District of Alabama; 14 that in the course of said depositions, the said three witnesses were examined respecting the extent of the respective interests of the said Jump, Chavannes, Merian, Renevier, Carrard, and Chuffard, as bondholders of the Mobile & Ohio Railroad Company. The said Charles Moran testified that the said Rodolph Merian was the holder of nine first mortgage bonds of two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively 4,823, 5,792, 2,839, 2,841, 2,844, 3,251, 3,337, 3,519, 3,520; and said Charles Moran further testified, that the said Eugene Renevier was the holder of five first mortgage bonds, of two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively, 15 4,501, 4,502, 4,503, 4,535, and 2,691; and said Charles Moran further testified, that the said Charles Carrard was the owner of twelve first mortgage bonds, of two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively 703 to 705, 3,883 to 3,886, 3,817, 5,916, 1,854, 5,069, and 4,849; and said Charles Moran further testified, that the said Cephise Chuffard was the owner of fourteen first mortgage bonds, of two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively, 953, 1,298, 2,215, 3,491, 4,054, 4,193 to 4,196, 4,514, 4,518, 4,520, 4,640, and 4,894; and these

16 deponents say that there have been transferred, assigned and delivered to these deponents ten of the bonds so sworn to as belonging to the said Cephise Chuffard, namely: Nos. 953, 1298, 2215, 3491, 4054, 4193, 4194, 4195, 4166, 4514, reducing her apparent ownership to four bonds; and said Charles Moran further testified, that Henry Jump was the holder of fourteen first mortgage sterling bonds for two hundred and twenty-five pounds sterling, or one thousand dollars, each, numbered respectively, 3,420, 1,471, 4,266, 4,273, 4,473, 4,053, 4,057, 4,575, 4,687, 4,992, 5,073, 5,937, 5,072, and 5,506, and of arrearage interest bonds, three for one thousand dollars each, 17 and four for five hundred dollars each, numbered respectively, 47, 48, 49, 45, 111, 112, and 312. And the said Charles Moran further testified, that Masson Chavannes was the holder of seventeen first mortgage sterling bonds, for two hundred and twenty-five pounds sterling, or one thousand dollars each, numbered respectively, 297½, 3,530, 3,562, 3,047, 5,681, 736, 1,374, 1,444, 1,545, 1,761, 2,684, 2,773, 2,780, 3,321, 4,357, and 5,928., though the last eleven bonds do not appear to have been proved before a Master.

To recapitulate: These deponents say that the principal amount of bonds now outstanding under said first mortgage is $5,609,000, of which these deponents own $5,008,000 dollars, or 89$\frac{28}{100}$ per cent. of the total 18 amount outstanding, while the ownership of the appellants, according to the information of these deponents derived from the sources aforesaid, is as follows: The said Masson Chavannes owns seventeen thousand dollars, or .303 of one per cent. of the total amount; the said Henry Jump owns fourteen thousand dollars, or .249 of one per cent. of the total amount; the said Rudolph Merian owns nine thousand dollars, or .160 of one per cent. of the total amount; the said Charles Carrard owns twelve thousand dollars, or .215 of one per cent. of the total amount; Eugene Renevier owns five thousand dollars, or .088 of one per cent.; and the said Cephise Chuffard owns four thousand dollars, or .071 of one per cent. of the total amount;

or in all the said appellants own sixty-one thousand 19
dollars, or $1\frac{087}{1000}$ per cent. of the principal amount
outstanding; so that in case the said decree appealed
from should be reversed as to the said coupons of
1874, the gain of the said Masson Chavannes would be
$1,360; that of the said Henry Jump would be $1,120;
that of the said Rudolph Merrian would be $720; that
of the said Eugene Renevier would be $400; that of
the said Carrard would be $960; and that of the said
Chuffard would be $320, or $4,880 dollars in all.

These deponents, therefore, say that neither of the
said appellants Merian, Renevier, Chuffard, Carrard,
Jump and Chavannes has an interest in the matter in
controversy to the amount of $5,000, because they say 20
that if the decree below should be reversed as to the
coupons of 1874, the additional share of either of said
appellants in the proceeds of said sale arising from the
reduction of said coupons of 1874, could not, under
any possible circumstances, exceed six per cent. upon
the par amount of the bonds held by such appellant.

And in reference to the mortgage commonly known
as the Tennessee substitution mortgage, which covered
one hundred and eighteen miles of the road of the
Mobile and Ohio Railroad Company, situated within
the State of Tennessee, but did not apply to any other
portion of said road, these deponents say that the
trustees under said Tennessee substitution mortgage
were Richard T. Wilson, Adrian Iselin, and William 21
Butler Duncan; that said trustees were not, as such,
made parties defendant to the suit in the Circuit Court
of the United States for the Southern District of Alabama,
in which William Butler Duncan and Andrew
Foster Elliot, as trustees, were plaintiffs, but were
made defendants in the two suits in which Morris
Ketchum and D'Orelli Ziegler and his associates were
respectively plaintiffs; that it is a part of the consolidation
order entered on the 5th of June, 1877, in the
Circuit Court of the United States for the Southern
District of Alabama, by consent of all parties, including
the said appellants, that the said consolidation

22 order should be and was made without prejudice to and saving, the rights of Richard T. Wilson, Adrian Iselin, and William Butler Duncan, as such trustees; and that the cause should proceed to decree without them, and the cause did by consent proceed to decree without them.

And these deponents further say, that by consent of all parties, further orders were made in said cause, of which copies are as follows:—

At a Stated Term of the Circuit Court of the United States for the Southern District of Alabama, held at the Court House in the City of Mobile, Alabama,
23 on the 6th day of June, 1877.

Present—Hon. Jos. P. Bradley, Associate Justice, and Hon. William B. Woods, Circuit Judge.

D'Orelli Ziegler et al.
vs.
The Mobile and Ohio Railroad Company et al.
} In Equity.

24

Richard T. Wilson and Adrian Iselin, as Trustees for the Tennessee Substitution Mortgage bondholders, so called, come into court by their counsel, Robert H. Smith, and move for leave to withdraw the appearance heretofore entered for them, and to vacate, as against them, the order and process to appear, plead, answer or demur; and that they may be stricken from the bill in this cause as parties defendants, on the ground that the Circuit Court of the United States for the Western District of the State of Tennessee had, before the filing of this bill, taken jurisdiction of the foreclosure of said Tennessee Substitution Mort-

gage, and still has jurisdiction thereof, and on the 25
ground that being citizens of the State of New York, and the property covered by said mortgage being exclusively within the State of Tennessee, this court has no jurisdiction to foreclose said mortgage or to require said Wilson and Iselin to appear in this cause; *and thereupon all the other parties by their respective solicitors and counsel appearing and consenting in open court*, it is ordered that said motion be and the same is hereby granted.

(Signed) JOSEPH P. BRADLEY,
Circuit Justice.
W. B. WOODS, 26
Circuit Judge.

Filed 6th June, 1877.
(Signed) N. W. TRIMBLE,
Clerk.

At a Stated Term of the Circuit Court of the United States, for the Southern District of Alabama, held at the Court House, in the City of Mobile, Alabama, on the 6th day of June, 1877.

Present—Hon. JOSEPH P. BRADLEY, Associate
Justice, and Hon. WILLIAM B. WOODS, 27
Circuit Judge.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD COMPANY, *et al.*
} In Equity.

Richard T. Wilson and Adrian Iselin, as Trustees for the Tennessee Substitution Mortgage bondholders, so called, come into court by their counsel, Robert H. Smith, and move for leave to withdraw the appearance heretofore entered for them, and to vacate as against

28 them the order and process to appear, plead, answer or demur, and that they may be stricken from the bill in this cause, as parties defendants, on the ground that the Circuit Court of the United States, for the Western District of the State of Tennessee, had, before the filing of this bill, taken jurisdiction of the foreclosure of said Tennessee Substitution Mortgage, and still has jurisdiction thereof; and on the ground that being citizens of the State of New York, and the property covered by said mortgage being exclusively within the State of Tennessee, this court has no jurisdiction to foreclose said mortgage, or to require said Wilson and Iselin to appear in this cause. *And, thereupon, all the other* 29 *parties by their respective solicitors and counsel appearing, and consenting in open court,* it is ordered that said motion be, and the same is hereby granted.

(Signed) Joseph P. Bradley,
Circuit Justice.
W. B. Woods,
Circuit Judge.

Filed 6th June, 1877.
(Signed) N. W. Trimble,
Clerk.

And these deponents state the matters and things 30 aforesaid, referring also to the affidavits, petitions and briefs heretofore filed by them, in opposition to the motion made by said Carrard, Chuffard, Jump, Chavannes, Merian and Renevier to vacate the order made on this appeal on December 10, 1877.

W. H. Hays,
Wm. S. Pierson,
T. Haskins DuPuy.

Sworn to before me, this 5th day of January, 1878.
Lucius W. How,
(124) Notary Public,
N. Y. Co.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1877.

No. 879.

MORRIS KETCHUM et al.,
Appellants,
vs.
WILLIAM BUTLER DUNCAN et al.,
Appellees.

Motion for Certiorari.

F. N. BANGS,
For Motion.

NEW YORK:
Evening Post Steam Presses, 208 Broadway, corner of Fulton Street.
1878.

IN THE

Supreme Court 1

OF THE UNITED STATES.

OCTOBER TERM—1877.—No. 879.

MORRIS KETCHUM & AL.,
Appellants,
agst.
WILLIAM BUTLER DUNCAN & AL., 2
Appellees.

UNIEED STATES OF AMERICA,
Southern District of New York, ss. : } ss. :

William H. Hays, William Butler Duncan and T. Haskins Du Puy, being duly sworn, severally depose and say as follows:

Certain motions have heretofore been made in this
court regarding this appeal and the proceedings there-
on, and to the papers on said motions and the transcript 3
of the record on the appeal, and to the orders of this
court, heretofore made, these deponents respectfully
refer.

And these deponents say that they have received from the clerk of this court an index of the matters contained in the transcript of the record on this appeal; and deponents say that the paper purporting

4 to be a transcript of the said record filed with the clerk of this court, is not a full and complete transcript of the record in the court below, but that matters appearing of record in the court below and material to the merits of the appeal have been omitted in the said transcript; and in particular these deponents say that there has been omitted from said transcript a copy of the proofs of claim submitted to the master by Alexander Duncan under the order of March 6, 1876, appearing in said record, and a copy of the proofs of claim or debt submitted to and filed with the master under said order by William H. Hays, William S. Pierson and T. Haskins Du Puy; and deponents say that as they are advised by their counsel and verily
5 believe, it is material and important to the correct determination of the questions arising on this appeal that the transcript of the record should contain the said proofs of claim.

These deponents further say, that according to the said index, the said transcript of record does not contain a copy of certain proceedings had upon a motion made before his Honor Judge Woods, the Circuit Judge, in the suit in which Morris Ketchum was plaintiff, to remove, or grant an injunction against, the receivers appointed by the court in the suit in which A. Foster Elliot and William Butler Duncan were plaintiffs; and inasmuch as said
6 transcript of record does contain the proceedings before the Circuit Court, Judge Bruce presiding, upon the hearing of certain pleas interposed to said Ketchum's bill, and the opinion of Judge Bruce upon said proceedings, these deponents are advised by their counsel and they verily believe, that it is material to the determination of the questions arising on this appeal that the proceedings on the said motion so heard as aforesaid by Judge Woods, the Circuit Judge, should be transmitted to this Court.

These deponents further say, that there are omitted from said transcript copies of the quarterly reports rendered by the receivers appointed by the court below to take charge of the mortgaged property; and as these deponents are informed and believe the said reports

show that at the time of the hearing of the consolidated 7
cause in the court below, the said receivers had in their possession a large sum of money subject to the order of the court, and which, as these deponents contend, should have been disposed of by the decree of the court; and as these deponents are advised by their counsel and believe, it is material to the proper determination of this cause that the last three of the reports filed by the receivers prior to the final hearing of this cause in the court below should be transcribed and transmitted to this court.

And these deponents are further informed by the said index, and they believe, that the said transcript does not contain any copy of the petition of appeal, notice or 8
claim of appeal, allowance of appeal and citation and bond filed with the Clerk of said Circuit Court, upon the appeal of William H. Hays, William S. Pierson and T. Haskins Du Puy; and that the said transcript does not contain copies of certain depositions made in the suit in which Ziegler and others were plaintiffs, which affidavits were made respectively by Charles Moran, D. Comyn Moran and Amede D. Moran, which depositions were taken under a commission issued in the said action in which Ziegler and others were plaintiffs, and which depositions were read on the final hearing of the consolidated cause in the court below, and which are material to the determination of the questions sought
to be raised upon the said appeals. 9

These deponents further say, that on the final hearing of the consolidated cause in the court below, there was filed in open court a stipulation, signed by the solicitors and counsel for William H. Hays, William S. Pierson and T. Haskins Du Puy, consenting that the claim of priority made on behalf of the coupons of 1874 might be allowed, and that as these deponents learn from said index, no copy of the said consent has been transcribed and transmitted to this court, and that as deponents are advised and believe, it is material to the questions sought be raised on this appeal, 10 that the said consent should be before this court upon the hearing of said questions.

Therefore, these deponents pray that a *certiorari* may issue out of this court and under the seal thereof, directed to the Clerk of the said Circuit Court of the United States for the Southern District of Alabama, commanding him to certify to this court copies of the said papers omitted from the said transcript already filed in this court; or that such further or other or different rule or order may be made as may be proper in the premises.

W. H. Hays,
W. Butler Duncan,
T. Haskins Du Puy.

11

Sworn to before me, this 2d day of January, 1878,
Joseph Gutman, Jr.,
United States Commissioner,
Southern District of New York.

IN THE

SUPREME COURT

Of the United States.

October Term, 1877.—No. 879.

12 Morris Ketchum et al.,
Appellants,

agst.

William Butler Duncan et al.,
Appellees.

Gentlemen,—Please to take notice, that upon the affidavit, of which a copy is herewith served upon you, and upon the transcript of the record on file in this court, and upon all the papers on file in this court in the matter of this appeal, a motion will be made before his court at the opening thereof at the Capitol, in the

City of Washington, on the fourteenth day of January, 1878, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for the issue of a *certiorari*, as suggested in the affidavit of which a copy is herewith 13
or for such other or differe
nature of the case may requir

Dated New York, Decembe

Yours, &c

Francis N. Bangs,
Of counsel for William H. Hays,
William S. Pierson, T. Haskins
Du Puy, William Butler Duncan, Alexander Duncan and 14
Andrew Foster Elliot.

To

E. L. Andrews, Esq.,
Solicitor, and of counsel for
Morris Ketchum *et al.*

E. H. Grandin, Esq.,
Solicitor, and of counsel for
Rudolph Merian *et al.*

Supreme Court of the United States,

MORRIS KETCHUM et al.,
Appellants,
vs.
WILLIAM B. DUNCAN et al.,
Appellees.

RODOLPH MERIAN et al.,
Appellants,
vs.
WILLIAM B. DUNCAN et al.,
Appellees.

ANSWER TO APPELLEES MOTIONS. TO SUSPEND SUPERSEDEAS, TO SET ASIDE ORDERS OF SUPREME COURT REFUSING TO VACATE SUPERSEDEAS OR DISMISS APPEAL, AND FOR A CERTIORARI.

GEORGE HOADLY,
E. H. GRANDIN,
E. L. ANDREWS,
Of Counsel for Appellants.

Morrison & Nathan,
Printers and Blank Book Manufacturers,
23 Dey Street, N. Y.

IN THE

Supreme Court of the United States.

MORRIS KETCHUM ET AL.,
Appellants,
vs.
WILLIAM B. DUNCAN, ET AL.,
Appellees.

RODOLPH MERIAN ET AL.,
Appellants,
vs.
WILLIAM B. DUNCAN ET AL.,
Appellees.

Now come the appellants in the foregoing causes in this Court and respectfully move this Honorable Court to advance the said causes on the calendar of this Court, and assign a day for the speedy hearing of the said appeals on their merits, and for grounds of said motion, the appellants refer to the Brief herewith presented.

GEORGE HOADLY,
E. L. ANDREWS,
E. H. GRANDIN,
of Counsel.

SUPREME COURT OF THE UNITED STATES.

MORRIS KETCHUM ET AL.,
Appts.,
vs.
WM. B. DUNCAN ET AL.

On motion of Mr. E. L. Andrews, it is ordered that the motion to vacate the order heretofore entered, suspending operation of the supersedeas in this cause be assigned for argument on the 15th of January, 1878.

17 December, 1877.

True copy :

Test.,

D. W. MIDDLETON,
Clk. Sup. Court, U. S.

SUPREME COURT OF THE UNITED STATES.

MORRIS KETCHUM ET AL.,
Appellants,
vs.
WILLIAM B. DUNCAN ET AL.,
Appellees.

RODOLPH MERIAN ET AL.,
Appellants,
vs.
WILLIAM B. DUNCAN ET AL.,
Appellees.

ANSWER TO MOTIONS.

To suspend Supersedeas. To set aside order of Supreme Court refusing to vacate supersedeas or dismiss appeal. And for a Certiorari.

To the Honorable the Supreme Court of the United States:

Come, Charles Moran, D. Comyn Moran and Amedee D. Moran, who being duly sworn, deposes and says, each for himself, that they constitute the firm of Moran Bros., of the city of New York, and are the owners and holders of one hundred and forty-two thousand dollars ($142,000) of the First Mortgage and interest bonds of the Mobile and Ohio Railroad Company, of which one hundred and five thousand are First Mortgage Sterling Bonds.

Charles Moran says that he has been interested in the Mobile and Ohio railroad enterprise for many years past, in fact since 1855, and was engaged in the negotiation of the loan for six millions of dollars ($6,000,000) of which the bonds above referred to constitute a part, and a first mortgage on the property.

Deponents say that, relying upon the representations of William B. Duncan, as hereinafter set forth, and at his instance, they, together with some small bondholders requested him to take possession of the Mobile and Ohio Railroad as trustee for the bondholders under said mortgage, and upon the default which occurred in the payment of interest on the first day of May, 1875. That request made by them as *cestius que trusts* was in writing, and has been used in the course of this litigation, as the basis for the action of said Duncan in taking possession of the railroad.

Charles Moran says, that for several years past, and as soon as he learned that there were bonds in existence issued by the Mobile and Ohio Railroad Company, and claiming to hold a paramount lien upon the road in the State of Tennessee; he stated in Geneva and in New York and whenever the opportunity offered that he could not submit to the injury to his rights attempted by the imposition of this lien of some one million six hundred and sixty-eight thousand dollars ($1,668,000,) ahead of the first mortgage.

He further says, that he, frequently, in conversations with W. B. Duncan, before, and about the time of the said request, and since that time reiterated his intention to defend himself against these Tennessee claims. He was assured by Duncan, that he would do nothing to affect his position in respect of said claims. Under these circumstances, and believing from Duncan's assurances that he would assert the rights of the First Mortgage bondholders throughout the litigation; deponent appeared as his sponsor as aforesaid, for the control of the property. At that time, also, the said Duncan and his firm of Duncan, Sherman & Co., were of good repute and supposed to be solvent.

Deponents say, that some months thereafter Morris Ketchum filed his bill as trustee of the First Mortgage. The said Duncan concealed the facts as to the manner in which he claimed to derive his title as trustee of the first mortgage, and alleged that Ketchum's proceedings were not brought in good faith, but merely for the purpose of making his commissions as trustee, and induced deponent to oppose his (Duncan's) removal from the possession of the railroad.

Thereafter, on or about the 20th day of May, 1876, deponents were surprised to learn for the first time, from the newspapers, that a decree had been entered for the sale of the railroad in Tennessee, at the suit of William B. Duncan, Adrian Iselin, and Richard T. Wilson, claiming as trustees of the Tennessee substitution bonds. Deponents thereupon made inquiry into the condition of the litigation, and learned that Morris Ketchum in discharge of his duty, as trustee of the First Mortgage bondholders, had filed proceedings against the claims of these Tennessee substitution bondholders and thereby deponents were led to make further and closer investigation into the affairs of the trust estate and for the first time became apprised of the true condition of their property. They learned the following facts: The bill which had been filed in Alabama by Duncan and his associate, in the firm of Duncan, Sherman & Co., A. F. Elliott had been framed on behalf of the coupons, 1874, held by Alexander Duncan, setting them up as liens on the property under the First Mortgage; and acknowledging the one million six hundred and sixty-eight thousand dollars ($1,668,000) of Tennessee claims to be paramount to the First Mortgage on that section of the road. In fact, deponents had been unwittingly made the means, by Duncan, of setting up through him, the very positions which they had desired to defend themselves against. Deponents further learned for the first time, that the manner in which Duncan claimed to have acquired the title to the trusteeship was by virtue of a proceeding instituted in Mobile in 1863, and a publication in a newspaper of that city, followed by a decree of a Southern Court in the following terms: "The Court being satisfied that the said Ketchum is an alien enemy, it is hereby ordered, adjudged and decreed that he be removed from the said trusteeship." Deponents not believing that a decree obtained during the war, and on a political ground, could confer a valid title against a loyal citizen, became fearful that the affairs of the property would be involved in confusion and perpetual discredit by reason of this false basis of title be set up against their securities.

Deponents further discovered that Duncan had not opposed the misappropriation of two hundred and thirty thousand dollars ($230,000) of the moneys of the trust in his hands to floating claimants, and that said payment of the moneys derived from the earnings of the road to inferior claimants had been opposed by Morris Ketchum alone, acting in the name of Louis J. Belloni, one of the First Mortgage bondholders. Mr. Ketchum was unable to act in his own name, as trustee, to prevent this appropriation of the funds of the trust, by reason of a decision which had just been rendered by Judge Woods, holding the Confederate proceedings aforesaid to be valid. In confirmation of the above, deponents refer to the reports of this litigation in the second volume of Woods reports, and to the records in this Court.

Deponents further found that the father of W. B. Duncan, Alexander Duncan, claimed to own about two hundred thousand dollars ($200,000) of the coupons of the Tennessee substitution bonds assigned to him by Duncan, Sherman & Co., and that W. B. Duncan, was, in fact, through his assignee in bankruptcy, interested in some of the above floating claims, and through him and Alexander Duncan interested in every claim adverse to the rights of those whom he claimed to be trustee.

Deponents say that at the said times in 1876 they represented $512,000 of First Mortgage and interest bonds of the Mobile and Ohio Railroad Company, their constituents residing in most instances in Europe, and relying upon them for their protection. Deponents believing it to be their duty on behalf of those for whom they were acting as agents, as well as necessary for the protection of their own interests, to interpose some defence against the acts of Duncan, conferred with some of the largest holders of First Mortgage bonds in the city of New York, and agreed upon the plan of defence and action set forth in the following statement to the bondholders which forms a part of the record in this Court:

Office of Mortgage Bondholders of the
Mobile and Ohio Railroad Co.
November 24, 1876.

To the creditors of the Mobile and Ohio Railroad Company:

The undersigned, owners of First Mortgage Sterling Bonds of the Mobile and Ohio Railroad Company have duly considered a circular signed by Messrs. William H. Hays, William S. Pierson, and T. Haskins Dupuy, accompanying a Plan of Reorganization of said company which has been submitted to us for our signatures.

The object of this plan can only be, it appears to us, to further the interests of the inferior securities of the Mobile and Ohio Railroad, at the expense of the First and other Mortgage Bondholders. After a careful examination we believe it to be most unjust to our interests as holders of those bonds, and we respectfully call the attention of all the parties in interest, to the following simple statement of facts, and the conclusions drawn from them by us. The facts are mostly taken from the records of the Court having the present custody of the property of the Mobile and Ohio Railroad Company, and hence cannot be denied.

Messrs. William B. Duncan and A. F. Elliott have been for several years directors of the Mobile and Ohio

Railroad Company. The former was the head of the banking house of Duncan, Sherman & Co., of this city, and the latter the New Orleans agent of that house. For about a year before the default of the Mobile and Ohio R. R. Company on the interest of the First Mortgage Bonds, Mr. Duncan had been president of the company, and still acts as such president.

In April, 1875, shortly before the default in the payment of interest, Messrs. Duncan and Elliott claimed to become trustees of the First Sterling Mortgage, Mr. Duncan, at the time, being already a trustee of the so-called Tennessee Substitution Bonds, and likewise for the consolidated Mortgage Bonds. Immediately upon the default, which transpired in May, 1875, the directors surrendered possession of the entire property of the Mobile and Ohio Railroad Company to Duncan and Elliott, as trustees for the First Mortgage Bondholders. A few days afterwards, Duncan and Elliott filed a bill in the United States Circuit Court for Alabama, and were invested by said Court with the powers of receivers of the property. Since that time Duncan and Elliott have administered the property through the agency of T. Haskins Dupuy.

The Floating Debt Claims.

On or about the 9th day of April, 1876, the Floating Debt Creditors of the company applied to the United States Court for the sale of $550,000 (five hundred and fifty thousand dollars), of securities, belonging to the First Mortgage, and the application of the proceeds in liquidation of their claims.

W. B. Duncan and A. F. Elliott claiming te represent the First Mortgage Bondholders offered absolutely no opposition to this demand.

The sole defence of the First Mortgage Bondholders was made on behalf of Mr. Morris Ketchum, as surviving trustee of their mortgage aided by some of the bondholders. Without this timely action on the part of Mr.

Ketchum, it is clear that the Court would have been led to grant the order in favor of the Floating Debt Claimants, which would in effect, have appropriated our property for the benefit of other persons. Indeed, the lack of all opposition on the part of the First Mortgage Bondholders-other than above stated, was urged on the Court as an acquisence by the bondholders generally, in this appropriation of their property. Fortunately, however, the scheme was entirely defeated and the United States Circuit Judge sustained Mr. Ketchum in his opposition on our behalf.

The assets, amounting to more than half a million dollars of securities, thus saved for our benefit, we should seek to have applied to the payment of our over due coupons. The strange proceeding of the Floating Debtholders, and the absence of all defence on our behalf by W. B. Duncan and A. F. Elliott, warn us of the necessity of a proper representation of the First Mortgage Bondholders.

Alexander Duncan's claims.

In their proceedings by bill filed in the United States Circuit Court, Messrs. Duncan and Elliot declare that the coupons of the First Mortgage Bonds which fell due in May and November of 1874, which had been paid to the bondholders, were still outstandieg and subsisting First Mortgage liens on our property. These coupons were presented and were paid in the same manner in which all previous coupons had been presented and paid. It was generally supposed, and every one had a right to suppose, when they were paid and surrendered, that they ceased to be a part of the First Mortgage. Nevertheless, it was claimed about the time of the default in 1875, that these coupons were outstanding liens on the property, and they now reappear mainly in the hands of Mr. Alexander Duncan, father of Mr. William B. Duncan who claims them by assignment from Duncan, Sherman & Co., to the extent of nearly ($736,000) seven hundred and thirty-six thousand dollars. It is claimed that these coupons should participate in our mortgage, and to the same extent, reduce the value of our bonds. These coupons were paid in the regular and usual way, and they should not be paid again, at least with our consent. Dead and paid coupons cannot be revived in this way to eat up the mortgaged property. If this should be submitted to, the payment of mortgage interest can always be turned into a loan to the bondholder, to be deducted from the amount of this mortgage. We cannot consent to any plan of reorganization which proposes to take this three-quarters of a million dollars from the mortgage estate, as does the plan offered under date of October 12th, 1876, which purposes to include all coupons "whose original due date named therein shall not be later than November 1, 1877."

The Tennessee Claims.

In the various proceedings before the United States Circuit Courts, W. B. Duncan and A. F. Elliott admit that certain claims called Tennessee Substitution Bonds hold a priority over the First Mortgage Sterling Bonds on the 118 miles of the main line running through the State of Tennessee. In addition, a distinct suit in the States Circuit Court of Tennessee was instituted in the name of William B. Duncan, Adrian Iselin and R. T. Wilson, as trustees for these Tennessee Substitution Bonds, to enforce in their favor a priority over the First Mortgage Bonds. The sole representatives of the First Mortgage Bonds served with notice of these legal proceeding in Tennessee, were Duncan and Elliott, who claimed to represent the First Mortgage Bonds as trustees. No defence, whatever, was made by them in this action, and the consequence was that a decree was obtained, by default, against the First Mortgage, and an order of sale of the Tennessee section of the road, was entered for the benefit of the Tenneesee Substitution Bonds, leaving the First Mortgage Bonds only such balance, if any, as might remain. The excuses offered by W. B. Duncan to palliate his conduct in this matter, and his efforts to avoid the effect of his laches cannot countervail his express admissions in favor of these subordinate claims against the First Mortgage.

Now, in fact, the First Mortgage is a first lien on the entire line, the lien formerly created to protect the advances made by the State of Tennessee to the company, having long since been satisfied by the return to the State of its Bonds to the full amount of the advances made by the State. It is true, there was an attempt to assign the State's lien, after its liquidation, to the holders of the Tennessee Substitution Bonds; but as these bonds were created long after the First Mortgage Bonds, and were issued only after the full liquidation of the advances of the State, and as they are entirely different in nature from the cancelled State Bonds, these new Substitution Bonds cannot obtain a priority over the First Mortgage Bonds, by any arrangement between the company and its subsequent creditors.

But even assuming that the Substitution Bonds are entitled to the benefit of the satisfied and extinct lien of the State of Tennessee, the proposed plan of reorganization gives them an advantage over the First Mortgage Bonds, entirely unwarranted and unjust: The First Mortgage Bonds are for £225 Sterling each, payable in London, equal to $1100 *Gold* or $1200 currency. These Bonds are proposed to be admitted into the reorganization only for the sum of $1000, and they are allotted only $440 in the New First Mortgage Bonds for each Sterling Bond; whilst the Tennessee Substitution Bonds, which cannot claim more than $1000 *currency* under the State lien, are allotted $625 for each $1000 bond. And the past due coupons of these bonds are admitted into the proposed reorganization at $36 each, although only entitled to claim under the State lien $30 in currency.

In fact these various proceedings are simply attempts to give an unjust priority over the paramount rights of the First Mortgage Bonds to the following claims :

Floating Claims	$ 536,000
Alexander Duncan's Claims..............	636,000
Tennessee Claims........................	2,018,028
Total loss to Mortgage Bondholders......	$2,290,028

Those who favor or passively submit to the priority of these various claims over the First Mortgage Bonds, appeal to the current, well-founded objection against litigation in the Courts. But, if litigation continues, on whom shall the blame fall ? on those who defend their just rights, or on those who attempt to secure an undue and unjust advantage over prior liens ? In all events, we shall, henceforward, take good care that the property and assets are fairly managed and applied for the benefit of the parties entitled to them.

In our judgment the property should be promptly taken out of the Courts and placed under the direct administration of the Mortgage Bondholders and their representatives ; and we sincerely believe that an effort by the Bondholders to protect themselves against the foregoing claims, and to reorganize the property in their own interest, while treating all the various other interests with the utmost liberality, will meet with the same success that attended the resistance to the priority over the Mortgage Bonds, sought to be obtained by the Floating Creditors.

In case of the sale of the road on foreclosure it would probably not bring the amount of the First Mortgage. It therefore rests entirely with the First Mortgage Bondholders to determine the conditions on which they will admit the junior securities to participate in the purchase.

We suggest and recommend to our fellow-Bondholders, and to all other parties in interest, to unite with us, in order to effect

The Reorganization of the M. & O. R. R. Co. on the following terms, which appear to us equally just to all the various parties in interest:

I. Obtain from the Court an order for the application to the payment of our overdue coupons, of the assets which it was lately attempted to apply to the payment of the Floating Debt Creditors.

II. Release the property from the hands of the Court by the sale of the entire line, from Mobile, Alabama, to Columbus, Kentucky. At such sale the property to be purchased for the benefit of all the securities of the present company—and the purchasers to reorganize the company in accordance with this plan.

III. The reorganized company to create and issue new securities, as follows:

(*a*). Six per cent. Bonds, payable, principal and interest, in gold, secured by a first mortgage on the entire line from Columbus, Kentucky, to Mobile, Alabama, and on all the property, rights, franchises and lands acquired by purchase for account of the reorganized company; said Bonds to be issued in exchange for the First Mortgage Sterling Bonds, and for the Interest Bonds, and for the unpaid coupons on those bonds, which matured on and after the first of May, 1875. We propose to admit the Interest Bonds on the same basis with the First Mortgage Bonds, because the old First Mortgage coupons are held in trust for the benefit of the holders of the present Interest Bonds.

(*b*). First preferred Income Bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the present Second Mortgage Bonds, and for unpaid coupons to March 1, 1878.

(*c*). Second preferred Income Bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the present convertible Bonds and upaid coupons, to March 1, 1878.

(*d*). Third preferred Income Bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the Tennessee Substitution Bonds and unpaid coupons, to January 1, 1878.

(*e*). Fourth preferred Income Bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in exchange for the Consolidated Bonds.

(*f*). Surplus Income Bonds, bearing seven per cent. interest, non-cumulative, and payable only when earned, to be issued in settlement of Floating Debt.

Common Stock,

To be issued to the amount of the present Common Stock, but to be held and voted on by the trustees of the New First Mortgage until interest on all the above Bonds has been paid out of net earnings for three successive years. Thereupon, the certificates to be assigned to the present stockholders or their representatives.

We are satisfied that the property is amply able to meet the amount of First Mortgage interest called for by the above plan, and that the charter rights will be unimpaired by a sale for our benefit.

The holders of all the securities other than the First Mortgage who do not accede to this plan within a time to be limited by the Purchasing Committee, will be debarred from participating in the purchase and reorganization.

In order to consummate the above plan of reorganization without unnecessary delay, we request all the creditors of the Mobile and Ohio Railroad Company to return signed the accompanying power, addressed to Committee of Mobile and Ohio Railroad Bondholders.

68 William street, New York.

MORAN BROTHERS,
H. AMY & CO.,
ARENTS & YOUNG,
LOUIS J. BELLONI.

The undersigned holders of securities of the Mobile and Ohio Railroad Company, now revoking all other powers, do hereby request and authorize

Moran Brothers, H. Amy & Co., Arents & Young,
Louis J. Belloni,

to act on our behalf in the election of a Purchasing Committee, composed of two First Mortgage Bondholders and one Second Mortgage Bondholder, who shall have the preceding plan carried into execution by final decrees of the Circuit Courts of the United States, and by purchase and reorganization thereunder; and who shall take any and all proceedings deemed by them advisable in furtherance of said plan, which shall not be effectual until approved by a majority of the First Mortgage Bondholders. After the reorganization on the foregoing basis, the possession of the road to be delivered to the directors who may be selected by a vote of the First Mortgage Bondholders controlling the stock of the company under the foregoing plan.

Names and address	Classes of claims	Amount.

N. B.—The Bondholders and other parties in interest may send this power to the signers of the above plan, or to any other person they may desire to entrust with their interests.

Deponents say that the signers of the foregoing circular owned and represented the sum of $930,000 of the First Mortgage bonds.

About this time, Morris Ketchum had issued the following circular, Judge Woods having upheld the Confederate Decree:

24 Broad Street.
New York, April 19th, 1876.

Dear Sir:

A large number of interested parties, yourself among the number, have either called upon, or communicated with me in relation to the affairs of the Mobile and Ohio R. R.

These parties have thus learned that I was the only survivor of the three original Trustees under the First Mortgage, and at the request of sundry holders of First Mortgage Bonds, I had taken steps, in their behalf, to assert my right to the position of Trustee at the present time, in spite of my pretended removal by the Courts of the State of Alabama, after the commencement of the war of the Rebellion.

After hearing argument upon the question, Judge Woods has decided, upon purely legal and technical points, that my removal must be held valid, as well as the appointment of the present encumbents of the Trust.

I have felt it my duty to advise you of these facts, inasmuch as, whatever may be my opinion as to the existing administration of the affairs of this Road, the decision above quoted necessarily ends my connection with it.

Many of you have expressed great dissatisfaction at the past and present treatment of your interests and property. My right to defend you is denied. The remedies remain in your own hands.

MORRIS KETCHUM.

But the signers of the aforesaid circular united in requesting Morris Ketchum to continue the efforts which he had made for the protection of the First Mortgage bondholders as their trustee, and united with him in all the subsequent proceedings which have been had from that time to the present. Deponents say that among the first steps which transpired in the litigatton after the foregoing, was the hearing had before the United States Circuit Court for the Southern District of Alabama, upon the plea of the Railroad Company, and the demurrer of William B. Duncan contesting the title of Morris Ketchum to the trusteeship of the railroad, upon the ground that during the war a Southern Court had divested his title.

After a hearing which extended over nearly an entire week, and after long deliberation, his Honor Judge Bunce pronouncing the opinon of the Circuit Court at its regular term overruled the defences which had been set up to sustain the Confederate proceedings above described. Morris Ketchum thereupon moved the Court to fill the vacancies in his trust by the appointment of George S. Coe and Philo C. Calhoun, two of the leading bank presidents of the city of New York, and also moved that the possession which then existed and which still exists under the aforesaid Confederate title be changed by the appointment of receivers, under the title which had been sanctioned by the Court. The said motions came up in due form upon their return day before the Circuit Court, but for reasons assigned in open Court by the learned Judge holding the Court, but not deemed discreet to mention here, a hearing could not be had. Soon afterwards the Term of the Circuit Court was adjourned *sine die*, and the said motions have never had a hearing, and the said Duncan and Elliott have still remained and now remain the possessors of the property.

Deponents say that said Duncan and his counsel, by petition presented to the United States Circuit Court for the Western District of Tennessee, alleged that "the decree in favor of the substitution bonds, and against the First Mortgage bonds was taken without their knowledge," and that "the complainants were not entitled to a sale of the property unless default be made in the payment of the principal debt which does not mature until the year 1901, but so long only as default in payment of interest exists, their right is to the application of the income of the property by the agency of a receiver."

Deponents further say, that they filed a bill to review said decree, but finally it was arranged between Duncan and Iselin et. al., that a hearing might be had in regard to the merits of the questions involved in the Tennessee suit, but refusing to admit the present appellants, or Mr. Ketchum, as parties, so that they might appeal.

Deponents, as agents for Rodolph Merian and other bondholders to the amount of six hundred thousand dollars ($600,000), thereupon presented a petition to the Circuit Court for the Western District of Tennessee, for an order that the opening of the decree might be substantial and not illusory by admitting the said bondholders as defendants to the bill to protect their own rights; Mr. Elliott, one of the claimants to the trusteeship of the First Mortgage under the confederate title claiming to be their sole representative before the Tennessee Circuit Court, and he being a former associate in the firm of Duncan, Sherman & Co., with Duncan, who was largely interested in the Tennessee claims. Morris Ketcham likewise presented a petition to the same Court for leave to be admitted as a defendant as the trustee of the First Mortgage. Both of these motions were opposed for several days by counsel for Duncan and Elliott, and were both finally denied by Mr. Justice Trigg. Deponents then prepared by their counsel to seek some remedy whereby they might have a position on the record which would enable them to avoid any further *pro confessos* against their mortgage, and ultimately to have a hearing before the Supreme Court of the United States. The other parties to the litigation at last consented that Rodolph Merian and others might be made parties, but upon condition that they would go to trial on such facts as could be agreed upon.

Deponents are informed by their counsel and verily believe that to avoid troublesome and expensive litigation against any decree which might be obtained without their presence as parties, they felt bound to permit the cause to be presented to the Circuit Court upon a very imperfect condition of the record, to which they consented under duress as aforesaid. Merian and others were then constituted parties on behalf of six hundred thousand dollars ($600,000), of the First Mortgage Bonds as appears from the record, and the cause proceeded to a hearing. The opinion pronounced in the cause reads in part as follows: "I have given to this case all the consideration that I have been able to devote to it during the vacation. I have necessarily been absent from home for a large portion of my time, and while here have been occupied in the examination and disposition of an unusual amount of business at Chambers, and even now, to dispose of unfinished business, I will be compelled to leave very soon for Knoxville and Nashville, and having some matters of private concern which must engage my attention before taking my departure to fill other engagements, I shall be obliged to postpone writing an elaborate opinion, as I contemplated doing, at this time, and such as the magnitude and importance of the case would seem to demand. I regret this exceedingly, but under all the circumstances I find it impracticable now, and trust to having leisure and opportunity at some future time for doing so, if it should be particularly desired."

Deponents further say, that pending the proceedings at Circuit, which resulted in the decrees below, the holders of the Tennessee claims and the Duncan coupons, confederating with T. H. Dupuy, who was the agent of Duncan and Elliott, in the possession of the property, together with said Duncan and Elliott, and wielding all the influence and prestige derived from the possession of the railroad which had been retained by them in the manner above indicated, combined together and proposed what they were pleased to call a plan of re-adjustment of the securities of the Mobile and Ohio Railroad Company.

They represented by notices in the public press, and by circulars distributed, that the plan proposed by them would terminate expensive litigation, and that the adoption of the plan above set forth, presented by Moran, Amy and others, would lead to an opposite result. The manner in which a number of *bona fide* First Mortgage Bondholders were brought into this scheme is shown by the papers already submitted to this Court, in which it appears that the *cestui que trusts* were threatened and induced to believe that by a privilege accorded of using the bonds as cash upon the sale of the property, the party holding the largest number of claims would be enabled to deprive *cestui que trusts* of their just and contract rights. Among these representations were the following:

To the Bondholders of the Mobile and Ohio Railroad.

The agreement of October 1, 1876, having been signed by a majority of the first mortgage indebtedness and Tennessee sub-bondholders, has become binding on the subscribers thereto.

Any other plan of reorganization predicated upon obtaining the consent of the majority of the first mortgage indebtedness holders has now become impracticable, and it is, therefore, the interest of the yet outstanding bondholders to join the party which will have the best chance to purchase the road whenever a decree for its sale will have been obtained.

We hereby give notice that bonds can be deposited under this agreement up to the 1st of March next; all bondholders who have not acceded to it by that time will, at the discretion of the Committee, and without further notice, be liable to be debarred from participating in it.

WILLIAM H. HAYS,
WILLIAM S. PIERSON, } Committee.
T. HASKINS DUPUY.

They have likewise used the decree appealed from as a means of forcing submissions from the bondholders by advertising it as follows in the daily newspapers:

Mobile and Ohio Railroad.

[Extract from the final decree rendered June 15, 1877, in the United States Circuit Court for the Southern District of Alabama. Present—Hon. Jos. P. Bradley, Circuit Justice; Hon. W. B. Woods, Circuit Judge]:

"7. The Court orders and decrees that the Masters may receive in payment from the highest and last bidder, bonds and coupons which form a part of the first mortgage debt ascertained to be due or owing by the Master in his report, and sustained by the opinion of this Court. * * * provided also that if the said mortgage property shall be bid off directly or indirectly by, for or in behalf of the bondholders and creditors who have or shall have entered into and subscribed the agreement for the readjustment of the securities of said company, dated October 1, 1876, commonly called the agreement of reorganization, then and in that case all and every bondholder and creditor of said company not having already entered into and subscribed said agreement, who shall, on or before the first day of September next, enter into and subscribe the same, and deposit their securities with the Farmers' Loan and Trust Company in the city of New York, or with the Bank of Mobile, in the city of Mobile, as provided by said agreement, shall be and they are hereby allowed to participate in said bid and purchase on the same terms and on an equal footing in all respects, according to the character of their claims respectively, with the said bondholders and creditors who have heretofore entered into and signed the said agreement."

Further information may be had on application personally or by mail to

W. H. HAYS, Chairman,
No. 11 Pine Street, New York.

The following declares their expectation of advantage from a change in the mortgage contract so as to permit the road to be sold for bonds.

NEW YORK, Feb. 16, 1877.

To the creditors of the Mobile and Ohio Ralroad Co.:

The Committee of Reorganization of the Mobile and Ohio Railroad Company take occasion to inform you as follows:

* * * * * *

8. The Committee has in its actual possession claims enough to enable it to buy the property whenever it is offered for sale, in a manner which will require it to raise less money than will be required from any other purchaser.

(Confidential.) Office of Committee of Reorganization of the Mobile and Ohio
Railroad Company,
No. 11 Pine street, N. Y.
March 10th, 1877.

It is very satisfactory to the committee to be able to refer you to the annexed schedule showing the amount of bonds now in the hands of the committee and subscribed to the reorganization scheme. This large and prepondering amount insures, as far as anything can, the ability of the committee to purchase the entire property; because under the circumstances any decree of foreclosure will of course permit payment to be made by the purchaser in the securities of the road, according to their order and priority, and the purchase will be made for the exclusive benefit of the subscribers to the agreement who shall have transferred their securities to the committee.

The number and amount of those who have as yet withheld their assent to the scheme is so small in proportion to the whole amount of bonds outstanding that the committee anticipate no difficulty, with the means at their command, in providing the small amount which may be necessary to be paid into Court for division among such dissenting minority, and the new securities to be issued the reorganization scheme, will afford an ample fund for the benefit of the new corporation, and of the subscribers to the agreement.

We think you should urge upon those who have not subscribed the agreement, as well as those who have done so, but have not as yet deposited their securities, (and who are not included in the annexed schedule), the importance of their so doing, as tending very greatly to the promotion of their own interests, and to rendering possible the consummation of even the first object of the committee, as the fact that we are prepared to produce to the Court the bonds which we claim to represent has a valuable effect; and to participate in the benefit of the scheme the bonds must be under our actual control.

For the committee,

W. H. HAYS.

Deponents show that the arrangement above set forth was predicated upon an agreement with the corporation, and so far as it expected to realize an amicable arrangement by which the First Mortgage Bondholders should accept a new bond of similar rank for only four hundred and forty dollars ($440) in lieu of each bonds now held by them for a thousand ($1000) dollars, and relinquish the balance of their First Mortgage to the Duncan coupons and the Tennessee substitution claims it has utterly failed of success.

Your petitioners show that when this cause was heard at Circuit, there were more than one million three hundred thousand dollars, ($1,300,000) of First Mortgage and Second Mortgage Bonds, including only three hundred thousand of the latter, who were united in opposing this effort to deprive them of their rights. There were more than one and a half million of First Mortgage Bonds besides many hundred of thousands of dollars of Second Mortgage Bonds, which refused to yield the sacrifices proposed, and which it was sought to entort from the bondholders by the power of bidding, This scheme, too, had been put forward by the very agent who was in possession of the railroad and retained in that possession by virtue of the remarkable circumstances which transpired in relation thereto, at Circuit. Deponents submit, as shown in the papers presented to this Court, that the effect of the decree in reference to the purchase of this property, and which provision of the decree was extensively advertised by the said Dupuy and others in this scheme, to get control of the property, induced a large number of First Mortgage Bondholders to yield their mortgage rights to their own agent, combined with Pierson and Hays, so that the amount of First Mortgage Bonds which still refuse to yield to the claims of the Duncan coupons and Tennessee substitution bonds is about three-quarters of a million of dollars.

Deponents believe that they own more of the First Mortgage Bonds than Duncan, Elliott, Hays, Pierson, and Dupuy altogether.

Deponents now represent two hundred and twenty-nine thousand dollars ($229,000) of said bonds, includtheir own, and the record shows that of the balance of First Mortgage Bonds, H. Amy and Company representing and owning about a quarter of a million, are awaiting the decision of this Court upon the merits of the cause, to determine whether they will revoke their power given to Dupuy and others to bid for them on the sale of the property.

Besides these, of the four hundered thousand dollars ($400,000) of bonds not specially represented on the record, and represented only by Morris Ketcham, as trustee, deponent's are informed that about two hundred thousand dollars ($200,000) have expressed their determination to await the judgment of this Court. There are likewise two hundred and twenty thousand dollars ($220,000) of Second Mortgage Bonds, that have presented their petition to this Court in conjunction with the appellants.

And deponents further say that they prefer to obtain an adjudication from this Court as to the validity of the liens on which they invested their money instead of voluntarily surrendering fifty-six per cent. (56 per cent.) of that lien for the benefit of the contesting claimants. They would lose fifty-six per cent. (56 per cent.) of their mortgage lien for two hundred and twenty-nine thousand dollars ($229,000), to wit: One hundred and twenty-eight thousand dollars by making such voluntary surrender. The bonds represented by Mr. Ketcham would, by such voluntary surrender, lose more than two hundred thousand dollars ($200,000). The appellants believing that they were entitled to the fullest adjudication in the premises, have given bonds for one hundred and twenty thousand dollars ($120,000) to stay the execution of the decree below and the sale of the railroad. They have offered to submit these appeals, though the decree below were against them, upon printed arguments, but the appellees have not consented to this fair and reasonable proposition. Deponents now pray this Court that the causes may be advanced on the calendar for a speedy hearing, as on account of the reasons shown in the accompanying papers, any interference with the *supersedeas* obtained would be a practical nullification of their appeal. A large number of the First Mortgage Bonds are held by parties who hold contested claims, Tennessee substitution bonds and Duncan coupons. Deponents have been informed by a number of First Mortgage Bondholders who have yielded to the propositions of Dupuy and others, that they did so supposing that they would lose the greater part of their bonds if they did not accede, and that they trusted deponents would prosecute the appeals to a successful determination.

The following extract from a late letter of one of deponent's constituents in Switzerland, illustrates this: "The last few days they have used a most persistent solicitation to bring us on their side; they have given us as a last argument that unless our bonds were deposited with the Hays Committee they will only have the right at the termination of the litigation to a very small dividend." Since the order of this Court suspending the supersedeas, deponents received a cable despatch from De Watteville to surrender his bonds to the Dupuy party.

Deponents are desirous of expediting the determination of their rights, but their interests are too large to justify the concessions asked of them, and they can only further, as far as in them lies, the immediate and prompt hearing of the merits of the litigation.

Deponents further refer to the fact of the continued possession of the railroad by Duncan and, Elliott and the very large expenditure made by them, exceeding one hundred thousand dollars ($100,000) for legal expenses, and the fact that appellants have been subjected already to an expense of more than twelve thousand dollars ($12,000) for the defence of their rights without any allowance from the fund, even for actual disbursements, to the trustee named in the deed, although his title has been confirmed by the Circuit Court.

Deponents and the other parties to the First Mortgage Bondholders' agreement, above set forth, have thus been placed in the position of seeing the trust estate wielded throughout this litigation by parties in interest in the contested claim.

Deponents further say, that from statements made to them by some of the of the bondholders who have joined the Dupuy plan, they are informed, that they have been induced to join the same from the fact, that Duncan and Elliott are retained in the possession of the property. The said Duncan is an adjudicated bankrupt and Elliott has made an assignment in solvency as a member of Duncan, Sherman & Co. Their bondsmen are two attorneys at law, who are likewise on the bond of the assignee in insolvency of Duncan, Sherman & Co. to the extent of six hundred and fifty thousand dollars. Under these circumstances, deponents have deemed it useless to object to their accounts with such a remote prospect of recovering from insolvents.

Deponents are assured and believe that the most considerable number of *bona fide* First Mortgage bondholders have not yielded their rights willingly, but from the fear of litigation held out to them by the Hays-Dupuy party, and also from the fear of losing the greater part of their bonds by the process of bidding above described.

Deponents submit that they and their constituents have been greatly oppressed by this course of action in regard to the possession of the property. This has been intensified by the fact that after a year of litigation to determine that the confederate title of Duncan & Elliott was invalid, they are still continued as trustees in possession under that title.

Deponents have only desired throughout the litigation that the property should be in impartial hands and that this grievous wrong should not accrue to them, namely witnessing the hand of the Court directed by agencies adverse to them, and their opponents gaining the advantage of wielding against them the property, in which they had a large interest.

Deponents submit the foregoing to show that the appellees are not entitled to the extraordinary grace and favor asked by them, namely, to have the supersedeas practically destroyed, to enable them to continue in permanent control of the property, And deponents refer to the brief herewith submitted to show the great loss which will accrue to them from the execution of the present decree.

And deponents submit that no proof whatever has been presented to this Court of any anxiety or desire on the part of the First Mortgage Bondholders for this proposed hasty and immediate sale of the property before a hearing in this Court. On the contrary, from the evidence submitted on the motions already argued it is shown that there is a strong desire among the bondholders who have deemed themselves obliged to submit temporarily to the party holding the power of purchase under this decree—to have a hearing in this Court before execution, in order that they may revoke their powers in case of a reversal.

Deponents pray that on account of the matters above set forth, the hearing of this litigation may be set down for some early day, and that the motions of appellees be denied or adjourned to the hearing.

CHARLES MORAN,
D. COMYN MORAN,
AMEDEE D. MORAN.

Sworn to before me, this 12th day of January, 1878.
EDWARD L. OWEN,
United States Commissioner,
Southern Dist. of New York.

SUPREME COURT OF THE UNITED STATES.

MORRIS KETCHUM ET AL., Appellants, agst. WILLIAM B. DUNCAN ET AL., Appellees.	Answer to Motion for Certiorari.

To the Honorable the Supreme Court of the United States.

The answer of the appellants to the motion for a certiorari herein, respectfully shows to the Court as follows:

That the decree herein shows in its preamble on what papers and evidence it was rendered, and reference is prayed thereto, for a designation of the testimony on which it is based.

The appellants likewise refer to the record already in this Court, as a sufficient answer to the application for any further papers to be certified for the purposes of this appeal.

The appellants further show that they directed the Clerk of the Circuit Court to send up, as part of his record, all of the papers which are indicated in the preamble to the decree as being the basis of the judgment of the Court below. The clerk did in fact, probably through inadvertence, send up other papers besides those requested by the appellants, and which have greatly increased the bulk of the record. The additional papers already sent by the clerk of the Circuit Court, are unnecessary for the hearing of this cause, as they do not affect the merits, and proceed merely to collateral issues and interlocutory motions.

For further answer appellants show that the filing of proofs of claim or debt, which were submitted in the Master's office, would be entirely unnecessary, as there is no dispute now, nor was any raised at Circuit, as to the mere formal evidence of claim or the amount thereof, but the sole question presented was as to the legal effect of said proof, and whether the claim so proved relating to the coupons had not been already satisfied, and whether the claimant was not equitably estopped from disputing such satisfaction.

For answer to the application to swell the record by introducing copies of papers used on a motion at Chambers, for Injunctions and Receivers, the appellants say that the said motion being purely an interlocutory proceeding, not affecting the validity of any of the claims or liens upon the property, nor any matter before this Court, they submit that it would be a mere encumbrance upon the record to bring it before this tribunal. The opinion of his Honor Judge Bruce, referred to in the moving papers, was pronounced upon a demurrer and plea to the bill, and was inserted in the record in accordance with the rules of this Court, and more particularly because the opinion relating to the same matter, which was pronounced at Chambers by Judge Woods, on the motion for injunction, was reported in the second volume of Woods' reports, and the appellants deemed it only just that the opinion on the issues in the cause, relating to the question of the trust title, should be equally accessible to this Court. But if said papers in regard to the possession of the property, should be deemed proper records in this Court, the appellants pray that the certiorari may extend to all the proceedings for possession, including a certificate of the matters that transpired in the Circuit Court on the return day of the motion for possession in execution of the decree of the Circuit Court, when the appellants were foiled in their efforts to bring said motion to a hearing.

For further answer to the motion to send up to this Court the receivers' reports, the appellants say that the said documents are in the course of administrative proceeding of the Court below, not relating to any subject of appeal. They were not referred to in the decree, nor does any question involved in them, appear as discussed in any of the opinions rendered at the final hearing. Nor would the amount of money in the receivers hands affect the legal questions regarding its distribution.

For further answer to motion for a certiorari, for a copy of the petition, of appeal, and notice or claim of appeal allowance of appeal, and citation and bond of William H. Hays, William S. Pierson, and T. Haskins Dupuy, the appellants say that the said documents relate to a cross-appeal, taken by the aforesaid parties, sometime subsequent to the appeal of these appellants, and, to the best of their recollection, after directions had been given to the Clerk of the Circuit Court to make up the record on the appeal of these appellants. Nor do the appellants believe that in any event they were bound to make the record on a cross-appeal presenting other questions, a part of the record on their appeal.

For answer to the motion for a transcript of the depositions of Messrs. Moran, the appellants say that the said deposition was taken under a commision issued without interrogatories contrary to the rules in equity, for the purpose of being used upon a motion for a receivership, and is not referred to in the decree of the Circuit Court.

The latter answer applies to the stipulation referred to in the moving papers.

And the appellants further show that the decree is explicit in regard to the testimony on which it is founded, as follows: "The testimony taken in the cause as taken before the Master." The expense of obtaining a transcript of the record from the clerk below exceeded $1100, and according to the information obtained by the appellants, it will cost nearly $4000 to print the record as it now stands. These items are without the expense of the Tennessee record which according to the same proportion of outlay will cost about $1500. The cost of printing the additional papers, if ordered, and obtaining a transcript from the clerk below, the appellants believe will exceed $2000. If this certiorari were granted, the expense would be $8600.

For further answer to this motion, and submitting that these appellants were not bound to furnish transcripts of the records required by other appellants for the purposes of their appeal, they refer, in support of this answer, to the deposition accompanying the foregoing.

MORRIS KETCHUM,
RODOLPH MERIAN,
EUGENE REVEVIER,
CHARLES CARRARD,
CEPHISE CHUFFARD,
MASSON CHAVANNES,
HENRY JUMP,
by E. L. ANDREWS,
E. H. GRANDIN,
GEORGE HOADLY,
of Counsel.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.

Charles Moran, being duly sworn, deposes and says: That he is the attorney in fact of the appellants, except Morris Ketchum, for the defence of their rights in Mobile and Ohio Railroad Company's First Mortgage Bonds. That he has read the foregoing answer, and knows the contents thereof; that the said answer is true as he is informed and verily believes.

CHARLES MORAN.

Sworn to before me, this 12th day of January, 1878.
EDWARD L. OWEN,
U. S. Commissioner,
S. D. of New York.

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, 1877.

No. 879.

MORRIS KETCHUM et al.,
Appellants,
vs.
WILLIAM BUTLER DUNCAN et al.,
Appellees.

Brief for Appellees on Motion to vacate Order of Dec. 10, 1877, and other motions.

F. N. BANGS,
For Appellees.

NEW YORK:
Evening Post Steam Presses, 208 Broadway, corner Fulton Street.
1878.

U. S. Supreme Court.

MORRIS KETCHUM ET AL.,
Appellants,

vs.

WILLIAM BUTLER DUNCAN ET AL.,
Appellees.

October Term, 1877
—No. 879.

In this case, this court, on December 10, 1877, made an order in the following terms:

On consideration of the motion to dismiss this appeal and of the argument of counsel thereupon had, as well in support of as against the same, it is ordered that said motion be, and the same is hereby, denied.

And it is further ordered that the operation of the *supersedeas* arising upon this appeal be so far suspended as to allow sale to be made of the mortgaged premises, in pursuance of the decree below; and that the commissioners appointed to make the sale conduct the same, in all respects, as directed by the decree, except that the portion or share of the proceeds which would enure to the benefit of the appellants by the reversal of the decree, so far as it sustains the validity of the coupons of 1874, be paid in cash to the commissioners and by them into the regisrry of the Circuit Court for the Southern District of Alabama, to await the disposition of this appeal and the further order of the court thereon.

A motion is now made, in the name of the original appellants, to vacate this order. This motion is opposed, not only with reference to the condition of things existing at the time the order was made, but with reference, also, to the condition of things now existing: a change in the circumstances of the case and in the relations of the parties, which is stated in detail in the affidavit submitted in opposition to the motion, having taken place since December 10.

At the same time the appellees move:

1. To vacate the orders heretofore made, denying their motions to dismiss the appeal of Ketchum and others and vacate the supersedeas.

2. For leave to discontinue and withdraw the appeal of De Watteville and Ziegler, and, in part, that of Chuffard.

3. In case the appeal is retained, then for a *certiorari* to bring up portions of the record not embraced in the transcript now on the files of this court.

And the appellants, Ketchum and others, move to advance the cause.

The subjects involved in these various motions are:

I.—The right of those who make the motion to vacate the order of December 10, to be heard.

II.—The extent of the power of this court to direct or restrain the execution of a decree in equity pending an appeal.

III.—The propriety and justice of exercising the power of the court in this case.

IV.—The right of the appellees in their own names and on their own behalf, as well as in the names and on the behalf of Ziegler, De Watteville and Chuffard to discontinue and withdraw, in whole or in part, the appeals taken in the names of the last three persons.

V.—The right of the appellees, upon facts now existing, to have the appeal dismissed.

VI.—The right to a *certiorari*, if the appeal is not dismissed.

I.—The appeal was originally taken in the names of Ketchum, Merian, Renevier, Jump, Chavannes, Carrard, Chuffard, De Watteville and Ziegler. Of these appellants, Ketchum had no personal interest whatever, and the aggregate amount of sterling bonds held by the other appellants was $186,000, namely: Merian, $9,000; Renevier, $5,000; Carrard, $12,000; Chuffard, $14,000; Jump, $14,000; Chavannes, $17,000; Ziegler, $18,000; and De Watteville, $97,000. The only interest which either of these parties had was to reverse so much of the decree as permitted coupons of 1874 to be received by the Masters in payment for the mortgaged property. As this could not prossibly injure either of the appellants to an amount exceeding six per cent. upon the amount of his bonds, the aggregate amount of such injury could not exceed $11,160. But, since the appeal was taken, the bonds held by Ziegler have been assigned to Hays, Pierson & Dupuy, three of the appellees; and since the order of December 10 was made, all the bonds held by De Watteville, and ten of those held by Chuffard, have been also assigned to the same appellees. The actual ownership of the remaining appellants, therefore, does not exceed $61,000. The aggregate amount which they have at stake, altogether, does not exceed $3,660, and the largest interest of any one of them does not exceed $840. These facts appear by the affidavit of Hays, Pierson & Dupuy.

But a corporation called the Rogers Locomotive and Machine Works, as a second mortgage bondholder, reinforces the remaining appellants by joining in their motion to vacate the order of December 10. That corporation, however, is not an appellant, and it has no rights which the appellants have not,—perhaps not even the right to say that it took no appeal because it relied on the will and ability of some one else to stay the execution of the decree.

No one of the parties who now move to vacate the order of December 10, has at present any right to a hearing in this court.

19 *Howard*, 108, *Rogers* v. *The St. Charles.*
23 *How.*, 483, *Clifton* v. *Sheldon.*
3 *Otto*, 44, *Terry* v. *Hatch.*

II.—In 10 *Wallace*, 296, *The Slaughter House Cases*, the court recognized the fact, well authenticated by the text books and reports, that "independently of statutory regulations, the term supersedeas has little or no application in equity suits, as the rule is well settled in the English courts that an appeal in chancery does not stop the proceedings under the decree from which the appeal was taken without the special order of the subordinate court."

In the expression of his views given in 10 Wallace, p. 298 and 299, Mr. Justice Bradley puts his dissent from the judgment of the court upon the grounds that such judgment has the effect of leaving many classes of judgments and decrees *in equity*, though appealed from, entirely effective and operative between the parties, and that such judgment remits the practice on this subject back to the practice of the English Courts of Equity, in which it is conceded that an appeal does not suspend proceedings nor act as a supersedeas on the proceedings in the court appealed from.

The inquiry therefore is, as to the effect of the acts of Congress upon an appeal in equity. Does the allowance of such an appeal, by virtue of any statutory regulation, and without special order, operate as a supersedeas?

By the language of the statute relating to appeals in equity (2 *Stat.*, 244, *sect.* 2, *and Rev. Stat. sec.* 1012), such appeals are made "subject to the same rules, regulations and restrictions as are prescribed in law in case of writs of error."

In *Kitchen* vs. *Randolph*, 3 *Otto*, 87, this court stated that at common law a writ of error was a supersedeas by implication. The court then proceeded to show that the acts of Congress, instead of enlarging, limited, the operation of the writ in that respect. Its effectiveness as a supersedeas was made to depend upon a compliance with certain prescribed conditions as to time and security.

When, therefore, appeals in equity were made subject to the same "*rules, regulations and restrictions* as are prescribed in law in case of writs of error," there was nothing in the enactment which dispensed with the necessity of obtaining a stay by order. This language only superadded other conditions, to wit, those of time and security, which were required in cases of writs of error. Neither the legislation as to writs of error, nor that as to appeals, enlarged the operation of the writ or of the appeal. On the contrary, it restricted it.

But the present legislation on the subject is contained in seetions 1,007 and 1,012 of the Revised Statutes, the former relating to security upon writs of error, and the latter applying to appeals in equity, the "same *rules, regulations and restrictions* which are prescribed in law in case of writs of error." This legislation is not enabling, but restrictive. This is manifestly so, if the word "appeal" is substituted for "writ of error," in section 1,007. That would make it read thus: "In any case where an allowance of an appeal may be a supersedeas," that is in cases where it is made so by a special order, "the appellant may obtain a supersedeas" by complying with the additional conditions prescribed.

In the case at bar, the operation of the allowance of an appeal was not left to be ascertained by implication. It was *specially ordered* to operate as a supersedeas.

But, even conceding that a supersedeas upon an appeal in equity, is, *upon some terms*, a matter of right, yet it cannot be denied that a large discretion is still left to the court, both by statute and by rule.

The amount of security to be given is not specified by statute, except that it is to be "good and sufficient." This leaves room for the exercise of judicial power as to the form of the bond, the solvency and responsibility of the sureties, and the adequacy of the penalty. This judicial power is, in the first instance, to be exercised by the Court below; but, this court, so far from renouncing, has, in repeated instances, in specific cases, and by general rule, asserted its power and authority to consider the adequacy of the security to the purpose intended, and to say how far, if at all, the security is "good and sufficient," for the purpose of staying proceedings in the court below.

Certainly, it cannot be pretended that there is any statute of the United States which enacts that the execution of a decree for the collection of an indebtedness of $9,000,000 shall be stayed by the filing of a bond for $100,000. The power of determining whether, in such a case, such a bond was originally "good and sufficient," or, under altered circumstances, continues to be "good and sufficient," and how far and to what extent, if at all, it is good and sufficient, to suspend the collection of an acknowledged debt, is a power which this court has never abnegated, and, it is to be hoped, never will.

In 9 *Wheaton*, 553, *Corbett* vs. *Brodie*, this court reviewed the action of the court below in fixing the amount of the security, and ordered the cause to be dismissed until the plaintiff in error gave security sufficient to cover the whole amount of the judgment.

In 16 *Howard*, 135, *Stafford* vs. *The Union Bank of Louisiana*, this court required security for the whole amount of the decree, although the suit was a foreclosure suit, and the mortgaged property was in the hands of a receiver.

In 19 *Howard*, 375, *Roberts* vs. *Cooper*, this court stated that the party claiming its intervention should have the full benefit of the security intended by the law, in a case where the writ of error was a supersedeas.

In 6 *Wallace*, 153, *Rubber Company* vs. *Goodyear*, decided at December Term, 1867, this court held that after the allowance of an appeal, the question of the sufficiency of an appeal bond became cognizable here; and in view of the fact that some security had been deposited in the court below before the taking of the appeal, this court allowed an appeal bond to be withdrawn and a new one, in a smaller amount, to be filed.

At the same term, December, 1867, this court promulgated its present 29th rule (6 *Wallace*, v.). By the making of the rule this court assumed to have inherent control over the whole subject of supersedeas and security; and the latter part of the rule seems designed to mitigate, if not prevent, the hardships which might arise from enforcing the rigid direction given in 16 *Howard* 135, *Stafford* vs. *The Union Bank*, while, at the same time, Rule 29 seems to recognize the doctrine of that case as the true one up to that time.

If, therefore, the latter part of Rule 29 had not been in force, the Circuit Court, in this case, might and must have exacted security for the whole amount of the debt established by the decree.

But that rule is not an act of Congress, inflexible and imperative in this court. It is a rule of court. The same power which enacted it can repeal or suspend it, or except a case from its operation, or declare how far it is available to a party seeking the benefit of it (*U. S.* vs. *Breilling*, 20 *How.*, 252). If it is found that in a given case it is resorted to for the purpose of inflicting upon the appellee hardships from which the rule itself was designed to exempt the appellant, this court can abrogate it, *pro hac vice*, and so administer it that it shall not operate beyond what the justice of the case requires.

In 12 *Wallace*, 99, *French* vs. *Shoemaker*, this court again declared it to be within its discretion to increase or diminish the amount of the bond, and to require additional sureties, or *otherwise*, as justice may require. This involves the right to determine how far the security already given shall avail the appellant, or, in other words, to what extent and to what end it shall be deemed "good and sufficient."

In *Jerome* vs. *McCarter*, 21 *Wallace*, 31, the court asserted its power to consider the sufficiency of the security upon a change in the circumstances of the case, or of the parties, or of the sureties, but at the same time announced that it would regard the action of the court below as to the "goodness and sufficiency" of the security at the time it was taken, as final. This, however, does not involve an abandonment on the part of this court, of its power to suspend its own rules, or to except a particular case from their operation, in order to avoid injustice and oppression. It only remits to the court below the power of passing on the form of the bond, the responsibility of the sureties and the value of the property.

There is another source from which power flows to this court to do justice pending an appeal. This source of power is found in Sec. 701 of the Revised Statutes, which is in the following words :

> "The Supreme Court may affirm, modify or reverse any decree or order of a Circuit Court, or District Court acting as a Circuit Court, or of a District Court in prize causes, lawfully brought before it for review, or may direct such judgment, decree or order to be rendered, or such further proceedings to be had as justice may require."

The application of this section has been strongly enforced and copiously illustrated in the brief of my learned associate, the Hon. John A. Campbell, filed on this argument. But I may, without presumption, be permitted to add something to what he has observed.

In cases of this description, the court takes the property in dispute out of the hands of the parties, and deprives them of all direct control over it and its revenues.

If the taking of an appeal is matter of right, and if a stay, auxiliary to an appeal, upon very small security, is also matter of right, then either that stay, at the will of a party, petrifies or freezes the case and the fund inflexibly into the status which they have at the time of the taking of the appeal, beyond the power of anybody or any thing (except Divine Providence) to control it, or, from necessity, the court which has adopted the found-present, existing, undenied, and undeniable right to millions of dollars?

The appeal is, in intendment of law, a nullity as to all parts of the decree which do not injuriously affect the appellants. It has vitality only as between the appellants and the couponholders. In every other respect it is void for want of legal capacity in the appellants to take it, as much so as if they had been infants, or under some other disability. They not only admitted the rights of the other bondholders, but brought suit to enforce those rights. The decree, as a decree of sale, is their own progeny, and they ought not to be permitted to play Saturn eating his own offspring.

The cases in which parties have been held to have divested themselves, by their acts or omissions in the court below, of the right to appeal, so as absolutely to close the ears of the Appellate Court against them, or in which they have been held never to have acquired the right to be heard, except, at best, within defined limits, are numerous.

A party consenting to a decree divests himself of legal capacity to appeal from it.

2 *Vesey, sen.*, 488, *Harrison* vs. *Rumsey*.
Ambler, 229, *Bradish* vs. *Gee*.
5 *Johns. Ch.* 564, *French* vs. *Shotwell*.
20 *Johns.* 668, *Same Case*.
12 *John*, 521, *Monell* vs. *Laurence*.
4 *Paige*, 476, *Leitch* vs. *Cumpston*.
1 *Cowen*, 709, *Atkinson* vs. *Marks*.
2 *Woods*, 628, *Anderson* vs. *R. R. Co*.
8 *Dana*, 12, *Story* vs. *Hawkins*.

A party whose legal rights are not infringed by a decree is devoid of capacity—he is legally incompetent—to appeal from it.

6 *Wallace*, 639, *Crawshay* vs. *Soutter*.
7 *Paige*, 221, *Hone* vs. *Van Schaick*.
10 *Id.*, 426, *Card* vs. *Bird*.

A partial incompetency or incapacity may exist, that is, the incapacity may relate to a portion of the decree, while it does not extend to the remainder.

6 *Paige*, 274, *Cuyler* vs. *Moreland.*
7 *Id.*, 18, *Mills* vs *Hoag.*

A party who has availed himself of pending litigation for his own benefit has divested himself of legal capacity to set up a claim in opposition to the theory on which that litigation is based.

2 *Woods*, 323, *Forbes* vs. *R. R. Co.*
Id., 628, *Anderson* vs. *R. R. Co.*
13 *Blatchford*, 312, *Stevens* vs. *R. R. Co.*

A party who has omitted to raise a particular question in the court below has divested himself of the legal capacity to raise that question here, and this principle is "founded not only on the nature of the jurisdiction of the court, but on principles of great importance to the due administration of justice in all courts."

5 *Wend.* 620, *Wood vs. Young.*

An objection for want of equity cannot be, for the first time, raised on appeal.

2 *N. Y.*, 498, *Clark vs. Sawyer.*

An objection in abatement of the action, on the ground of plaintiff's defective legal capacity, can not be for the first time raised on appeal.

17 *Barb.*, 414, *Baldwin vs. McArthur.*
34 *Id.*, 66, *Mosselman vs. Caen.*
36 *Id.*, 392, *Paige vs. Fazackerly.*

Where only one question has been decided by the court below, this court is deaf to the hearing of any other question, although all parties agree to ask it.

1 *Peters*, 621, *McDonald vs. Smalley.*

This court gives no attention to claims omitted to be made in the court below.

10 *Wheaton*, 431, *The Santa Maria.*
1 *How.*, 169, *Bell vs. Bruen.*
3 *How.*, 692, *Brockett vs. Brockett.*
8 *How.*, 402, *West vs. Smith.*
18 *Id.*, 557, *U.S. vs. Larkin.*
18 *Id.*, 289, *Kinsman vs. Parkhurst.*
20 *Id.*, 45, *Hudgins vs. Kemp.*

Tested by these rules, the only general feature of this controversy which this court has lawful authority even to look at is, that it is a controversy over several small sums, amounting in the aggregate to less than $4,000, between a few bondholders and the holders of the coupons of 1874.

The right of the appellees, *as coupon-holders*, to enforce the decree against the bondholders who have not appealed has not been intercepted by any means which the law approves or allows.

16 *Peters*, 521, *Todd vs. Daniel.*

The right of the appellees, *as bond-holders*, to enforce the decree against the debtor and the junior incumbrancers, and as against all other bond-holders, has not been intercepted by any means which the law allows or approves, because no one questioned that right in the court below, or has legal capacity, or is legally competent, to question it here.

The right of the appellees, *as bondholders*, to enforce the decree against themselves, *as coupon-holders*, is a right which can be questioned by themselves alone.

The right of the appellees, as couponholders *and* bondholders, to enforce the decree against the now remaining appellants has not been intercepted, because the now remaining appellants have not enough at stake to entitle them to maintain an appeal; or, if that is not so, then the right of the appellees to enforce the decree has been intercepted to the extent of only $4,000. As to everything else, they are free from any lawful restraint, and the order of Dec. 10 has done no more than permit them to use their own property, under the limitation that, in using it, they should do no injury to others.

It is contended by the remaining appellants that they may be injured by the execution of the decree in its present shape, because of the situation of so much of the property as lies within the State of Tennessee.

The facts on that subject are before the Court in the record and on the affidavits.

A part of the mortgaged property, 118 miles in length, is in Tennessee. This part is subject to an indebtedness now amounting to some $2,000,000, secured by mortgage to Iselin, Wilson & Duncan as trustees. It is or was a question whether that mortgage is prior or subordinate to the lien of the mortgage in question on this appeal. But Hays, Pierson & Dupuy hold all the $2,000,000 of indebtedness, except about $60,000, and they hold about 90% of the indebtedness secured by the mortgage in question here. It is of but little importance to them which mortgage has priority over the other, and if it were not for the opposition of the appellants, the whole property might be sold together under both mortgages. The attitude of the appellants will compel a separate sale of the Tennessee portion; and they now urge this as a reason why the remainder of the property should not be sold until the priority of the two mortgages, as between each other, shall have been determined.

The answer to this is that they are themselves responsible for whatever difficulty exists in this respect. and that the appeal involves no question on the subject. The bill of Duncan and Elliot did not bring in the Tennessee bondholders nor their representatives as defendants; yet the appellants Merian, Renevier, Carrard, Chuffard, Jump and Chavannes proved their claims in the Duncan and Elliot suit, and so became promoters of a sale in that suit. Ketchum, however, in his bill, and Ziegler, De Watteville, Jump and Chavannes in their bill, did bring in the trustees of the Tennessee bondholders as defendants, and ask a determination of their rights. But, on June 15, 1877, the consolidation order was made, *by consent*, whereby the consolidated cause was directed to proceed, without prejudice to and saving, the rights of Wilson, Iselin, and Duncan; and then, on the next day, an order was made, *by consent of all parties*, striking the names of the Tennessee trustees from the bills on the ground of want of jurisdiction over their persons, and want of jurisdiction over the subject matter. Here, again, the insinuation of error is met by proof of consent. At all events, the emergency created by the obstinacy and folly of the appellants can be provided for without injustice to them or the appellees.

It is also insinuated by the appellants that in case the decree below should be enforced pending the appeal, they might be injured, because this court might, on the determination of the appeal, give them further time to contribute to the expense of, and share in the benefit arising from, a purchase by others of the mortgaged property. How much damage they would sustain by being excluded from that privilege it is impossible to say; but it is submitted that in the particular in question, they have no right to a hearing here. They have no *legal right* to anything but their share, as creditors, of the price bid on the sale by the purchaser. Beyond that, what the decree contained was matter of favor, inserted by consent.

Any attempt by a court to make $100,000 equal to $5,000,000 would be manifestly futile. While an interest is, although small, within the protection of the law as much as a large one, yet in the practical administration of a property or a fund, a large proprietor has, and must have, lawfully a preponderating influence. His rights are of the same quality as and no better than, his remedies are as effectual as, and no more so than, those of the small proprietor. But his power of purchase is greater, because his resources are larger, and because, by law, a dollar will buy more than a penny. There is nothing inequitable, unjust, or unlawful in his using what he has, to buy what a less fortunate possessor cannot buy at all. In a partition sale, the apportionment of a trust fund, or a sale under foreclosure, the largest owner has a lawful advantage of which the court cannot, by any machinery, deprive him. If partners are forced on him, he may dissolve the partnership, and then his disparity of interest *must*, because by law it is entitled to, tell in his favor.

There is, therefore, no reason to believe that this court can or will interfere with the portion of the decree in question. The appellants have said that the appellees shall have nothing more than their legal rights. It is not to be assumed that the court will reverse a decree in order to give the appellants anything more than *their* legal rights.

If it should come to the knowledge of the court that a party of capitalists had raised a sum of money and formed a partnership to buy the road, and had invited all bondholders to come in with them, and some bondholders had refused, while most had consented, would the court say that the recusants had a *legal right* to become partners? And would the court, after seeing that the sale was fairly made, and that no one was imposed upon, refuse to confirm the sale because the purchaser refused to encumber himself by an association with his enemies? If it would, then it may be asked, Is there any limit to the arbitrary power of the court?

Although in a foreclosure suit a court of equity furnishes equitable *remedies*, they are not arbitrary, but are adapted to the *legal rights* which, alone, lie at the basis, and furnish the guide, for the whole proceeding.

IV.—The appellees ask, in view of the changed circumstances and present position of the case, that the court will vacate the orders heretofore made, denying their motion to dismiss the appeal of Ketchum and his coappellants, and will now dismiss the appeal, and vacate the supersedeas.

At the time when the appeal was taken, Hays, Pierson and Dupuy, held $3,931,000 of first mortgage sterling bonds. They now hold $5.008,000.

The bonds of Ziegler and DeWatteville, and some of those of Chuffard, have been assigned to Hays, Pierson and Dupuy.

By the terms of the assignment, Hays, Pierson and Dupuy are constituted not only owners of the bonds, but attorneys in fact of the former owners.

Therefore, Ziegler, DeWatteville, and Chuffard as to the ten assigned bonds, do not now oppose the motion to dismiss. They consent to it and join in it; and the remaining appellants have not enough at stake to entitle them, separately or collectively, to maintain an appeal.

V.—Upon the same grounds, Hays, Pierson and Dupuy, in their own names and in the names of DeWatteville, Ziegler and Chuffard, ask leave to discontinue and withdraw the appeal of Ziegler and De Watteville and so much of Chuffard's appeal as relates to the ten bonds assigned by him, if the entire appeal is not dismissed. It is submitted that when, if ever, the appeal comes to be heard, it should not be heard under a misapprehension, and that the record should show that some of the appellants have withdrawn from the proceeding, and have ceased to ask for a reversal.

VI.—The motion for a *certiorari*, if the appeal is retained, is submitted upon the papers on which it is founded.

VII.—The motion made by the appellants to advance the cause, if the appeal is retained, is submitted by the appellees to the determination of the court, without the expression of any wish, favorable or otherwise. But it is suggested that as the record is incomplete, and is still in manuscript and very voluminous, and as the questions arising are new in this court and of great importance, no earlier time should be assigned for the argument than the first week of the next term.

F. N. Bangs,
Of Counsel for Hays, Pierson,
Dupuy, Duncan, and Elliot.

U. S. Supreme Court,

OCTOBER TERM, 1877.

No. 879.

MORRIS KETCHUM et al.,
Appellants,
vs.
WILLIAM BUTLER DUNCAN et al.,
Trustees, &c.,
Appellees.

Brief in opposition to Motion to vacate Order of Dec. 10, 1877.

JOHN A. CAMPBELL,
For DUNCAN AND ELLIOT.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, CORNER OF FULTON STREET.

In the Supreme Court

OF THE UNITED STATES.

MORRIS KETCHUM ET AL.

vs.

DUNCAN & ELLIOT ET. AL.

No. 879.

A Motion to vacate the order made by this Court on December 10th, 1877.

The facts apparent to the court are, that the trustees, Duncan & Elliott, who possess the property as trustees and receivers, that the trustees of a second mortgage, and the debtor corporation which executed the first mortgage, and also the owners of nine-tenths of the first mortgage bonds, and of the debt of the corporation otherwise, concur in the opinion that the sale of the railroad and all of the property included in the mortgage, should be made in accordance with the terms of the decree. This opinion has been distinctly communicated to the court.

There are no advocates of this motion to vacate the order of December 10, 1877, save only a few persons, who represent a very small fractional part of the debt, and whose possible damage by a sale is provided for by that order.

The question presented to this court is, whether there be any inflexible rule to prohibit the vacatur or suspension of a supersedeas, or whether the court is limited by any statute of the United States in that respect.

I.

The jurisdiction of the Supreme Court is to affirm, modify, or reverse, any judgment, decree or order of a Circuit Court, or District Court sitting as a Circuit Court, or court of prize, lawfully brought before it for review, and to direct such judgment, decree or *order* to be rendered, or *such further proceedings to be had by the inferior court, as the justice of the case may require.*

Revised Statutes, section 701. This section is a compendious digest of several statutes, and contains a grant of judicial power to this court coextensive with the obligations and duties which have been devolved upon it.

II.

It has been settled that a party having no interest in the subject matter of a suit, or who has parted with that interest during its pendency, cannot sustain an appeal. Nor will an appellant be heard to impugn a portion of a decree which does not bear upon his rights or interests, though a party to the record and aggrieved by another portion.

Mills *vs.* Hoag, 7 Paige, 18, 222.
Idley *vs.* Bowen, 11 Wend., 227.
Cuyler *vs.* Moreland, 6 Paige, 274.

It follows that where an appellant has but a limited and defined interest in a common fund, and brings an appeal against a decree distributing that fund among parties who are acknowledged and unquestioned owners of the remainder of that fund, he cannot restrain the distribution or disposition except for the amount to which he is entitled, and all that he can require is, that his actual right and interest shall be assured from damage by the order and action of the court. Otherwise a partial owner might (as the partial owners in this case have attempted) obstruct and postpone hundreds in the enjoyment of their ackhowledged rights, without any legitimate advantage to themselves. Courts of Equity and Admiralty are embraced in the statutes of the United States, as holding the same position. The Admiralty case of the *Thetis*, 3 Hagg. Ad. R., 99, was a salvage case. The court awarded £16,000 among a number of salvors. But there were two appeals from the decree, and an *inhibition* to proceed with the case served on the judge. A motion was made to distribute the funds awarded to others. It was resisted because of the inhibition, and that the decree had so mixed the salvage that a separation could not be made. The judge awarded the distribution. The case of the *Jeff. Davis*, L. R, 2d Privy Council R., 19, is still more analogous.

The vessel was libelled upon a mortgage claim in the High Court of Admiralty. The owner claimed and defended on the ground of payment and breach of contract. The vessel was condemned. An appeal was interposed with citation and inhibition. A motion was made to the Judicial Committee for an order of sale of the vessel pending the appeal, and the order was made.

The court held that a default had occurred in the payment of the mortgage debt; that a right to sell attached; that a sale was proper; and so ordered. The cases of Stratton *vs.* Brown, 8 Pet., 4, and Oliver *vs.* Alexander, 6 Pet., 143, illustrate the proposition that when the rights and interests are distinct and separate, the Supreme Court deals with them as such, and does not allow one to interfere, to postpone, delay, or embarrass others having similar, though distinct, rights and interests.

III.

In suits at law there is commonly a joint interest and right among the contesting parties, plaintiffs and defendants.

The judgment of the court affects in the same manner the respective litigants on either side.

The writ of error serves to redress a grievance which affects the plaintiffs alike. But if a plaintiff or a defendant should decline to join in the writ, the Appellate Court does not coerce him, and the judgment would not be disturbed as to the dissenting defendant who declines the contest. The execution would not be superseded as to such a party. Courts of Admiralty and Chancery have occasion to deal with parties who have several and separate interests in the subject of the suit, sometimes arising under a distinct title. Cases of salvage, seamen's wages, creditors' bills, legacies, shareholders in corporations, and bondholders in railway mortgages, are examples.

In such suits every claimant may be heard for his interest and may claim an appeal. The appeal of one does not avail another. The failure to appeal makes the decree operative as to him. The decree can be affirmed in part and reversed in part, and the same article of the decree can be affirmed as to one and reversed as to another.

Generally, if a judgment at law is reversed for error the whole is reversed, and is not reversed *quoad* one defendant and left standing as to the others charged with him. It is not common in a court of law that a judgment operates directly upon property, but only upon persons.

These important differences necessarily create a difference in the operation and effect of appeals from that of writs of error.

IV.

The section of the Revised Statutes (1012) which directs the manner of transfer to the Supreme Court of causes in chancery and admiralty by appeal, are designed principally to define the relations of the Circuit or District Courts to the cause after an appeal has been perfected according to the regulations prescribed. An appeal from these courts according to these regulations may involve an express restriction or inhibition upon the inferior court from innovating or attempting (to use civil and common law language) anything to the prejudice of the appellant pending the appeal. The inhibition is served on the court, and his disobedience is an attentat.

> Barton *vs.* Regina, 4 Moore P. C., 273.
> Chichester *vs.* Donegal, 1 Adams Ec. R., 23.

But such regulations have not prevented those courts from making provident dispositions of property in their custody.

> Spring *vs.* So. Ca. In. Co., 6 Wheat., 519.
> Jennings *vs.* Carson, 4 Cr., 4.

The Court of Chancery in New York authorized a sale of property in the hands of its receiver, pending an appeal, upon the application of some of the owners and against opposition by a minority, because of the advantage of the parties interested in the cause. The court vindicated its jurisdiction upon the ground of necessity and from analogy to other courts. In the suit before the court there is no need for argument as to the authority of the court. The section (701) we have quoted confers plenary powers.

Crane *vs.* Ford, Hopk. Ch. R., 114.
Chapman *vs.* Hammersley, 4 Wend., 173.

V.

The Court of Chancery in Great Britain is invested with jurisdiction to order a sale of real property whenever it is necessary and expedient to do so for the purposes of the suit, at any time during the pendency of the suit, and before a hearing. It is a jurisdiction which has been exercised when the equities of the parties could not be worked out in a common decree.

Hearns *vs.* Holton, 16 Jurist, 1,077.
Wickham *vs.* Nicholson, 19 Beav., 38.
Hurst *vs.* Hurst, 16 Beav., 372.

VI.

The jurisdiction of the Supreme Court in the matter of this motion under the section of the statutes (701), is the same which was claimed and exercised by the House of Lords in Great Britain, as an appellate court before the independence of the United States.

The appeal from the Court of Chancery to the House of Lords was claimed to impliy an *inhibition* such as we have described.

Application to proceed with the execution of the decree was made in the Appellate Court. The long delay in that court caused the rule to be relaxed, and the Chancellors gradually claimed the power to proceed with the execution of their decrees, or to suspend them for cause shown to them on motion. The House of Lords conceded the power formally in 1807.

Huguenin *vs.* Bazely, 15 Vesey, 180–185.
Waldo *vs.* Caley, 16 Vesey, 206.
Corporation *vs.* Wood, 1 Phil., 493, 498.
Slaughter-house cases, 10 Wall., 274.

The principle upon which the suspending orders are made, is stated—Walford *vs.* Walford, L. R. 3, Ch. App. 812.

The power of these courts over the decree enables the court to make such regulations in respect to its execution, as would effectually promote the justice of the cause. The section of the statute we have quoted, frankly invests the court with jurisdiction so as to accomplish the purpose.

VII.

The first mortgage of the Mobile & Ohio Railroad Company provides for the prompt and speedy sale of the railroad and other property at the instance of a few holders of bonds, upon the happening of a default.

This is the solution which each one of the deeds of trust of the company proposes, in case of the insolvency of the corporation, to make for the benefit of its creditors. Each bondholder accepts this as the rule of action—as the social principle. It is the same rule which the law adapts for the adjustment of partnership relations upon a dissolution. A partner has a right to claim a sale. A court sometimes grants a sale before the dissolution of the firm, or a hearing of the cause.

The case of insolvency—no prospect of improvement in the condition of the firm, furnishes a sufficient motive.

Bailey *vs.* Ford, 13 Simon, 495.
Crowshay *vs.* Moule, 1 Swanst., 495.
Wyld *vs.* Mylne, 26 Beav., 504.

For two years and a half this railroad has been administered by a court. Every party to this suit affirms, on the record, that his object and desire is to have a sale. The order of consolidation was made to advance this object, as its terms declare. The court has the earnest application of nine-tenths of all the creditors to attain this object at once. A number have not joined in any opposition to this, and have not appealed from the decree. They acquiesce in the propriety of the order made by the Circuit Court, and sanction the order in this court.

Some of the opponents have renounced that opposition. Some of the appellants have surrendered their title as appellants.

The number that still oppose a sale can be indemnified for every loss they may possibly sustain, and be secured in the right to participate in the proceeds.

The facts bring this case within the precise terms of the acts which empower this court to review this decree, and justify the order heretofore made in this court. It is an order of proceedings which will certainly promote the justice of the cause, and enforce the rights and advance the interests of the creditors of the corporation.

John A. Campbell,
Attorney for Duncan & Elliot,
Trustees.

Supreme Court of the United States,

MORRIS KETCHUM et al.,
Appellants,
vs.
WILLIAM B. DUNCAN et al.,
Appellees.

RODOLPH MERIAN et al.,
Appellants,
vs.
WILLIAM B. DUNCAN et al.,
Appellees.

BRIEF FOR APPELLANTS.

TO ADVANCE CAUSES. AND IN OPPOSITION TO SUSPENSION OF SUPERSEDEAS.

GEORGE HOADLY,
E. H. GRANDIN,
E. L. ANDREWS,
Of Counsel for Appellants.

MORRISON & NATHAN,
Printers and Blank Book Manufacturers,
23 Dey Street, N. Y.

Supreme Court of the United States.

MORRIS KETCHUM ET AL.,
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vs.
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BRIEF ON MOTIONS.

To advance causes on Calendar,
and
In opposition to Vacatur or suspension of Supersedeas or Dismissal of Appeal.

The litigation included in the above causes involves the marshalling of the assets of a railroad corporation whose property extends from the Ohio river to the Gulf of Mexico. It requires the ascertainment of the liens and priorities upon the railroad and various portions of it, situated in four States of the Union.

Among the questions on which determinations are sought from this Court, and which, from their peculiar nature, or the peculiar manner in which they are here presented, afford strong grounds for advancing the causes, are the following:

First. A claim amounting with interest to nearly $2,000,000 is set up against the First Mortgage Bonds and claimed to hold paramount liens to those bonds upon 118 miles of this road in the state of Tennessee. To enforce the liens asserted by these bonds a suit was brought in the Circuit Court for the Western District of Tennessee and from the decree in that case an appeal now rests in this Court. The peculiarity entitling this branch of the litigation to a speedy hearing, consists in the following facts: A certain class of bonds which were issued long anterior to the bonds on which the suit is brought and which antecedent bonds are still outstanding, are really the liens upon the Tennessee section of the road, instead of the bonds on which the suit is brought and which claim to to be substituted to the liens of the original bonds. In this condition of the claims and incumbrances on the property the old bonds having the original lien, and which are now in great part in the hands of *bona fide* holders have been left entirely out of the litigation by the complainants. Consequently they would be in no way bound by the result of this suit or any execution of the decree thereunder.

The preliminary question on the hearing of this appeal by the Supreme Court will be whether a bond claiming to be substituted to the lien held by another security (and which latter security is outstanding with claims for over-due interest now unpaid) can be enforced as against incumbrances claimed to be subordinate without the presence of any representation of the bonds which originally held and are still claimed to hold the lien sought to be enforced. If there be such an absence of parties as would leave the First Mortgage Bondholders of this road open to another foreclosure suit on behalf of the old bonds of Tennessee issued to the Mobile and Ohio road, in which new suit this proceeding could not be pleaded as *res judicata* against them; we would have the extraordinary and disastrous result of a foreclosure sale on behalf of the new bonds claimed to hold the lien by substitution, without any protection accorded to subordinate incumbrances against the duplication of the proceeding by the old bonds to which the ones now in suit claim to be substituted. Besides the sale of the road under the present claim of the substitution bonds for about $2,000,000, we would have another sale for $2,000,000 more on account of the same liens to that amount claimed by the original securities. We submit that under these circumstances there is every reason to believe that the Supreme Court will remand the cause for the bringing in of parties to the litigation representing the lien of the old Tennessee bonds, so that, whatever decree may be enforced will be binding and protective. Any other course of administration in chancery would, we submit, be contrary to its spirit and practice. Therefore, to leave this cause to be reached in its regular course upon the calendar to be remanded upon grounds not reaching the merits of the controversy, would be productive of great injury to all the parties interested in the trust estate.

Second. There is another question of similar import which will also be likely to be productive of the same result. Morris Ketchum was the original trustee of the First Mortgage and remained so without challenge of his title until the civil war, when it is claimed, that by force of a proceeding which took place in Mobile, in 1863, and a publication in an Alabama newspaper, summoning him to answer the suit of the Mobile and Ohio Railroad Co., for his removal from the trusteeship, he became divested of his estate and that Duncan and Elliott succeeded by mesne proceedings to his estate and title.

The sole ground for the decree stated by the Confederate Court was, that Morris Ketchum was an alien enemy of the Confederate States. In the litigation in Tennessee the complainants joined as defendants to their bill, Andrew F. Elliott, claiming under the Confederate title to be trustee, and as such the representative of First Mortgage bondholders, Morris Ketchum filed his petition to be made a defendant; but Judge Trigg denied the application and left the record as it now stands, with no legal representative of the first mortgage except the Confederate successors, in the trust estate. As there are more than $400,000 of First Mortgage bonds that have been in no way specially represented or consenting to this branch of the litigations regarding this railroad, it is necessary to determine. Whether, in view of this rejection of the title of their legal representative, Morris Ketchum, there can ensue, at least so far as the 118 miles of this road in Tennessee is concerned, any foreclosure of their equity of redemption or any decision whatsoever binding upon them, as respects the claims of these substitution bonds which have obtained the decree in Tennessee.

Hence this Court will be asked to determine whether there can be jurisdiction to divest an estate of a loyal citizen in a loyal State through a publication ordered by a Court sitting in a rebel State and upon the political grounds of his hostility to the rebel authorities. Should this Court deem that such decree is mere waste paper, then to make a binding decree in the pending suit, it would be proper to remand the proceedings to the Court below, for the bringing in of the legal trustee, Morris Ketchum as a party.

We would then have the same result as indicated in the foregoing point—the cause remanded on this ground for the making of proper parties—without any determination on the merits.

Third. Some of these questions may appear to relate more particularly to the encumbrances upon 118 miles of the road in Tennessee, but the gravamen of our appeal from the Alabama decree is that no proper execution of that decree which likewise orders the sale of this portion of the road can be had until it be determined whether there is a lien of $2,000,000 or $4,000.000, or any other amount ahead of the First Mortgage. And any execution of the Alabama decree through a suspension of the *supersedeas* until this question were determined, could result only in offering property for sale when the bidders could not know whether they were taking it with enormous encumbrances upon it or not. (See Appellants Brief against suspension of Supersedeas.)

This we claim to be error. And here we should mention that all parties to the Alabama suit were anxious to have the trustees of the Tennessee bonds come into that suit as appears from the Interlocutory decree, but on account of their being non-residents they could not be compelled to come in under the statute. Hence it was impossible to marshal the liens, on this property through the Alabama Decree.

There could be no equitable realization of the various liens except by the ascertainment of the liens on the entire property. All the bills asked for its sale as an entirety. There was a grave error in the Alabama decree in ordering the sale of the entire road until this claim of two or four million had been determined.

Fourth. Besides the magnitude of the property there is a very considerable number of parties in interest, estimated at not less than 2500. The question of the Tennessee liens involves the whole financial policy of that State, and invokes a determination as to whether the State of Tennessee or the railroad companies are ultimately bound for the payment, not alone of these $2,000,000 of debt on this particular road, but to the extent of many millions more of obligations, carrying liens upon almost the entire railroad system of the State of Tennessee. The financial policy of the State must therefore be largely influenced by the determination of this question.

The question, in regard to the duplication of coupon liens upon railroad properties, is involved in numerous other suits in the Federal Courts throughout the country. A question somewhat similar is contested in a cause now on the calendar of this Court, which will be reached, according to the present numbers, long before the Mobile and Ohio suits; and this cause should at least be heard at the same time.

Fifth. There is a vital question to the appellants which will be involved in the determination of this appeal, and which illustrates the justice of advancing this cause on the calendar so that the errors in the decree may be considered, before suspending or affecting the *supersedeas* obtained against the sale of the property.

We submit that there but two purely judicial methods of decreeing the enforcement of a mortgage security. By strict foreclosure; or by sale. We claim error in the decree for introducing a new system of foreclosure not recognized in our contract of mortgage or justified by law.

We were willing to take either a strict foreclosure, to be reached through any of the processes indicated below, or we were willing to take a decree of sale. Neither was adjudged, but, in substance, an exchange authorized, the property to be given for the return of the debtors' obligations.

We claim that the decree which is appealed from is a strict foreclosure against the First Mortgage bondholders on behalf of contested and inferior claims.

As holders of mortgage interests in the railroad seeking the realization of our security, we are entitled to have the property sold, if sold at all, for money, for legal tender. This is the right—the absolute right, of every incumbrancer. If the lien holder be entitled to have the mortgage estate sold to satisfy his claims, that right necessarily involves the receipt of the proceeds in money, and not in some other commodity. Any direction of a Court attempting to legalize some other species of payment at the foreclosure sale than money—which was loaned, and which the bond and mortgage covenant to repay—is a violation of contract rights.

We submit that no variation of the right to a sale for money is legal except by the consent of all and each of the creditors under the mortgage.

We claim that the Court below committed error in authorizing a sale of the mortgaged premises for bonds of the debtor—whether firsts or contested or inferior claims, or any other species of obligations. The object of all bills seeking judicial sales is to realize money for the property. It may be that, if all theholders of all the obligations secured by a single mortgage unanimously agree to become purchasers of the property—in short if the mortgagee intends to buy and asks for a decree accordingly — there can be no objection to permitting the mortgagee to deliver the bonds in the first instance to the Master, when if he paid money it would have to be paid back to him as a dividend in exchange for his bonds. Also when there is a single mortgagee obtaining permission in the decree to buy in this method, there is no one of his rank of lien to object.

In either instance of unanimous action of a number of mortgagees, or sole action of a single mortgagee, this variation from the mortgage contract may be allowed simply because consent of all parties interested has been given to this variation from the nature of the mortgage.

When there is such absolute unanimity among the holders of the paramount lien in favor of exchanging their bonds for the property, and upon such unanimous consent a decree is entered authorizing such exchange, (as was done by the decree appealed from without such unanimity), the practical result may be two-fold.

I. It may *amount* to a strict foreclosure in case the First Mortgage Bondholders do not choose to admit the subordinate lien holders to a share of the purchase. The First Mortgage Bondholders, unless some bidder offers more than the First Mortgage in which case they receive their money, take the premises for the debt.

II. The prior mortgagees may, by a unanimous consent and arrangement, admit the subordinate bondholders to a share in the purchase—to be evidenced by the securities of a new organization. This latter is, of

In the first instance the First Mortgage Bondholders get all of the property, and this cannot be objected to by any First Mortgage Bondholder, except in the case of the property being inadequate to pay the debt, when there may be advantages in an actual sale for money to determine the amount of judgment for deficiency.

As there was no claim of stock liability in this case, this would at least have enabled all the First Mortgage Bondholders to get the security to which we were entitled. It would not have realized money because no one would probably bid more than the First Mortgage, but it would have given us the next best equity —namely; the property.

The only parties interested in objecting to this plan would be the subordinate lien holders, who might have their equity foreclosed in this way without any real price being fixed for the property by competition and a genuine sale.

This may be obviated by the First Mortgage bondholders, as indicated in the second alternative above; by their consenting to give the subordinate encumbrances a subordinate participation in the purchase of the property. If such an arrangement be not effected in a manner satisfactory to all the subordinate encumbrances as well as all the First Mortgage Bondholders, the former are entitled to have a competition sale to determine whether they would not get a surplus; unless perhaps in the case where the security was shown to be clearly inadequate to realize the amount of the First Mortgage.

All of the above is predicated on the unanimous action of the First Mortgage Bondholders. It is shown that universal consent to vary the contract rights among a number of bondholders cannot injure any of *their* number. Consent to sell the mortgaged premises for bonds instead of money not only gives legality to such a decree but renders it innocuous, as far as the First Mortgage rights are concerned. The real reason of this is because they all agree to become purchasers. It may be said that it becomes legal because it is innocuous, and it is innocuous only when consented to by all the parties to the lien. Totally and dangerously different results follow when the Chancellor's variation of the mortgagees' rights are substituted for their own. Even if there be no contest as to what claims are included in the First Mortgage, the result of such a decree is very unjust when all the bondholders are not desirous to become purchasers. But the injustice which would transpire under the decree in this case is far greater.

Instead of the subordinate lien holders being subject to foreclosure, the contested claims dictate the terms on which the First Mortgage bondholders are to be admitted into the purchase, and threaten to cut off their equities and send them away with a pittance, by the use of the very processes which were supposed to be invoked for the benefit of the paramount encumbrancer.

This somewhat remarkable result is obtained in the following way; and is rendered practically effectual by permitting all the securities validated below to be used in lieu of money for bidding without any provision for the safety of the First Mortgage bondholder. This is in face of the fact that such an end is to be accomplished through an agreement with the stock interest.

It appears that nearly all of the holders of the contested claims, to wit, the coupons and the Tennessee claims. together with such of the holders of First Mortgage Bonds as are interested in those contested claims, besides other bondholders, entered into an agreement with the Mobile and Ohio Railroad Company, the mortgage debtor, whereby it was arranged that the creditors of the company, who signed the said agreement, would surrender the securities now held by them for new obligations of the debtor. It is apparent that such an agreement to divest the liens outstanding against the property would require absolute unanimity among the bondholders. So far from this having been obtained. it appears from the papers before this Court, that about one million and a half of First Mortgage Bonds refused at Circuit to make this sacrifice, to wit, to surrender $560 of each $1000 First Mortgage Bond now held by them, to be given to the Tennessee claims and the Duncan coupons, and to accept the remainder of a new First Mortgage, for $440 proposed to be allowed to the present First Mortgage Bondholders for each $1000 bond.

The promoters of this scheme (one of them the agent in possession of the property) not being able to consumate it by the voluntary consent of the First Mortgage bondholders propose to attain their object by a decree which amounts substantially to a mere delivery of the property to them on their own terms,

Without the consent of the bondholders it purports to authorize bonds to be used instead of legal tender to buy the road with.

All other bidders than holders of bonds must use some other medium—to wit, legal tender.

The public generally must provide millions of cash, but the bond-bidders need only furnish discredited obligations.

Practically the difference is vital, it gives the bond bidder the monopoly at the sale—in short it is no sale, but a mere exchange, absolutely destructive of competition.

In considering this matter it should be premised that the appellants did not seek in the first instance for an absolute decree of strict foreclosure.

All forms of strict forelcosure discussed below were suggested only as alternatives, presenting far geater equity than the enforcement by the decree of the new scheme of scaling the liabilities of the corporation. The appellants desired some form of strict foreclosure on behalf of the First Mortgage, to be adopted only in case a *real sale* of the property was not decreed.

It was not pretended that there is any provision in the mortgage permitting a purchaser at the sale of the property to tender obligations of the railroad company as money upon his bid. On the contrary, the provisions of the mortgage are distinct enough, that money and nothing else, can be used as a purchasing medium at the sale of the property. The trustee under the mortgage had no right to obtain such a decree, nor did any any claimant to the trusteeship in this case pray for such a decree. It is not pretended that there are any statutes, in existence, in the States through which the railroad runs, providing for a species of amicable foreclosure or re-organization such as exists in the legislation of certain of the States of the Union. But the decrees below, as we submit, for error, imported a new provision into our mortgage contract, by decreeing that the bonds and coupons and the Tennessee substitution claims should be received in lieu of cash upon the sale of the railroad. The effect of this provision is far reaching, and goes a long way to impair the value of a mortgage security. It is, in practical effect, destructive of all the First Mortgage interests who do not become purchasers. *A mortgage becomes no longer security for a debt to be collected through the enforcement of the lien, but is only a machine for forcing the creditor to become a* PURCHASER *of the property—or get nothing.* The First Mortgage bondholders, and their trustee stood at circuit upon the covenants in the deed for their security, and wanted a decree enforcing the mortgage, and not in effect substituting another contract. Instead of decreeing a sale according to the mortgage, we submit that the disposition which was made of the equities presented, contains error as follows :

First. We were entitled to have the road sold for money, or at least, not for paper which by the mere act of use at the sale would destroy itself and cease to be a fund for our claims.

Second. There should have been the ordinary decree of strict foreclosure which, although not generally in favor at the present time, would have been far more equitable than the decree rendered in this cause. By this means at least, each First Mortgage Bondholder would have got his proportionate share in the property without regard to the interests which he might have in the Tennessee substitution claims or in the prosecution of some scheme of arrangement with the stock interest in the corporation. The Court below thought that there might be some technical difficulty in lodging the title under such a decree, although no such difficulty was presented by our opponents, nor do we believe that any existed.

If these recognized methods of enforcing a mortgage were to be set aside and the road sold under a new method of bidding, the following measure of justice in the direct line of chancery jurisprudence remained open for affording some equity to the First Mortgage Bondholder; if his security was not sold but transferred or exchanged, or "readjusted." It was strongly urged on the Court below, and it was not suggested by any one that it presented any legal difficulties. It was that bonds should not be accepted in lieu of cash by the Master except for an upset price equal to the amount of the First Mortgage. The effect of this provision in the decree would have been that a holder of seven and a half millions of the First Mortgage liens, out of eight millions, would have to bid the upset price of eight millions of dollars, if he desired to use his bonds in satisfaction of the bid; he would then have to apply only half a million dollars of cash. The First Mortgage Bondholder would thus be protected against the absolute destruction of a fair sale, which necessarily results from the monopoly offered by the decree to the bidder holding the obligations of the debtor. This is a customary decree, and has been frequently and latterly employed in the Federal Courts, even where the mortgage itself authorized the use of bonds at a foreclosure sale of the property.

See Judge Dillon's decree, Iowa Central R. R.

It provides a necessary and equitable protection against the holders of a considerable amount of the debtor's obligations, who by permission to bid bonds instead of money, are converted into monopolists of the bidding and purchasing power at the sale of the mortgage property. While other bidders have to pay in cash, the combination are not under that great burden; they are preferred; and so far preferred that in the absence of some of the guards indicated herein, the Master might just as well be ordered to make a deed to them, without going through the form of "putting up" the property.

This was in the mind of the Circuit Justice where his opinion states that the road might be bid in by the trustees for the First Mortgage Bonds, if the particular person could be selected. We submit, that if such an important piece of justice was to be secured, a court of chancery should have had no difficulty in finding a trustee. But the decree above suggested does not require the action of the trustees, but merely provides that the bidder who tenders bonds must tender them to the full amount of the First Mortgage. In the absence of some such protection, a majority of First Mortgage bondholders, including those holding contested and inferior claims, may combine with the corporation and with the holders of all the inferior securities, and dictate terms to the First Mortgage Bondholders which will nullify the effect of all adjudications which may be obtained upon the merits of the respective securities held by the different classes of creditors.

So far as that combination proposed an amicable reorganization of the corporate credit, it was entitled to all the moral force with which it could address itself to the mind of all parties holding First Mortgage liens upon the Mobile and Ohio Railroad. It has failed to attain that result, and these purchasing parties then sought to attain the same results through the decree; namely, the enforcement of their scheme in lieu of the execution of an ordinary judgment of foreclosure and sale. Hence they sought and obtained from the Circuit

Courts, permission to use the bonds and coupons, and substitution claims in satisfaction of bids for the property· They can bid so much more in bonds and coupons than it is possible for any one else to bid in cash, they having the greater part of the issue in their hands, that to talk of a sale under such a decree is merely to employ a suspension.

Were the property offered for cash, which is the usual, and the fair and the direct method of selling the mortgage estate, the appellants before this Court would have stood as well as the appellees.

Either the public or the appellants could have bid successfully against the agent of the receivers who proposes by the above means to become the purchaser of the property.

This is the right which we claim they are absolutely entitled to, unless they consent to waive it; namely, to have the property sold for their benefit by public and competitive sale.

As affording some equity to non-bidding bondholders, another condition is generally coupled with the privileges of bidding in bonds, and this even when the mortgage provides for such a mode of foreclosure. This is by limiting the bidding power of each bond to that per centage of its face which the amount of the bid bears to the entire amount of the mortgage debt. That is; if the mortgage is for six millions as in this case, and the bid is only $100,000, bonds are allowed to be taken in satisfaction of that bid only at one-sixtieth of their face; so that it would take the whole issue to satisfy the bid in bonds, or the difference would have to be made up in cash. This equalizes the position of the First Mortgage bondholders, who do not care to become buyers with those who choose to embark in a new enterprise. It forces those holding bonds to one of two courses: either to bid a good price, and thus make their bonds valuable as bid tokens, in which case the non-bidding bondholders become entitled to their proportinate share of a good price instead of a nominal one. The bid value of each bond is increased, but unless the bondholders can satisfy the bid in bonds—which they can only do when they have all the bonds—they must provide a cash fund sufficient to provide the non-bidding bondholders with the same proportion of the total amount of the bid which their holdings bear to the entire issue of bonds. With this limitation upon the power which the majority bidding bonds hold over the minority who are not embarking in a new investment but seeking a foreclosure, the oppressive use of bonds at the sale is somewhat guarded. So strongly does this appeal to the Courts of Equity, that this provision is inserted even where a power of bidding bonds at the foreclosure is given in the mortgage—because it is a right when so given to be equitably exercised.

It will be seen that this achieves nearly the same result as providing an "Upset Price." But the latter is more equitable where the avowed purpose of the use of the bonds as bid tokens is to secure an interest to inferior claims. In that case the First Mortgage should clearly be protected by an upset price if bonds are indued with purchasing power.

But all these guards have been broken down by the decree appealed from. The Master is ordered to received the bonds as cash. The non-bidding bondholders are to get a dividend of a bid under such auspices.

What is the result of that? The bidding bondholders offer one hundred thousand dollars or some other insignificant sum. No one can bid against them and tender cash to the amount of millions which they tender in bonds. The property is struck off to them for $100,000. Now for the distribution. Half a million of First Mortgage bonds have not become bidders. They are one-twelfth of the mortgage. The bond bidders will have complied with the decree appealed from if they hand the Masters bonds for $93,667. The balance in cash $8333, is the total fund to be distributed among the half million Mobile and Ohio First Mortgage Bondholders.

It is said they may avoid this by availing themselves of the power conferred by the decree, and themselves bidding bonds. There are two answers to this:

One is that they are foreclosing and not investing—they are selling and not buying. They are pursuing their rights under their mortgage contract, And it would be a strange perversion of a mortgage security if the creditor thereunder is to be told that the only way of realizing on his investment is by buying it.

A further answer is that, even if willing to convert himself from a seller into a buyer he must perforce, by reason of the new currency medium imposed by the decree, be placed in the unfair and inequitable position of being obliged to bid cash as against a bidder using a majority of bonds in lien of money.

He is thus placed in the unjust position of getting a pittance if he don't bid; or, if he attempts to protect himself, of providing millions of cash as against another party with hands full of bonds.

It was said at Circuit: How can this be helped, if the bondholders choose to go into one plan of bidding instead of another?

The answer is: Let the matter alone. Do not insert this bond bidding element into the decree and thereby change the whole nature of the security. Simply execute the contract; decree a sale, and leave the Master to take the currency, which is the satisfaction of bids at judicial sales, provided by the laws of the land. Do not make a new contract for the parties, and one which it is fair to say, that no rational investor would have loaned his money on—a mortgage without the benefits of a strict foreclosure, or a *bona fide* sale.

When the *cestui que trusts* consent to such a transfer of the estate, it is time to make such consent the de-decree in this cause.

We asked nothing from the Circuit Court but an ordinary decree of foreclosure and sale. The decree which was rendered *amounts to a strict foreclosure*, but not *for the benefit of the First Mortgage lien holders, but for the benefit of those who were willing to enter into an* *arrangement with the company and the contested claimants.* We deny the right of the Circuit Court to decree an effectual sale of the premises, not for money itself, but for the obligations of the debtor.

It is to attain the power of buying at a mortgage foreclosure in this way that some of the State Legislatures have enacted elaborate legislation—which in regard to subsequent mortgages becomes a part of the contracts.

The modern mortgages of railroads provide for such schemes in the covenants of the deed. Purchasers of railroad bonds buying under such mortgages must know the terms of their securities.

But here the perversion of our security is without law or contract.

But if this Court should deem that such a change can be made in the conditions of our security we claim that it was error to make that change without providing the security of a bid in bonds to an amount which would have protected us, namely, an Upset Price.

Sixth. This matter has also a vital bearing upon the question of suspending the supersedeas. Even if the appellees are required to deposit the full amount of all the various mortgage claims which have not entered into this scheme for transferring the property, there is still a contingency to be met; namely, that the appeals may not be successful. If they do succeed in securing the priority of the First Mortgage Bonds then the amount of deposit required, namely, the face of their bonds, would equitably belong to them had a sale meanwhile taken place by virtue of a suspension of the supersedeas. But in the other contingency, if the decrees below are affirmed on questions of priorite, and this arrangement of exchange of bonds instead of a genuine sale has meanwhile transpired, how will it be possible to fix and determine the amount of dividend to which the appellants will certainly be entitled in all events as holders of First Mortgage liens on the property. There can be no price fixed because there will have been a sale only in name without competition or any other attribute of a sale.

Seventh. The stipulation in the Tennessee cause is so plain that it cannot be missapprehended. It refers in terms only to bondholders "besides the parties to the litigation." The appellants being parties whose answer was the basis of the contest, had, of course, a right to the appeal which was allowed. Both one of the plaintiffs and his counsel in Tennessee agree with appellants that there is error in the decreeing a sale.

Eighth. As to dismissal of appeal for deficiency in amount, it seems sufficient to add that whole tenor of the above, shows that the entire amount of the bonds individual appellants is involved in the determination of the appeal, to say nothing of Mr. Ketchum, the trustee, representing at least all the bonds not individually represented before the Court.

Ninth. Proposition to suspend or modify Supersedeas on making a deposit.

The question of the power to do this is discussed in Brief already submitted.

The impossibility of doing equity toward the appellants if the supersedeas bs superseded before a hearing is had, be superseded is believed to be shown in the Petition already submitted and the within Brief and accompanying papers.

It may be added that periods of redemption must again be allowed, at least in favor of the second mortgage.

Tenth. It is earnestly submitted that if the condition of this cause be of such an extraordinary nature as to justify the unprecedented interference with the supersedeas, the ends of justice can be much better subserved by simply advancing the causes on the calendar.

GEORGE HOADLY,
E. L. ANDREWS,
E. H. GRANDIN,
of Counsel for Appellants.

4 Ollo 672
7 Parze 230

Clifford

Supreme Court of the United States.

MORRIS KETCHUM, et al.,
Appellants,
vs.
W. B. DUNCAN, et al.,
Appellees.

RUDOLPH MERIAN, et al.,
Appellants,
vs.
W. B. DUNCAN, et al.,
Appellees.

Petition for Rehearing

ON

Order Vacating Supersedeas. &c.

Filed by leave of Court.

GEORGE HOADLY,
E. H. GRANDIN,
X E. L. ANDREWS,
of Counsel.

WASHINGTON:
R. O. POLKINHORN, PRINTER.
1878.

Feb 23 Supersedeas
1878 & advance

Synopsis of Grounds for Rehearing Alabama Case.

I. The motion really decided is one never before the Court, namely, to limit the appeal. It was conceded by Appellees' counsel that this was the appropriate motion. We could have fully answered that motion had we had the opportunity which we now seek.

II. While no part of the appeal has been actually dismissed the order proceeds upon the theory that it has; namely, that we could not appeal from the decree of sale. We are relegated to a bond whose condition is valueless if that part of our appeal is well taken. If the appeal from the terms of sale is properly brought the bond is conditioned to give us more or less of nothing.

Mr. Justice Bradley's Opinion. Assignments of Error.

Tennessee Case.

III. If the appeal from the questions of priority of the old Tennessee bonds is properly taken (which is not disputed), then the Appellees' bond is conditioned to pay our share of the proceeds of a sale which takes place under a decree in which two millions of outstanding bonds are not represented which claim to hold the lien to which complaining bonds seek to be substituted. Who would bid under such a sale not knowing whether he was buying a debt of two millions of dollars?

IV. Our rights are to be guaged under and by a sale

While the phraseology of the sections in the Revised Statutes, relating to this subject differs from the above, there is nothing in the Revision to indicate any change in the legislative intention in reference to the extent of operation which the statutory supersedeas should possess. On the contrary, the provisions indicate that the legislative intention remained the same. (Rev. Stat., sec. 1000.) In the absence of opposite provisions, the substance of the law remained unaffected by the Revision.

94, U. S., p. 50, *Doyle* vs. *Wisconsin.*

The Revision Commissioners were authorized only to "revise, simplify, arrange, and consolidate."

16 Statutes at Large, p. 74.

Hence the above statute is a binding legislative declaration, that the stay shall continue "pending the appeal."

Supreme Court Construction of the Effect of Supersedeas.

"The proceedings in relation to that writ were in due time; *and when docketed in this Court, it stayed execution by force of the act of Congress while the case was here pending.*"

Hogan *v.* Ross;
11 Howard, 297, per TANEY, C. J.

English Construction of the Legal Effect of Supersedeas.

"And they all resolved that the writ of error was a supersedeas *until the error was examined, affirmed, or reversed.*"

Bishop of Ossory's case, Croke temp. Jac., p. 594.

Construction of Section 701.

"JUDGMENT OR DECREE ON REVIEW. The Supreme Court may affirm, modify, or reverse any judgment, decree, or order of a circuit court, or of a district court in prize causes, lawfully brought before it for review, or may direct such judgment, decree, or order to be rendered, *or such further proceedings to be had by the inferior courts as the justice of the case may require.*" The Supreme Court shall not issue execution in a cause removed before it from such courts, but shall send a special mandate to the inferior court to award execution thereupon."

Similar provisions authorizing the Courts to make, in the above connection, "such other orders as the justice of the case may require," existed in English and American jurisprudence before the Judiciary Act.

"And thereupon to reverse or affirm said judgment, and to make such other order or decree therein as equity and justice shall require."

Greenleaf's New York Laws, Act of 1784, Vol. 1, Sec. 7.

It was never claimed that the above clause of the sentence in the statutes providing for reversing or affirming, was intended to give the New York Courts power to affect the specific provisions of law regarding supersedeas.

On the contrary, as shown by Kent's opinion below, the statutory provisions regarding supersedeas were held to control any discretion of the Courts to effect the stay before hearing.

Far less, so under the similar section of the Federal Statutes which is plain beyond peradventure.

"Section 701, Judgment or Decree on Review."

That section taken in connection with its statutory title, and examining the last sentence of it, in reference to mandates, seems clearly intended to authorize the Supreme Court "to affirm, modify, or reverse the judgment," and in addition, besides merely affecting the judgment below, as it stands, to direct the inferior Court to take "further *proceedings*" in the cause. When the Revised Statutes intend to refer to execution or process mesne or final, they use those very terms. In fact they use the term execution specifically in the same section.

The necessity for this provision arose out of the ancient practice of the House of Lords to give direction to the Court of Chancery to rectify its decrees. This practice is made the Federal law by the system of mandates in lieu of execution in this Court. It is in connection with "directing such decree to be rendered" that "such further proceedings are to be had."

See Daniel's Chancery, vol. 2, p. 1502. 4th Amer. Ed.

Therefore, "further proceedings" under the provision for "decree on Review," in subsequent connection with "affirming, reversing, or modifying the judgment," and followed by sending "down the mandate" can hardly be construed to authorize action before the hearing; or to refer to "supersedeas" which is elsewhere provided for, or to "execution" to which distinct reference is always made in the Statutes. It would be disregarding the context to give it such a construction and to apply it to a different subject-matter. Such clause is merely a legislative declaration of an immemorial practice by which Courts of Equity Appeal after hearing a cause and affirming or reversing proceeded to enforce all the equities by directing further proceedings to be had by the inferior Courts. Numerous applications of this authority are to be found in the Supreme Court Reports.

Insurance Co. vs. *Piaggio.* 11 Wallace.

And cases cited by Commissioners of Revision and which citations being made in pursuance of law, 16 Stat., p. 74, and adopted by Congress, are at least indicative of the legislative intention in regard to the powers they were granting. Congress might have conferred this power of acting on the subject-matter, but has it done so in a section providing for review and as against its own specific regulations for supersedeas?

Nature of the Writ of Supersedeas.

A supersedeas is generally understood as applicable to appellate proceedings; but this was by no means the sole operation of the writ, nor, indeed, its earliest application in England. In fact, in some States of the Union, as in Virginia, its functions are still invoked in other directions than for the purpose of aiding appellate jurisdiction.

Suffice, now, to consider it in its ordinary significance, which is laid down in one of the most eminent authorities as follows:

"Supersedeas, in its legal acceptation, means the preventing, *as well as the setting aside or annulling* of an act. A supersedeas is sometimes express; at other times implied. Every writ is a supersedeas by implication, by which, although no writ of supersedeas has issued thereupon, the doing of an act is prevented."

Bacon's Abridg., 274, 275, 284.

Reason for Writ of Error Operating as Supersedeas.

A writ of error is a supersedeas by implication.

Bacon's Abridg. *Supra.*

The true reason why the writ of error carried this effect is to be found in this:

Writs of error did not at common law issue from the Appellate Court which was to pass upon alleged errors. It was an Original writ issuing out of the administrative offices of the Chancery and was a commission under the King's seal to examine the record and reverse or affirm the judgment. It was a contempt of the King's writ to proceed with the execution, while he commanded an examination of errors. The contempt was enforced against the parties, the sheriff, and even the judges.

It was not the mere transfer of the record that made the writ of error a supersedeas.

In the Bishop of Ossory's case, where the question came up from the King's Bench in Ireland whether the writ of error was a supersedeas, *per se*, where the record was not removed to the higher Court, it was held as follows:

> "And by the opinion of all the Justices the writ in judgment of law is a supersedeas, *although the record itself be not sent.* For if error be brought in Parliament upon a judgment in this Court the transcript is only sent and the record remains in the King's Bench."

Croke *Supra*, pp. 3–5.

Common Law Supersedeas Writ of Error Operated to Stay Appellate Court.

It was not because the record of the cause was in the appellate court, nor under any claim that the cause had got into the higher court by virtue of any writ under any inherent powers of an appellate court; but, on the contrary, because the writ issued from the fountain of all justice in the realm commanding one tribunal to correct the errors of another that, *per se*, it operated as a supersedeas, as an annulling of the judgment below until there was judgment in error.

The original writ of error was a warrant for the appellate court to proceed with the examination of the errors. To execute on the judgment pending the writ was treated as a contempt of the King's authority. It would therefore have been equally a contempt of the writ directing the examination of errors for the Appellate Court to have directed execution before examining the errors. Indeed, under the constitution of the common law courts of error it is difficult to conceive of any other business before them than the examination of the record for consideration of error. No case can be found where any English or American superior court of common law jurisdiction ever undertook to order execution before examination of the errors.

English statutory system of bail in error.

The system by which a defeated party could delay execution without any security whatever, developed into a hardship against the successful party below, and resulted in the intervention of Parliament.

A writ of error had theretofore been an absolute writ of right without any bonds.

Van Antwerp vs. *Newman*, 4 Cowen, 82.

Acts passed in the reigns of James I and Charles I, provided "that no execution shall be stayed or delayed upon or by any writ of error, * * * unless the person in whose name such writ of error shall be brought, with two sufficient sureties, shall be bound," &c. This legislation, which was at first confined to certain enumerated actions, was extended, by acts passed in the reign of Charles II, so as to include many forms of suit, with the proviso that "it should not extend to any writ of error brought by any executor or administrator."

All classes of cases in error not within the bail statutes continued to be supersedeas without bond.

State legislation on writs of error.

The earliest American legislation on the subject, immediately after the Revolution, preserved a curious adherence to the English system.

By the act of 1784 the Assembly of New York enacted as follows:

"It shall be lawful for any party to sue forth, *out of the court of chancery*, a writ of error."

Greenleaf's Laws, vol. 1, sec. 7.

It will be noticed that the writ did not issue from the appellate court. The common-law jurisdiction of chancery was still preserved for the issuance of this writ.

There was a similar provision in the revision of 1813, "to sue forth a writ of error out of the court of chancery."

N. Y. Revised Laws, chap. 10, sec. 7.

Indeed, as late as the revised statutes of 1830, and under them, the chancellor was still an authorized officer for granting writs of error to courts of law.

Part 3, chap. 9, sec. 28.

We refer particularly to the New York legislation on this subject, because the following statute, providing for bail in error, was apparently the first ever enacted in this country, and was passed in the very year preceding the enactment of the federal judiciary act.

It reads as follows:

"That no execution shall be stayed upon debt, bond, or contract, unless such person or persons in whose name such writ of error, with two sufficient sureties, such as court, wherever such judgment is given, shall allow of, shall first before such stay made or supersedeas awarded, be bound," &c.

It was not to extend to writ of error by executor or administrator.

Act February 6, 1788.
Greenleaf's N. Y. Laws, vol. 2, p. 3.

The writ was still treated as a writ of right in all civil cases, with the above incidents.

Act March 20, 1801.
Kent and Radcliff's N. Y. Laws, p. 200.

The above system of legislation illustrates that the writ was still treated in this country as an original writ of right, *sub modo*, the statutes. It was not a writ from the appellate court. The Chancellor still issued it just as it issued in England from the common-law side of the Court of Chancery. Hence all argument is wrongly predicated which attempts to justify any control over the supersedeas, upon the supposition that it issued originally by virtue of the inherent powers of the appellate courts. It never did so issue, but was an original writ out of chancery and not out of the Appellate Court.

Nature of stay of proceedings on appeals in equity in English Jurisprudence.

In bringing appeals to the House of Lords, there was no writ. The appeal was purely the act of the parties, by petition, to the House.

It was originally a stay of proceedings, *per se*, without bond.

The doctrine was thus stated by Mr. Mansfield:

"Considering it upon principle, pending the appeal there can be no final judgment, and until final judgment, no execution."

Warden of St. Paul's vs. *Morris*, 9 Vesey Jr., 316.

The subject who was not satisfied with the advice given the King by his Chancellor, was entitled to have the property held intact against execution until the King could obtain the advice of his full Council in Parliament.

But, as in the case of writs of error, the practical inconvenience of an absolute stay (without security) upon the orders of the chancellor became apparent to the courts. In the case of chancery administration these difficulties were greatly enhanced from the fact that an appeal lay to the House of Lords from interlocutory as well as final decrees, and with the same absolute stay of all further proceedings in the entire cause.

Finally, the case of *Lord Pomfret* vs. *Smith*, (Lord Apsley,) in 1772, decided that his jurisdiction was suspended only as to the matters appealed from, but that it was not totally suspended so as to prevent a proceeding as to any other matter in the cause.

Palmer's Practice, H. L., p. 9.

Post-Revolutionary Law in England and New York in Regard to Stays in Equity.

In England there was until very lately a total absence of statutory provisions on this subject. But there was a somewhat remarkable voluntary relinquishment of the effect of stays by the House of Lords.

(Resolutions of Lords, 1807. 15 Vesey, p. 182. McQueen's Practice of House of Lords, p. 321.)

Since 1807 stays have therefore been in the discretion of the Chancellor. An appeal has ceased to be a stay *per se* in any case, and could only become so by special order.

In New York, for some years previous to 1830, the Courts held that it was *prima facie* a stay without bond; but, according to the English practice after the Revolution, that the stay was subject to the order of the Chancellor.

Green vs. *Winter*. 1 John. Ch. 77.

Finally the New York Revised Statutes of 1830 acted fully upon the subject and apparently in the same spirit and even in the letter and language of the acts of James and Charles in reference to writs of error. They provided that appeals should not stay proceedings unless a bond be given by or on behalf of the appellant.

Part 3, Chap. 9, Sec. 82,

After the passage of these statutes, the whole philosophy of the subject was explained in the following opinion by Chancellor Kent, and *we particularly refer to it as defining the effect of statutes, similar to the Federal law, on the question of the power involved in this case.*

"One of the evils of our practice was that the appeal suspended the proceedings in all cases in the first instance *without giving to the respondent any adequate security for his debt or costs* Another was that the Chancellor possessed an unlimited discretion and might deprive the appellant of the benefit of his appeal in any case by permitting the respondent to proceed and enforce the order or decree of the Court below before the appellant could obtain a hearing before the Court of *dernier* resort."

"The object, therefore, of the revisors was to *take from the Chancellor in all cases where it could be done without injury to the rights of suitors, the discretionary power of permitting the party to proceed in the suit notwithstanding the appeal,* and at the same time to furnish to the respondent an adequate remedy against the injurious consequences of delay.,'

(The exception of "injury" referred to perishable property taking testimony and contempt, which were excepted by the statute. Though the Chancellor only is mentioned in the above, there never was even an application to the Court of Errors after the Acts, to interfere with a stay. When a statute said there should be a stay, it was not necessary that it should enumerate each court that it stayed. Its operation was without exception, unless it so specified.)

Hart vs. *Mayor*. 3 Paige, Ch. 384.

The object was to terminate the confusion and uncertainty which had for so long pervaded the exercise of the power of dispensing with stays and to provide a statutory indemnity which would satisfy every just and proper requirement of the respondent in the appeal and at the same time secure the inviolability of the subject-matter of the suit in case of the appellant's success. It must be remembered that the Chancellor is speaking of the post-revolutionary practice in New York which never had an analogy in the Federal law, because Congress legislated on this matter of stays in equity in 1789, while New York did not do so until 1830, but tacitly during the interval adopted the later English law on the subject.

These statutory provisions were deemed to afford full recognition of the legal presumption in favor of the judgments below. They threw the burden on the appellant of furnishing full security in anticipation that the judgment would be affirmed. Therefore, notwithstanding the tacit adoption in New York of the loose practice regarding stays which existed in England about 1800, yet when the above statutes were enacted, and in language far less mandatory than the Federal law on the subject, Chancellor Kent held them to be a manpatory substitute for the previous system of practice.

History of Federal jurisprudence in reference to supersedeas in error and appeal.

The state of the law on this matter, when the judiciary act was passed, was as follows:

A writ of error was still a supersedeas *per se* in all cases not within the bail statutes. In cases under those statutes it was a supersedeas upon compliance with the regulations for security prescribed in those acts.

Appeals were *per se* stays of proceedings upon the order appealed from, according to the leading case in

1772. That is, they did not stay all proceedings where the appeal was from an interlocutory order which was separable from further proceedings in the cause. Where the appeal was from a final decree the appeal was *per se* and, without bond, a stay of execution. This state of the law must not be confounded with the English after our Revolution.

In this condition of the matter Congress undertook to deal with the subject.

By Section 22 of the Act of 1789, it was provided that "Final judgments and decrees in a Circuit Court in civil actions and suits in equity may be re-examined and reversed or affirmed in the Supreme Court upon writ of error."

Two notable differences were at once created by this act between the appellate jurisdiction of the House of Lords and that of the Supreme Court. The one confined the appellate jurisdiction of the Supreme Court to final decrees, and the other made writs of error the process for reaching the appellate court.

The first was the abolition in Federal procedure of appeals from interlocutory orders. The bearing of this upon the matter of staying proceedings was important. Much of the difficulties and embarrassments arising from the legal principle in England—that appeals to the Lords were *per se* stays of proceedings—arose from the fact that those appeals lay at every stage of the cause. On the other hand, by this limitation of the Federal appellate power, that inconvenience was practically abolished. The whole cause was proceeded with to the final termination irrespective of any dissatisfaction with interlocutory orders until it was presented in its completed form to the Supreme Court.

In reference to the manner of reaching the Appellate Court, a curious difficulty was presented, arising out of the very framework of our system of government and the Federal judicial system. In England, the King being the fountain of justice from whom all original writs issued, and a writ of error being an original writ issuing from the King's Chancery, the revisional power of the superior English courts was put in motion by a commission under the King's hand. When the American Constitution established a co-ordinate system of governmental departments, the theory of original writs was impaired at its very source. There was no authority outside of the judicial tribunals from which a warrant could be obtained to examine the errors in a record. There was no administrative office of writs. The only writs that could issue for the administration of justice must, under the American Constitution, issue from the courts acting under authority of law. There was not even an officer in the Federal judicial system corresponding to the Chancellor who issued the writ of error in New York. Hence there could be no writ of error in the exact technical sense of the ancient original writ.

Congress had to provide some substitute for it in order to put in motion the appellate power of the Supreme Court. Writs of error, so called, under the statute were established running in the name of the President, and tested in the name of the Chief Justice. The issuing of the citations which is really the operative act to put the appellate proceedings in motion is not by the appellate Court, but by a judge of the Circuit Court or Justice of Supreme Court.

Sec. 22, act 1789.

This was the substituted system for original writs of error in chancery. The writ was in no sense from the appellate Court. But the substance of the matter was and is, that upon compliance with the statutes the issuing of citations in error becomes matter of right. No allowance of the writ is required from any judicial officer.

Davidson *v.* Lanier, 4 Wall., 447.

This statutory writ, unlike its ancient prototype, has been held not to act on the parties to the cause, but only on the record. On this basis it has been held that error in a suit by a State can be re-examined; and in no case can judgment be given for non-appearance, but the record must be "re-examined, reversed, or approved."

In the above are the main characteristics of the Federal writ of error. Can there be any doubt that it is essentially a statutory writ of right? The writ issues, of course, upon the signature obtained to the citation in error.

What are the statutory preliminaries required by the Judiciary Act and its amendments for the obtaining the citation?

The judge signing the citation was required to take good and sufficient security that the plaintiffs in error shall answer all damages and costs, &c.

22d section act of 1789.

"The writ of error shall be a supersedeas and stay of execution when served within ten days, &c., until the expiration of which term of ten days, executions shall not issue in any case where a writ of error may be a supersedeas." "Where the decree is affirmed, the Circuit or Supreme Court shall adjudge to the respondent just damages for delay and single or double costs."

Section 23, act 1789.

The collocation of the clauses of the above section is indicative of a pretty definite scheme on the subject of supersedeas. The language is most imperative, that the writ of error, with the bond, "as aforesaid," shall be a supersedeas; and in the same section power is given to the Supreme Court to impose damages for delay, and double costs in addition to the penalties of the bond. Could anything show more absolutely the intention of Congress that the stay should remain until the merits were passed upon? When the judgment was "affirmed," the appellate Court could mulct the appellant on account of the delay caused by him. To give effect to all the verbiage of the statute, we should inquire what Congress meant by "*a supersedeas and stay of execution.*" The above definition from Bacon shows that supersedeas meant annulling of judgment below, besides the stay—which latter we have additionally expressed above. Surely Congress must have intended to guard this right of supersedeas carefully.

By the 22d section only supersedeas bonds in error were within the intention of Congress under the Judiciary Act. The bond was required to answer "all damages and costs."

Difficulties arose under this act when a supersedeas was not desired, because the judge could not sign the citation in error unless the bond covered damages.

After five years an act was passed that the security required on signing citation in error, which shall not be a supersedeas, "shall be sufficient to answer all such costs" as upon *affirmance* of the judgment or decree may be judged or decreed to the respondent in error. This determined the conditions of the bond in error without supersedeas, and left the option to the appellant to give bond with or without stay.

Therefore, when we consider that supersedeas was originally, in Federal practice, an absolute essential of appeals, can there be any doubt that Congress intended to make it irrefragible?

The next step in Federal legislation re-established the distinctive features of error and appeal, or, rather, for the first time incorporated them in Federal practice by the Act of 1803. That act provided that "such appeals shall be subject to the same rules, regulations, and restrictions as are prescribed by law in case of writs of error."

The Act of 1803 provides that an appeal "shall be allowed to the Supreme Court," &c., but an allowance is a matter of right which will be enforced by mandamus.

United States vs. *Gomez*, 3 Wall., 752.

An important feature in the above legislation not mentioned in the previous discussion is the terms of the supersedeas bond required by the statute. It speaks of "affirmance," and is conditioned to make the appeal or "plea good." Can these provisions be strained into any consistency with a theory that Congress did not intend the supersedeas to operate until the hearing? Such a construction is still further rebutted by the assimilation provided for in the above and all subsequent legislation, between practice on appeals and writs of error, for the latter, we have seen, proceeded from an authority higher than the Appellate Court, and was inconsistent with any ordering of execution until errors were examined.

This legislation illustrates the most direct purpose to prevent execution until the Supreme Court passed on the errors.

The Supreme Court Writ of Supersedeas.

The writ of supersedeas which the Supreme Court has sometimes granted is under its power to grant "writs necessary to the exercise of its jurisdiction."

94 U. S., *Goddard* vs. *Ordway*.

There are various writs of supersedeas in the *natura brevium*. The writ which the Supreme Court grants under the above clause of the Revised Statutes is a different supersedeas from the one secured by statute.

No argument in favor of any lawful control by the Supreme Court over the supersedeas in error provided by the statute can be deduced from its power to grant a different kind of supersedeas.

Right to Sell Perishable Property.

Most of the appellees' cases cited were of this character.

The source of this power is tersely stated by Chief Justice MARSHALL, as follows:

"The motive assigned for the order never is that the Court is in possession of the cause, but that the property in possession of the Court is in a perishable state. A right to order the sale is for the benefit of all parties, not because the cause is depending in that particular Court, but because the thing may perish while in its custody, and while neither party can enjoy its use."

Jennings vs. *Carson;* 4 Cranch. (S. C.), p. 75.

Parliamentary System of Counter Stays in Admiralty.

The only analogy to the order made in this case is to be found in the system established by statute in England, for execution pending appeals to the Privy Council from the Vice-Admiralty Courts. Some of the cases cited by appeallees were under this statute.

By that act of Parliament, 2 William IV., C. 51. the following rules regarding appeals from Vice-Admiralty Courts were established:

"In all cases in which an appeal is asserted, except respecting slaves, the judge may proceed to carry his sentence into execution, provided the party in whose favor the decree has been made give bail to abide the event of the appeal by two sureties, in the amount of the value of the property or subject in dispute, together with the

further sum of £100 sterling to answer costs in the event of the same being awarded by the Supreme Court."

This establishes a system exactly the opposite to any known to the common law or chancery practice. The appellants give bond to be allowed to execute the decree. There were peculiar reasons for the establishment of this unique system in Admiralty proceeding. When a ship is libelled she remains in the passive custody of the Marshal or other executive officer of the Court of maritime jurisdiction. There is no administrative officer of those Courts corresponding to Receivers in Equity. The ship therefore remains unused in port, and being of a comparatively perishable nature it was found in many instances that the subject-matter was lost or greatly deteriorated before hearing in the Privy Council. The old system by which inhibition followed *per se* on an Admiralty appeal and under which execution was an attentat or contempt was substituted by the foregoing statutory scheme of stays. In our Federal admiralty practice we have not followed the English system of giving the appellee control of the subject-matter pending appeal. We have enabled the appellant to counter-bond and prevent the appellee from removing the *res*.

Rules in Admiralty, No. 133.

The above statement shows that there is no analogy between the incidents and circumstances of an equity and admiralty appeal. Indeed, the primary power to receive stipulations from claimants of the *res* libelled, at the time of seizure, places this whole subject on a different basis in admiralty proceedings. Hence the legislative power has not seen fit to adopt those provisions in the case of equity appeals. Indeed, in this country the subject has been left to the inherent power of the Court having the custody of perishable property to dispose of it. *Yet in the* *face of a contrary scheme of our statutes*, the appellees propose a course similar to the English prize proceedings.

Appeal Falls with Supersedeas.

Distinction between supersedeas on separate appeal from Decree of Distribution and from Decree of Sale.

A very broad difference in principle can be pointed out between the illustration adduced in the opinion to show the power to modify the supersedeas and the case at bar.

Where one of several parties interested in a common fund appeals from a decree of distribution, such appeal, besides being separate, is several. The rights and interests of the appelant can be *severed* from the shares of those in similar interest. Upon a proper motion—to limit the effect of the appeal to the interest of the appellant in the fund—the court may so limit the appeal—retaining enough in the fund to cover the fullest claim of appellant. When the appeal is so limited the supersedeas falls with it. Such motion has never been made in this case—as was conceded by counsel for appellees on the argument; nor would it have been available.

When one of a number of parties in interest in a property appeals from a decree of *sale*, that appeal involves the whole case and the decree cannot be executed until the appeal is determined. That follows necessarily from the nature of the question involved in such appeal. As the objection is to the terms and conditions of the sale, the sale would of itself fix and limit the interests and results to the appellant as well as to all others interested in the litigation. Therefore, it would be a denial of the right of appeal to interfere with a supersedeas in such a case.

The matter is clearly explained by Justice Nelson in the following case:

Appeal from a decree of sale on a libel for salvage. Only part of the respondents and part of libellants are in the appeal.

"The whole *decree* is brought up on the appeal. *In its nature it is not severable.*"

The Roarer, 1 Blatchford, p. 1.

No motion made to limit or dismiss appeal pro tanto, but opinion proceeds upon invalidity of principal part of appeal.

The gist of the appeal was from the terms and conditions of sale. We refer to Justice BRADLEY's opinion to show that "this matter was beset with difficulties." The errors in this respect were shown on the face of the decree, and could have been *the subject of a bill of review for error apparent.* Error lies for defects in execution as well as judgment.

Coke on Litt., 288 B.;
2 Tidd's Prac., 1,134;
Insurance Co. vs. *Piaggio*, 16 Wall,

But in equity proceedings errors in terms of decree have been immaterial subjects of appeal.

If the Court orders an estate to be sold for cotton or sheet iron, be the judgment correct in all other respects, and though a *sale* is prayed for, cannot error be assigned in such a decree? All matters that should be proved must be in issues, but matters that cannot be reached until judgment cannot be pleaded.

Though accounting be prayed for, the terms of the accounting may be the subject of appeal.

Bobe vs. *Stickney*, 36 Ala., 492.

Time for redemption not allowed in decree is error apparent.

Clark vs. *Reyburn*, 8 Wall.

We most respectfully submit that if the terms of this

decree be not capable of assignment in error, then the whole principle of errors apparent is disused.

May we also add that now, with more of the record before it, the Court will see that the errors assigned in the terms of sale are far more substantial than seems to be supposed.

See opinion and assignments of error already submitted.

This question seems to us to be really the foundation of this whole difficulty. Certainly, if the conditions of sale be the main subject of appeal (and the Court below conceded that they would deprive us of nearly all our interest in the property), this Court would not relegate us to a bond or any stipulation conditioned upon such a sale, for that would be merely a nugatory instrument.

See brief submitted.

Recapitulation.

I. Writs of error never proceeded from the appellate tribunals, and consequently they had no inherent control over them. At first, supersedeas *per se* without bond and afterwards upon giving bond, the supersedeas was never touched nor was the power to impair it ever claimed by the Appellate Courts of common law. It was not their writ to meddle with.

II. In England, appeals were stays *per se* without bond, and at the time of the American Revolution neither the Lords nor the Chancellor had power to dispense with the stay. This Court would therefore have no inherent or inherited power to interfere with the supersedeas.

III. Our statutes certainly did not take away any part of the right of supersedeas. Considering the right as it stood in England at the time of the Judiciary Act, and considering that act merely as a regulation, the right to a supersedeas with all its common law effects remained the same, on giving security, just as it did in England after the statutes of bail.

IV. The power given by Congress to this Court to award damages for delay, and single or double costs; the terms of the bond required; the fact that supersedeas was under the original Federal practice an essential of all appeals, indicate a distinct legislative intention not to confer on this Court the power to interfere with the supersedeas.

V. The very nature of a writ of error as an original writ, to whose incidents appeals are analogized by the statutes ; the Congressional declaration in the Act of 1872; the English and Supreme Court decisions above cited, as to the continuance of the stay, all indicate that the Appellate Court cannot interfere with the supersedeas "pending the appeal."

VI. Section 701 conferring, under the Constitution, power on the Supreme Court to "review the decree,' and to carry out the results of that review with the amplitude of the ancient Courts of Equity Appeal by such other orders as justice, &c. cannot, upon the principles of statutory construction, nor, indeed, under the plain language of the section, be claimed to affect "supersedeas and execution" which are fully provided for by other sections of the Statutes.

On account of the above matters, not before presented to the Court, we respectfully petition for an opportunity to present the same orally.

E. L. Andrews,
of Counsel.

We unite fully in the foregoing.

George Hoadly,
E. H. Grandin,
of Counsel

Clifford

Supreme Court of the United States.

MORRIS KETCHUM, et. al,
Appellants.
vs.
W. B. DUNCAN, et. al.
Appellees.

MOTIONS

For Release from Supersedeas Bonds,

AND

To Substitute Participation in Plan of Purchase, in lieu of Appellees' bonds.

Appellants Dismissing their Appeal; on Foregoing Relief.

GEORGE HOADLY,
E. H. GRANDIN,
E. L. ANDREWS,
of Counsel.

WASHINGTON:
R. O. POLKINHORN, PRINTER.
1878.

Supreme Court of the United States.

MORRIS KETCHUM, et. al,
Appellants.
vs. 879.
W. B. DUNCAN, et. al.
Appellees.

Petition to be Relieved from Supersedeas Bond and to substitute participation in Purchase in lieu of Appellees' Bond, and for other relief.

To the Honorable, the Judges of the
Supreme Court of the United States:

Your petitioners, the appellants, being willing to relinquish their appeal, and forego the personal security of appellees as follows, most humbly represent to this Honorable Court that only the relief indicated herein would afford some opportunity of their being saved from the total loss—which they must certainly incur by the predicament in which they are now placed, Having relied on the appeal with supersedeas to prevent the execution of the terms of sale in the decree, they allowed the time limited for them to participate in the bond purchases under the decree to expire. The execution now proceeds under those same erroneous terms of sale which they sought to have reversed and *which deprive them of all results of that sale.* (See below.) They are thus left without such equities as were given them by the decree, to secure their undisputed rights in the property, and meanwhile the main and essential part of their appeal is lost with the loss of the supersedeas. They would have been in just so much better position had they not tried to exercise their right of appeal and submitted to the decree of the Circuit Court—by the total amount of their bonds.

The appellants could not be in worse position if the judgment were in all respects affirmed because as shown hereinafter, the condition in the appellee's bonds render them inoperative.

Under these circumstances they most respectfully and earnestly petition for the following relief:

That the present order be modified or the issuing of the mandate stayed, unless the appellees stipulate to exercise the privilege of bond bidding in trust for all the bondholders, by admitting them into the plan of reorganization, and reimbursing the expenses of the trustee.

This ends the appeal, but as shown below, we are forced to this by the loss of the supersedeas, unless the Court makes one of the following orders:

I. Provide that the sale shall be subject to the lien of appellant's bonds;

II. Require the deposit of sufficient money or United States bonds to cover our claims, with a stipulation that it shall be paid to us if we succeed in the appeal. Or if the judgment be affirmed the bond-purchase of the road under the present decree should be for the equal benefit of all holders of trust mortgage securities.

Your petitioners also humbly petition that the appellees be required to enter into a stipulation to release them from the supersedeas bonds—they and their sureties—the purpose for which the bonds were given, having been rendered nugatory.

Your petitioners most humbly represent that the changed condition in the circumstances of this appeal bear most heavily upon them.

They used every effort to terminate the supersedeas. They repeatedly offered last summer to submit the cause on printed briefs at the opening day of this term, by which the whole merits of the cause would have probably been passed upon before the present time. They used every effort to have the cause advanced, though the appellees opposed the advancement.

The property is in the hands of some of these same appellees.

The opinion before this Court concedes that no proceeds whatsoever can be derived from the sale. The railroad must, under this decree, be purchased by the appellees. *It was to buy, not to sell, that they were so desirous to avoid the supersedeas.*

The powers they hold from bondholders are revocoble, and if this Court reversed the judgment, those powers would be revoked. *This is the real reason of the motions made by appellees*, and of *their unwillingness to have the causes heard.* (Protest of H. Amy & Co., already filed.)

Of the Million dollars of bonds we represented at Circuit the greater part was given the appellees their power of attorney on account of this very limitation of time to Sept. 1, 1877, to participate in a bond purchase under the present decree.

We only by relying under the advice of counsel on the protection we supposed we had against the terms of sale in the decree, find ourselves disastrously affected—to the extent of losing nearly every dollar of $230,000 of bonds with several years' interest.

Referring to the accompanying papers for details of the above, we, the appellants, most respectfully petition for protection against the oppression of the appellees, inflicted on us without a hearing of our cause before the Supreme Court; and with the above provisions we will gratefully withdraw our appeal.

We further pray that any order made on this petition be without prejudice to our filing bills of review.

MORRIS KETCHUM, and others,

By George Hoadly,
E. H. Grandin,
E. L. Andrews.
Solicitors for Appellants.

Supreme Court of the United States.

MORRIS KETCHUM, et al.,
Appellants,
VS.
W. B. DUNCAN, et al.,
Appellees.

Motion to be Relieved from Supersedeas Bond and to Substitute Participation in Purchase, in lieu of Appellees' Bonds, and for Other Relief.

Pursuant to order affecting Supersedeas of the Terms and Conditions of Sale.

This part of the appeal—from the terms of sale—involved the largest proportion, in fact all, of the appellants' interest. Palpably supersedeas of sale under present decree was absolutely essential to the maintainence of appeal for the purpose of altering the conditions of the sale. That appeal must, therefore, fall under the present order.

The following was the opinion pronounced below on the equities involved in the terms of sale.

UNITED STATES CIRCUIT COURT.

Southern District of Alabama.

Opinion of Mr. Justice Bradley.

On the terms of sale and on admitting all the First Mortgage Bondholders of the Mobile and Ohio Railroad Company to a participation in the purchase of the road and other mortgaged property:

Bondholders secured by a common mortgage have equal rights in the common security, proportional to the amount held by each. If the mortgaged property be sold to a stranger the proceeds are equally distributed and perfect justice is done to all. If bondholders purchase the entire property, they have an equitable right, after satisfying the costs and charges of the litigation and trust, to pay the balance in bonds, so far as their own proportion of such balance extends, for it is to come to them. But it is evident that those who singly, or in combination, hold a large portion of the bonds, have a great advantage over the minority; for they can pay their own proportion of the purchase money, which is much the largest in bonds, and have only a small amount of cash to pay; whilst the minority can only pay a small proportion in bonds, and have a large amount to pay in cash, which, as a generality, they are totally unable to pay. **This practically puts it in the power of the majority to get the property at a large sacrifice, and turn the minority off with a mere pittance.** This is inequitable, and to be avoided if possible. Perhaps the most equitable mode of disposing of the property (when practicable) when it cannot be sold for cash to an amount sufficient to pay the bondholders, is to decree a strict foreclosure, in which all will participate alike, or to make a sale for the equal benefit of all the bondholders who choose to come in and participate. A strict foreclosure may be attended with difficulties in those States where a mortgage is a mere security and does not give a legal title, besides which, it places the property in the hands of a vast number of beneficiaries whose consent may be very difficult to obtain in perfecting a new organization for conducting the business.

Whilst a sale for the benefit of all is attended with the difficulty of determining who shall make the bid, the court has sometimes authorized the Trustees of the mortgage to bid for the bondholders. In this case, it is obvious that one class or the other of the bondholders would be dissatisfied with any selection of Trustees which the court might make.

To decree that all the bondholders shall be allowed to participate in any sale that may be made, would practically nullify an auction sale. Who would bid on such terms? In this case it has been brought to our notice that a scheme for reorganizing the company, or the interests represented in its property, has been agreed to and subscribed by about 78 per cent. (with interest) of the First Mortgage bondholders. We have examined this scheme, and if not perfectly equitable, we are unable to point out any want of fairness in it. It would give to those who have not joined in it, should they do so, about 20½ per cent. interest in the entire purchase; whilst if all First Mortgage bondholders (including the Tennessee Bonds in the number) were placed on an exact proportionate division, the non-subscribing interest in the purchase would amount to about 21⅝ per cent. But they run the risk of the Tennessee Bonds being placed ahead of the others. If the latter were given the preference, then, subject to that incumbrance, the non-subscribing interest would, by an equal division with the others, take about 24 8-10 per cent. of the purchase, which is probably less advantageous to them than the proposed plan of reorganization would be.

Looking at the difficulties which beset the subject on every side, we think that if we allow the non-subscribing bondholders to participate in the purchase of the property, should it be made in behalf of the mortgage combination, on an equal footing with those who have joined it, that we shall have done all that we can do under the circumstances to protect their interests. The parties representing the reconstruction scheme, through their counsel, have offered to allow them to come in, and to extend the time for doing so until the first of August. We suggest that this time should be extended to the day of sale of the property. We perceive that the Trustees have the power to do this—and keep the agreement on foot by extending the time sixty days at a time. We have, therefore, proposed an additional proviso to the decree to carry out this view. We hope that it will be acceded to by the counsel for the complainants and those representing the reconstruction schemes. We do not wish to dictate these terms to the parties who propose to purchase, but suggest that, in our judgment, the interest of all parties would be subserved by an arrangement of this sort. [The counsel for the complainants having suggested that it was very desirable, if the plan of reconstruction should be generally adopted, to avoid any sale at all, and proposing to extend the time for other bondholders to come to an arrangement, to the 1st of September, the Court adopted that modification, and announced that the decree would be made accordingly unless very forcible objections to it should be presented at to-morrow's session of the court.]

Woods, Circuit Judge, concurring.

The following are our assignments of error presenting the grounds of our appeal from the decree of sale *on the terms* ordered by the above opinion.

Assignment of Errors.

Against terms of sale as ordered in the Alabama decree.

First. That the Masters should not have been directed to receive on the sale any commodity, such as bonds, in lieu of lawful money, except by consent of all the *cestuis que trust* represented before the Court, *or for the equal benefit of all the bondholders*, according to their holdings.

That the Masters should have been directed not to receive the bond bid, except for the amount of the foreclosing mortgage or some other reasonable amount, as a minimum upset price, in order that the bondholders not desirous of becoming purchasers of the property might not be deprived of all substantial share of the proceeds of the sale by a nominal bid, under the terms of this decree.

That the Master should have been directed not to receive bonds, in lieu of cash, for any greater value than the dividend such bonds would be entitled to receive from the proceeds of sale. They should not have been directed to be received at their face value under the decree allowing the use of bonds as bid-money.

That a trustee should have been ordered to bid for the property for the benefit of all the bondholders alike.

That the time for participation by all the first-mortgage bondholders in the bond-bid should not have been limited to a shorter period than the time which is necessary to prosecute an appeal to the Supreme Court, so that the appellants might not, by exercising their right of appeal, lose even those equities secured to them by the decree, in order to provide for their unquestioned interests in the property.

The question regarding the all-important terms of sale as shown by the above, was fully raised at Circuit.

The pleadings alleged all that was possible of being alleged on the subject treated in the above opinion. The mortgage providing for terms of sale was attached to bills, and contained a sufficient reference to the question.

Dunham vs. *Railway Co.*, 1 Wall., 258, 268.

It was impossible to predict exactly what terms of sale the court would order and to plead in regard to them beforehand. As the terms on which a Chancery Court will grant the general relief prayed cannot be within the legitimate scope of pleadings, this court has frequently reversed decrees for errors apparent in the terms of sale or redemption without reference to the pleadings.

Clark vs. *Reyburn*, 8 Wall., 318.
Noonan vs. *Lee*, 2 Black, 500–509.

But in this case no objection in regard to the pleadings was suggested below, and the case was fully tried in regard to the terms of sale resulting in the above decision.

Appeal must fall with loss of supersedeas.

Equities of Bondholders Dissentiug from a Plan of Compromise of the Debts of a Railroad Corporation.

Our position when the decree was rendered was this:

By submitting to the terms of sale, we would have got $440,000 for our million.

By appealing from these terms, we expected to save $560,000, and secure our full claim or obligation for it.

As such appeal related to the conditions of purchase of the property on execution, manifestly it would be a fruitless appeal unless we superseded.

The object of the appeal was to alter the inequitable conditions of sale and purchase, so that there would be substantial proceeds for all the bondholders.

The sale has been ordered to proceed under the decree as it now stands, and the most important portion of our appeal will be lost by the execution ordered. We now seek only to save those equities which the decree below gave.

The opinion of Mr. Justice BRADLEY recognized that the property would necessarily be purchased by the party having the greatest number of bonds and for a pittance.

The road could not be sold for as much as the mortgage upon it.

As by the decree the bonds were as good as money for bidding purposes, and as this new bidding medium was of a definite and limited circulation, the parties holding the most bonds would necessarily become purchasers of the property.

As the whole object of giving the bondholders the power of bidding in bonds, was to benefit and protect them, and protect them all alike; the discussion below turned upon the terms of the decree by which that result conld be attained. As any one intending to purchase the railroad, could see by the term of the decree providing for bidding in bonds, that it would be useless for him to attempt to compete with the bonholders, the so-called sale would degenerate into a mere transfer of of the property to the holders of the greatest number of bonds.

As it would be to their interest to bid as small a sum as possible, in order, that they might have to pay only an infinitesimal dividend to the dissenting bondholders, they would bid merely enough to cover the costs. This has been the practical result under all such decrees.

Justice Bradley, therefore, while according this use of for (44) forty-four cents on the dollar for our present bonds, by not appealing, and by yielding to the terms of sale before September 1. We did not surrender our bonds on these conditions, because with our appeal and supersedeas of the execution we believed we could have the terms of sale and the priorities of lien so adjusted as to produce us far more than forty-four per cent. Now, deprived of all chance of benefitting by correction of the errors in the terms of sale—inasmuch as the property will be sold under the present decree—we are left without the alternative offered by the decree. Our predicament is that we are without the benefits of the appeal or of the equities of the decree.

Any further pursuit of this appeal—without the equity reserved to us in the decree of participating in the bond purchase—would be an endeavor to save six per cent. on the coupons of 1874, and thirty per cent. ou the Tennessee claims, while we lost the (64) sixty-four cents by the execution of the present terms of sale; or rather under the terms of security in the appellees' bonds we would lose every dollar of our conceded share of the property.

We therefore respectfully petition the court that an order be passed requiring the appellees to admit us into the scheme of purchase on equal terms with the other first-mortgage bondholders. With this small measure of justice saved to the appellants the appellees need not give any bond. The appellants feel compelled to relinquish the bond for this substitute on account of the following reasons:

Because the condition of the bond renders it valueless—to pay us the difference between our dividend from the proceeds of sale under the present decree, and what our dividend, *under the same terms of sale*, would be without distribution to the coupons of 1874. This is totally inoperative.

The principal part of our appeal was taken from the terms of sale because they were so erroneous and inequitable that the sale would produce only a nominal result. See opinion of **Bradley** J. The bond gives us the difference between our cash share of the nominal proceeds of sale under the present decree, with or without the coupons. With their monopoly of the sale, the appellees would take good care that a very nominal sum should be bid for the road, so that our recovery on the bond would be nil. See Opinion supra. Practically, the condition of the bond is: To pay us the *difference* between our share of proceeds, which are *nothing*, and what that share would be if the coupons of 1874 are decided to have no claim to participate in that nothing.

Further, because if the bondsmen, even under a bond with operative conditions, become insolvent after the sale and before hearing in this court, we will have lost all security and this court will have no power to help us, unless the Circuit Court be ordered to retain control of the property until hearing in this court.

The appellants are thus driven by the loss of the supersedeas to surrender their appeal. The only means of saving anything whatever is to submit to the inequitable terms of the sale now ordered to execution and surrender their bonds to the appellees, unless the Court should make the following

Orders Necessary for Saving Appellants' Rights.

The sale of the property should be expressly subject to the lien of the appellants' bonds, instead of any personal security to them.

Or a money or U. S. bond deposit should be for the full amount of the appellants claim, principal, interest and costs. And should be conditioned to pay them that amount absolutely upon the success of the appeal. If we should fail in the appeal, then,

under [illegible]
of [illegible]
The [illegible]

[illegible]

Clifford

Supreme Court of the U. S.

MORRIS KETCHUM, *Trustee, et al.*,
Appellants,
vs.
WILLIAM B. DUNCAN, *et al.*,
Appellees.

UNITED STATES OF AMERICA,
Southern District of New York. } *ss.*

Egbert H. Grandin, Counsellor-at-Law, of the City of Mobile, in the State of. Alabama, being duly sworn, saith:

That on the fourteenth day of January, A. D., 1878, in said City of Mobile, whilst affiant was acting as one of the counsel of said Morris Ketchum, appellant, and was about to make a motion before the Circuit Court of the United States for the Southern District of Alabama, which said court has the custody of the trust fund in said entitled cause, for the refunding of said Ketchum of the expenses of the execution of his said trust, affiant was served with a notice issuing out of the Court of Chancery of the State of Alabama, at Mobile, Alabama, in the words and figures following, to wit:

"IN CHANCERY, AT MOBILE, ALABAMA.
3594.

HAYS, DUPUY, *et al.*
vs.
MORRIS KETCHUM, *et al.*
} *At Rules,*
Register's Office.
Mobile, Jan. 14, 1878.

In this cause the complainants, under the terms of the

decree rendered on the 19th of December, 1877, having taken an appeal from said decree and for the reinstatement of the injunction, as provided by said decree, and having filed these bonds with sureties in the sum of two thousand dollars, to the effect that said injunction stand in full force, notice is hereby issued to E. H. Grandin, Esq., counsel for respondents, and to Morris Ketchum, respondent, that said appeal has been taken, that said bond has been filed, and that said injunction is reinstated.

JOSEPH HODGSON,
Register.

Affiant further saith, that the said injunction which he was so notified, was reinstated, was, and is an injunction restraining affiant and all other counsel for said Morris Ketchum, trustee, and said Ketchum, himself, from making any motion or taking any proceedings in the cause of *Morris Ketchum, Trustee* vs. *The Mobile & Ohio R. R. Co., et als.*, in the said Circuit Court for the Southern District of Alabama.

Affiant further saith, that upon and after the service upon him, as aforesaid, of said notice, he refrained from making the said contemplated motion, and that the Hon. S. F. Rice, who was engaged with affiant to make said motion, refused to make the same pending said injunction.

Affiant further saith, that the suit in which said injunction was ordered, was brought in the said Chancery Court at Mobile, to carry into execution a decree of the Confederate Court of Chancery, at Mobile in 1863, which decree said Circuit Court for the Southern District of Alabama had pronounced null and void.

Affiant further saith, that the bill in said suit in the Chancery Court at Mobile, was dismissed by the Chancellor, but complainants appealed from his decree of dismissal and the injunction, was restored as appears by the aforesaid recited notice.

E. H. Grandin.

Sworn to and subscribed before me, this 13th February, 1878.
Daniel W. Gillett,
[SEAL.]
Notary Public,
New York City and County.

Clifford

Supreme Court of the United States,

OCTOBER TERM, 1877.

No. 879.

MORRIS KETCHUM et al.,
Appellants,

vs.

WILLIAM BUTLER DUNCAN et al.,
Appellees.

Further Brief for Appellees on Motions noticed for hearing for Feb. 18, 1878, and adjourned to Feb. 22, 1878.

F. N. BANGS,
For Appellees.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON STREET.
1878.

U. S. Supreme Court.

MORRIS KETCHUM ET AL., Appellants, *vs.* WILLIAM BUTLER DUNCAN ET AL., Appellees.	October Term, 1877 —No. 879.

In this case, this court, on December 10, 1877, made an order in the following terms:

On consideration of the motion to dismiss this appeal and of the argument of counsel thereupon had, as well in support of as against the same, it is ordered that said motion be and the same is hereby denied.

And it is further ordered that the operation of the *supersedeas* arising upon this appeal be so far suspended as to allow sale to be made of the mortgaged premises, in pursuance of the decree below; and that the commissioners appointed to make the sale conduct the same, in all respects as directed by the decree, except that the portion or share of the proceeds which would enure to the benefit of the appellants by the reversal of the decree, so far as it sustains the validity of the coupons of 1874, be paid in cash to the commissioners and by them into the registry of the Circuit Court for the Southern District of Alabama, to await the disposition of this appeal and the further order of the court thereon.

Afterwards, on the 14th day of January, 1878, this Court made an order as follows:

Supreme Court of the United States.—No. 879.—October Term, 1877.—Morris Ketchum *et al.*, appellants, *vs.* Wm. Butler Duncan *et al.*

Upon the petition of William H. Hays, William S. Pierson, T. Haskins DuPuy and William Butler Duncan, sworn to January 5th, 1878, and on motion of Mr. Merrick (counsel, for the appellants, appearing and not opposing), it is, this 14th day of January, ordered by the court that this appeal, so far as it respects D'Orelli Ziegler and Bernard de Watteville, and so far as it respects the bonds formerly held by them, and so far as it respects the bonds formerly held by Cephise Chuffard, numbered respectively 953, 1208, 2215, 3491, 4054, 5193, 4194, 4195, 4196 and 5514 be, and the same is hereby discontinued; and that the names of the said Bernard de Watteville and D'Orelli Ziegler be stricken from the record as appellants on this appeal; and that a minute be made of record on this appeal, in this court, that said petitioners, Hays, Pierson and DuPuy, have succeeded to the rights of the said Bernard de Watteville and D'Orelli Ziegler, respectively, as creditors under said mortgage, and to the rights of the said Cephise Chuffard, as a creditor under said mortgage upon the said ten bonds last hereinabove mentioned. 14th January, 1878.

True copy.

[SEAL.] Test. D. W. MIDDLETON.
Clerk Supreme Court, U. S.

A motion made by the remaining appellants to rescind the above order of December 10th, 1877, was heard by the court on the same 14th of January, 1878; and on the 11th of February, 1878, the court made the following order:

Morris Ketchum *et. al.*, appellants, *vs.* Wm. Butler Duncan *et. al.*

On consideration of the motion to rescind the order suspending the operation of the *supersedeas* in this cause, and the argument of counsel thereupon had, as well in support of as against the same,

It is ordered that the Circuit Court proceed with the execution of the decree appealed from, upon Hays, Pierson and Du Puy filing in this court a bond payable to the United States in the penal sum of seventy-five thousand dollars, with security to be approved by this court, conditioned to pay to the appellants and those whom they, or either of them, legally represent in the appeal, the difference between the amounts which they would respectively receive from the proceeds of the sale, in case the disputed coupons of 1874 are on this appeal disallowed as a part of the mortgage debt, and the amounts they will receive if the mortgaged property shall be sold and distributed under the decree as it stands. February 11th, 1878.

True copy.

[L.S.] Test. D. W. MIDDLETON,
Clerk Supreme Court U. S.

This order was certified to the Circuit Court, and entered of record there.

The remaining appellants then gave to the counsel for the appellees notice of a motion, as follows:

Supreme Court of the United States.—Morris Ketchum *et al.*, appellants, *vs.* W. B. Duncan *et al.*, appellees.

Take notice that on Monday, February 18th, 1878, we will move the Supreme Court of the United States for an order:—Requiring money, in lieu of a personal bond, to be deposited on the vacation of the *supersedeas;* requiring the amount of the money deposit, or of the bond, to be, at least, $229,000 or $600,000; requiring provision to be made out of the fund for the expenses of trust; requiring the appellees to give a release of the *supersedeas* bonds.

New York, February 12th, 1878.

E. L. ANDREWS,
Solicitor for Appellants.

On the return day of this notice, counsel for the residuary appellants appeared in court and produced a brief, into which was incorporated a petition containing a confused mass of prayers, suggestions and innuendoes, which it is as difficult for the reader to analyze as it appears to have been for the author to express intelligibly.

One design of the appellants appears to be to put the appellees' counsel to the trouble of drawing at least one brief *per diem* in relation to some matter connected with this appeal.

It may be that by the time this comes from the press it will have become obsolete, or subjected to the operation of an implied *supersedeas*, by the production of some new effort emanating from the imagination, or the fancy, or the recklessness, of the other side. Subject to that risk, the undersigned proceeds to reply to the brief and petition of the appellants' counsel, without making any reference to the careless and unverified statements which he understands were made outside of the brief and petition, on the oral argument delivered in this court, without previous notice of its scope or extent, on February 18th.

I.—The appeal was originally taken in the names of Ketchum, Merian, Renevier, Jump, Chavannes, Carrard, Chuffard, De Watteville, and Ziegler. Of these appellants, Ketchum had no personal interest whatever, and the aggregate amount of sterling bonds held by the other appellants was $186,000, namely: Merian, $9,000; Renevier, $5,000; Carrard, $12,000; Chuffard, $14,000; Jump, $14,000; Chavannes, $17,000; Ziegler, $18,000; and De Watteville, $97,000. (*See depositions of Messrs. Moran, filed* Feb. 18, fols. 23, 35, 40, 62, 271, 281 to 285.) The only interest which either of these parties had was, to reverse so much of the decree as permitted coupons of 1874 to be received by the Masters in payment for the mortgaged property. As this could not possibly injure either of the appellants to an amount exceeding six per cent. upon the amount of his bonds, the aggregate amount of such injury could not exceed $11,160. But, since the appeal was taken, the bonds held by Ziegler have been assigned to Hays, Pierson & Dupuy, three of the appellees; and since the order of December 10th was made, all the bonds held by De Wattevelle, and ten of those held by Chuffard, have been also assigned to the same appellees. The actual ownership of the remaining appellants, therefore, does not exceed $61,000. The aggregate amount which they have at stake, altogether, does not exceed $3,660, and the largest interest of any one of them does not exceed $1,020. These facts appear by the affidavit of Hays, Pierson & Dupuy, and are cognizable by the court on a motion to dismiss the appeal or to vacate the supersedeas.

19 *Howard*, 108, *Rogers* v. *The St. Charles.*
23 *How.*, 483, *Clifton* v. *Sheldon.*
3 *Otto*, 44, *Terry* v. *Hatch.*

A corporation called the Rogers Locomotive and Machine Works, as a second mortgage bondholder, reinforced the residuary appellants by joining in their motion to vacate the order of December 10th. That corporation, however, is not an appellant, and it has no rights which the appellants have not—perhaps not even the right to say that it took no appeal because it relied on the will and ability of some one else to stay the execution of the decree.

An affidavit of Charles Moran was produced in aid of the appellants. He intervened in the suit in the court below by proving his bonds. He only owned forty or fifty bonds. (*See his deposition, fol.* 267, q. 750 to q. 780.) The bonds held by the appellants were proved in his name. But he acquiesced in the decree. He did not appeal. Those whose bonds had been proved in his name separated from him, and appealed in their own names. He no longer represents them, nor do they represent him.

II.—In 10 *Wallace,* 296, *The Slaughter House Cases,* the court recognized the fact, well authenticated by the text books and reports, that "independently of statutory regulations, the term supersedeas has little or no application in equity suits, as the rule is well settled in the English courts that an appeal in chancery does not stop the proceedings under the decree from which the appeal was taken without the special order of the subordinate court."

In the expression of his views given in 10 Wallace, pp. 298 and 299, Mr. Justice Bradley puts his dissent from the judgment of the court upon the grounds that such judgment has the effect of leaving many classes of judgments and decrees *in equity,* though appealed from, entirely effective and operative between the parties, and that such judgment remits the practice on this subject back to the practice of the English Courts of Equity, in which it is conceded that an appeal does not suspend proceedings nor act as a supersedeas on the proceedings in the court appealed from.

This being the admitted condition of things, independently of the acts of Congress, the question is, what effect have the acts of Congress upon an appeal in equity? Does the allowance of such an appeal, by virtue of any statutory regulation, and without special order, operate as a supersedeas?

By the language of the original statute relating to appeals in equity (2 *Stat.*, 244, *sect.* 2) such appeals were made "subject to the same rules, regulations and restrictions as are prescribed in law in case of writs of error."

In 3 *Otto,* 87, *Kitchen* vs. *Randolph,* this court stated that at common law a writ of error was a supersedeas by implication. The court then proceeded to show that the acts of Congress, instead of enlarging, limited the operation of the writ in that respect. Its effectiveness as a supersedeas was made to depend upon a compliance with certain prescribed conditions as to time and security.

When, therefore, appeals in equity were made subject to the same "*rules, regulations and restrictions* as are prescribed in law in case of writs of error," there was nothing in the enactment which dispensed with the necessity of obtaining a stay by order. This language only superadded other conditions, to wit, those of time and security, which were required in cases of writs of error. Neither the legislation as to writs of error, nor that as to appeals, enlarged the operation of the writ or of the appeal. On the contrary, it restricted it.

The present legislation on the subject, contained in sections 1,007 and 1,012 of the Revised Statutes, the former relating to security upon writs of error, and the latter applying to appeals in equity the "same *rules, regulations and restrictions* which are prescribed in law in case of writs of error" has no different effect. This legislation is not enabling but restrictive. This is manifestly so, if the word "appeal" is substituted for "writ of error," in section 1,007. That would make it read thus: "In any case where an allowance of an appeal may be a supersedeas," that is in cases where it is made so by a special order, "the appellant may obtain a supersedeas" by complying with the additional conditions prescribed.

In the case at bar, the operation of the allowance of an appeal was not left to be ascertained by implication. It was *specially ordered* to operate as a supersedeas.

III.—But conceding that some stay or supersedeas upon an appeal in equity does arise by implication, without special order, the next question which arises is, does the implied stay, in every case, necessarily extend to the whole decree?

Certainly, it cannot be pretended that there is any statute of the United States which enacts in terms that the execution of a decree for the collection of an indebtedness of $9,000,000 shall be stayed by the filing of a bond for $100,000.

The language of the Revised Statutes is that where an appeal may be a supersedeas, the defendant may obtain *such* supersedeas by complying with certain conditions. Literally, the privilege is confined to the "defendant;" but "defendant" must mean "aggrieved party," otherwise a plaintiff or an intervenor could not appeal. At the outset, a literal construction of the statute in this respect must be abandoned in deference to its good sense and to the necessities of justice. Construing its remaining words in the same spirit, the obvious intent is that the aggrieved party shall have, whether expressly or by implication is not material, a stay or supersedeas commensurate only with his grievance, and not one extending beyond that grievance.

IV.—This court has power to determine the extent of the implied stay which aggrieved parties have obtained, if they have obtained it only by implication, and to review any express order of the court below, granting a stay, if the stay has been granted by express order.

This proposition, it is observed, does not involve any question as to the time or propriety of exercising the power. It is an abstract affirmation of the existence of the power. The question of the time when the power should be exercised, and of the propriety of exercising it at this time, is discussed hereafter.

That the court has power to determine, not merely the merits of an appeal, but the right of a party to assume the attitude of an appellant, and to be heard upon the merits of a decree, can hardly be denied. Courts of Chancery have refused to hear a so-called appellant, either because he was not aggrieved by the decree, or because he was estopped from appealing by his conduct or by the record, or because he had consented to the decree, or even because he had raised no question in the court below, or had omitted to assign errors. It is always an inquiry with the court, preliminarily, whether the appellant has not divested himself of legal capacity to take an appeal.

That a party consenting to a decree divests himself of legal capacity to appeal from it, see

2 *Vesey, sen.*, 488, *Harrison* vs. *Rumsey.*
Ambler, 229, *Bradish* vs. *Gee.*
5 *Johns. Ch.* 564, *French* vs. *Shotwell.*
20 *Johns.*, 668, *same case.*
12 *John*, 521, *Monell* vs. *Laurence.*
4 *Paige*, 476, *Leitch* vs. *Cumpston.*
1 *Cowen*, 709, *Atkinson* vs. *Marks.*
2 *Woods*, 628, *Anderson* vs. *R. R. Co.*
8 *Dana*, 12, *Story* vs. *Hawkins.*

That a party whose legal rights are not affected by a decree is devoid of capacity—is legally incompetent—to appeal from it, see

6 *Wallace*, 639, *Crawshay* vs. *Soutter.*
7 *Paige*, 221, *Hone* vs. *Van Schaick.*
10 *Id.*, 426, *Card* vs. *Bird.*

That a partial incompetency, or incapacity, may exist, that is, that the incapacity may relate to a portion of the decree, while it does not extend to the remainder, see

6 *Paige*, 274, *Cuyler* vs. *Moreland.*
7 *Id.*, 18, *Mills* vs. *Hoag.*
43* (not 43) N. Y. (2 *Keys*), 123, *Hackley* vs. *Hope.*

That a party who has availed himself of pending litigation for his own benefit has divested himself of legal capacity to set up a claim in opposition to the theory on which that litigation is based, see

2 *Woods*, 323, *Forbes* vs. *R. R. Co.*
Id., 628, *Anderson* vs. *R. R. Co.*
13 *Blatchford*, 312, *Stevens* vs. *R. R. Co.*

That a party who has omitted to raise a particular question in the court below has divested himself of the legal capacity to raise that question here, and that this principle is "founded not only on the nature of the jurisdiction of the court, but on principles of great importance to the due administration of justice in all courts," see

5 *Wend.*, 673, *Wood* vs. *Young.*

That an objection for want of equity cannot be, for the first time, raised on appeal, see

2 *N. Y.*, 498, *Clark* vs. *Sawyer.*

That an objection in abatement of the action, on the ground of plaintiff's defective legal capacity, can not be for the first time raised on appeal, see

17 *Barb.*, 414, *Baldwin* vs. *McArthur.*
34 *Id.*, 66, *Mosselman* vs. *Caen.*
36 *Id.*, 392, *Paige* vs. *Fazackerly.*

That where only one question has been decided by the court below, this court is deaf to the hearing of any other question, although all parties agree to ask it, see

1 *Peters*, 621, *McDonald* vs. *Smalley*.

That this court gives no attention to claims omitted to be made in the court below, see

10 *Wheaton*, 431, *The Santa Maria*.
1 *How.*, 169, *Bell* vs. *Bruen*.
3 *How.*, 692, *Brockett* vs. *Brockett*.
8 *How.*, 402, *West* vs. *Smith*.
18 *Id.*, 557, *United States* vs. *Larkin*.
18 *Id.*, 289, *Kinsman* vs. *Parkhurst*.
20 *Id.*, 45, *Hudgins* vs. *Kemp*.

That a party's conduct in the court below may estop him from appealing, see

3 *Otto*, 39, *Terry* vs *Abraham*, *per Mr. Justice Miller*.

But the power to determine the legal, or lawful, dimensions of an appeal, and the legal, or lawful, capacity of an appellant to appeal, involves the power to determine his right to a stay. If his appeal is dismissed unheard, his stay goes with it by necessary implication, and it is in effect determined that he never ought to have had a stay.

In short the inherent (not expressly statutory) power of this court, as a Court of Appeal, to decide a party's right to be heard, conveys with it the inherent power to determine his right to a stay until he is heard.

The uniform practice of the court proves that it possesses the power, preliminarily, to determine what is the extent of the stay implied (in cases where it is implied at all) by the proceedings in the court below. It has exercised the power in specific cases, and by general rule.

In 9 *Wheaton*, 553, *Corbett* vs. *Brodie*, this court reviewed the action of the court below in fixing the amount of the security, and ordered the cause to be dismissed until the plaintiff in error gave security sufficient to cover the whole amount of the judgment. The court, in effect, decided that the proceedings in the court below should no longer imply a stay, and never should have raised such an implication.

In 16 *Howard*, 135, *Stafford* vs. *The Union Bank of Louisiana*, this court, upon the same principle, required security for the whole amount of the decree, although the suit was a foreclosure suit, and the mortgaged property was in the hands of a Receiver.

In 19 *Howard*, 375, *Roberts* vs. *Cooper*, this court, upon the same principle, stated that the party claiming its intervention should have the full benefit of the security intended by the law, in a case where the writ of error was a supersedeas.

In 6 *Wallace*, 375, *Rubber Company* vs. *Goodyear*, decided at December Term, 1867, this court held that after the allowance of an appeal, the question of the sufficiency of an appeal bond became cognizable here; and in view of the fact that some security had been deposited in the court below before the taking of the appeal, this court held, in substance, that an appeal bond in a smaller amount would have been sufficient to raise an implied stay, or to justify an express stay.

At the term of December, 1867, this court promulgated its present 29th rule (6 *Wallace*, v.). By the making of the rule this court assumed to have inherent control over the whole subject of supersedeas and security; and the latter part of the rule seems designed to mitigate, if not prevent, the hardships which might arise from enforcing the rigid direction given in 16 *Howard*, 135, *Stafford* vs. *The Union Bank*.

If the latter part of rule 29 had not been in force, the Circuit Court, in this case, might and must have exacted security for the whole amount of the debt established by the decree. It was relieved from doing so by a general direction from this court that certain observances, in certain cases, should imply a stay, or authorize an express stay by order.

But rule 29 is not an Act of Congress, inflexible and imperative. It is a rule of court. The same power which enacted it can repeal or suspend it, or except a case from its operation, or declare how far it is available to a party seeking the benefit of it (*U. S.* vs. *Breitling*, 20 *How.*, 252). If it is found that in a given case it is resorted to for the purpose of inflicting upon the appellee hardships from which the rule itself was designed to exempt the appellant, this court can abrogate it, *pro hac vice*, and so administer it that it shall not operate beyond what the justice of the case requires, or may limit the stay implied or granted.

In 12 *Wallace*, 99, *French* vs. *Shoemaker*, this Court again declared it to be within its discretion to increase or diminish the amount of the bond, and to require additional sureties, or *otherwise*, as justice may require, so as to modify or limit the extent of an implied or express supersedeas. This involves the right to determine how far the security already given shall avail the appellant, or, in other words, to what extent and to what end it shall be deemed " good and sufficient."

In 21 *Wallace*, 31, *Jerome* vs. *McCarter*, the Court asserted its power to consider whether upon a change in the circumstances of the case, or of the parties, or of the sureties, the implication of a stay should continue any longer, although it at the same time announced that it would regard the action of the court below as to the "goodness and sufficiency" of the security at the time it was taken and as to the value of the property, the penalty of the bond, and the damage likely to be sustained by the appellee, as final. This however, does not involve an abandonment on the part of this court, of its power to suspend its own rules, or to except a particular case from their operation, in order to avoid injustice and oppression, or to determine the legal effect of the proceeding in the court below. It only remits to the court below the power of passing on the form of the bond, the responsibility of the sureties and the value of the property.

If the stay in the case at bar arose under a special order of the Circuit Court, then, under the provisions of sec. 701 of the Revised Statutes, this court has express authority to affirm, modify or reverse such order.

V.—If, because this, in form, is an appeal from the whole decree, the court cannot look into its substance and legal efficacy and distinguish its essence from its external appearance, but must consider the execution of every part of the whole decree as expressly or impliedly superseded, at the arbitrary will of a party claiming to be aggrieved, yet the court has, under sec. 701 of the Revised Statutes, power, pending the appeal, to "direct such judgment, decree or order to be rendered, or such further proceedings to be had as justice may require."

The application of this section has been strongly enforced and copiously illustrated in a brief of my learned associate, the Hon. John A. Campbell, heretofore filed in this cause. But I may, without presumption, be permitted to add something to what he has observed.

In cases of this description, the court takes the property in dispute out of the hands of the parties, and deprives them of all direct control over it and its revenues.

If the taking of an appeal is matter of right, and if a stay, auxiliary to an appeal, upon very small security, is also matter of right, then either that stay, at the will of a party, petrifies or freezes the case and the fund inflexibly into the status which they have at the time of the taking of the appeal, beyond the power of anybody or anything (except Divine Providence) to control it, or, from necessity, the court which has adopted the foundling, must, in the exercise of a sound discretion, to be adapted to the emergency according to legal and equitable principles, employ its paternal right and authority for the benefit of the claimants. In 4 *Otto*, 672, *Goddard* vs. *Ordway*, the court announced the possession of that power and authority, and the propriety of exercising it in suitable cases. This springs from the necessity and fitness of things, and from the express powers conferred upon the court.

Then, in what case can the power to dispose of the property for its own preservation be more fitly exercised than in a case where the rights of nearly all the parties are fixed beyond recall, and only a small sum is in dispute?

And how can it be more fitly exercised than by putting the property where it must ultimately go—where its going is only a question of time, that is, in the hands of purchasers, and then distributing the proceeds among those who are conceded to own them, to the extent to which such ownership is conceded, and reserving the remainder for the security of those who are disputants over it? If the right and duty of the court are commensurate with the control which it has taken from the parties, and assumed for itself, then when it is asked to do what is above suggested, it is asked to do no more than its jurisdiction permits and its justice dictates.

VI.—It was proper to apply to this court, at an early stage of the case here, to declare to what extent an implied stay had arisen from the proceedings in the court below, or to what extent an express stay was justified by the character of the litigation and the relation of the appellants to it.

A stay or supersedeas belongs to the same class of preliminary, precautionary, or provisional remedies, to which injunctions, attachments and receiverships belong. These are interlocutory in their nature, intended only for the security of a party in the final enjoyment of his right when he establishes it. But no court would make an attachment, injunction, receivership, or other cautionary remedy, broader than the grievance for which final redress is sought. No other court having, as this has, original jurisdiction to control the scope of a provisional remedy, would refuse to consider, preliminarily, the question whether the preliminary remedy does not exceed the possible bounds of the relief finally sought. Every court having such jurisdiction, considers itself bound, *ex debito justitiæ*, to consider whether, by those interlocutory remedies which anticipate the final judgment, needless wrong is not done. It would be matter of great ragret to find that a court, by a mere rule of order, had abnegated the duty of ascertaining whether its merely cautionary process was not being abused to the great detriment of innocent parties.

VII.—In the case at bar, the appeal of Ketchum and his co-appellants, is, in intendment of law, a nullity as to all parts of the decree, except those which are in favor of the coupon holder. The appeal has vitality only as against the latter.

Ketchum, if he were a trustee, as he is not, would have no right of appeal.

3 *Otto*, 412, *Sage* vs. *R. R. Co.*

As to the other appellants, the case is a simple one. It is, that certain parties, claiming to be aggrieved in that some $4,000, which should be distributed in small fragments among them, has been awarded to some one else as a coupon holder, have stayed the enjoyment, by bondholders to the amount of some $14,000,000, whose rights are not the subject of dispute, of those acknowledged rights. The appellants do not complain that those bondholders have obtained anything which they are not entitled to ; and those bondholders are themselves satisfied with the decree. As to them, the decree cannot be reversed, either for their benefit or to their disadvantage. Nothing can be done by this court after years of delay but to give to the appellants $4,000, and that not out of the pockets of the bondholders who are stayed, but out of the pockets of coupon holders who are willing to secure the appellants against all chance of loss. If the decree below is found to be erroneous, the utmost this court can do is to award to the appellants themselves (and not to the anonymous " others," whom, without proof, they claim to represent), for distribution in small proportions, the same share of the proceeds of sale which they would receive in case the coupons of 1874 were wholly disallowed.

This result can be amply secured to them without injustice to others ; and unnecessary delay in the enjoyment of an acknowledged legal right is injustice.

Can there be any doubt that this is a case calling for the exercise of whatever power the court possesses? Can any bond be adequate compensation to a party against the deprivation of a present, existing, undenied, and undeniable right to millions of dollars?

In every other respect than as it affects coupon holders, the appeal is void, for want of legal capacity in the appellants to take it, as much so as if they had been infants, or under some other disability. They not only admitted the rights of the other bondholders, but brought suit to enforce those rights. The decree, as a decree of sale, for the benefit of bondholders, is their own progeny.

Some of the numerous cases in which parties have been held to have divested themselves, by their acts or omissions in the court below, of the right to appeal, so as absolutely to close the ears of the appellate court against them, or in which they have been held never to have acquired the right to be heard, except, at best, within defined limits, are above referred to. The most recent one is that of *Terry* vs. *Abraham*, 3 *Otto*, 49.

Tested by those cases, the only general feature of this controversy which this court has lawful authority even to look at is, that it is a controversy over several small sums, amounting in the aggregate to less than $4,000, between a few bondholders and the holders of the coupons of 1874.

The right of the appellees, *as couponholders*, to enforce the decree against the bondholders who have not appealed has not been intercepted by any means which the law approves or allows.

16 *Peters*, 521, *Todd* vs. *Daniel*.

The right of the appellees, *as bondholders*, to enforce the decree against the debtor and the junior incumbrancers, and as against all other bondholders, has not been intercepted by any means which the law allows or approves, because no one questioned that right in the court below, or has legal capacity, or is legally competent, to question it here.

The right of the appellees, *as bondholders*, to enforce the decree against themselves, *as couponholders*, is a right which can be questioned by themselves alone.

The right of the appellees, as couponholders *and* bondholders, to enforce the decree against the now remaining appellants has not been intercepted, because the now remaining appellants have not enough at stake to entitle them to maintain an appeal; or, if that is not so, then the right of the appellees to enforce the decree has been intercepted to the extent of only $4,000. As to everything else, they are free from any lawful restraint; and the orders made by this court on December 10, 1877, and January 14, 1878, have done no more than permit them to use their own property, under the limitation that, in using it, they should do no injury to others.

VIII.—It was contended by the now surviving appellants that they might be injured by the execution of the decree in its present shape, because of the situation of so much of the property as lies within the State of Tennessee.

The facts on that subject are before the Court in the record and on the affidavits.

A part of the mortgaged property, 118 miles in length, is in Tennessee. This part is subject to an indebtedness, now amounting to some $2,000,000, secured by mortgage to Iselin, Wilson & Duncan as trustees. It is or was a question whether that mortgage is prior or subordinate to the lien of the mortgage in question on this appeal. But Hays, Pierson & Dupuy hold all the $2,000,000 of indebtedness, except about $60,000, and they hold about 90% of the indebtedness secured by the mortgage in question here. It is of but little importance to them which mortgage has priority over the other, and if it were not for the opposition of the appellants, the whole property might be sold together under both mortgages. The attitude of the appellants will compel a separate sale of the Tennessee portion; and they now urge this as a reason why the remainder of the property should not be sold until the priority of the two mortgages, as between each other, shall have been determined.

The answer to this is that they are themselves responsible for whatever difficulty exists in this respect, and that the appeal involves no question on the subject. The bill of Duncan and Elliot did not bring in the Tennessee bondholders nor their representatives as defendants; yet the appellants Merian, Renevier, Carrard, Chuffard, Jump and Chavannes proved their claims in the Duncan and Elliot suit, and so became promoters of a sale in that suit. Ketchum, however, in his bill, and Ziegler, De Watteville, Jump and Chavannes in their bill, did bring in the trustees of the Tennessee bondholders as defendants, and ask a determination of their rights. But, on June 5, 1877, the consolidation order was made *by consent*, whereby the consolidated cause was directed to proceed, without prejudice to and saving, the rights of Wilson, Iselin, and Duncan; and then on the next day, an order was made, *by consent of all parties*, striking the names of the Tennessee trustees from the bills on the ground of want of jurisdiction over their persons, and want of jurisdiction over the subject matter. Here, again, the insinuation of error is met by proof of consent. At all events, the emergency created by the obstinacy and folly of the appellants has been provided for without injustice to them or the appellees.

IX.—It was also insinuated by the appellants that in case the decree below should be enforced pending the appeal, they might be injured, because this court might, on the determination of the appeal, give them further time to contribute to the expense of, and share in the benefit arising from, a purchase by others of the mortgaged property. How much damage they would sustain by being excluded from that privilege it is impossible to say; but it is submitted that in the particular in question, they have no right to a hearing here. They have no *legal right* to anything but their share, as creditors, of the price bid on the sale by the purchaser. Beyond that, what the decree contained was matter of favor, inserted by consent.

Any attempt by a court to make $100,000 equal to $5,000,000 would be manifestly futile. While an interest is, although small, within the protection of the law as much as a large one, yet in the practical administration of a property or a fund, a large proprietor has, and must have, lawfully, a preponderating influence. His rights are of the same quality as, and no better than, his remedies are as effectual as, and no more so than, those of the small proprietor. But his power of purchase is greater, because his resources are larger, and because, by law, a dollar will buy more than a penny. There is nothing inequitable, unjust, or unlawful in his using what he has, to buy what a less fortunate possessor cannot buy at all. In a partition sale, the apportionment of a trust fund, or a sale under foreclosure, the largest owner has a lawful advantage of which the court cannot, by any machinery, deprive him. If partners are forced on him, he may dissolve the partnership, and then his disparity of interest *must*, because by law it is entitled to, tell in his favor.

The appellants elected to stand on what they regarded as their legal right to an appeal and a stay, as being worth more to them than the privilege of uniting with the appellees in a purchase of the property. It turns out now that the privilege offered them was of more value than the legal right on which they insisted, and they wish to revoke their choice. But they cannot restore the appellees to the position which the latter would have occupied if the appellants had not appealed.

There is, therefore, no reason to believe that this court can or will interfere with the portion of the decree in question. The appellants have said that the appellees shall have nothing more than their legal rights. It is not to be assumed that the court will reverse a decree in order to give the appellants anything more than *their* legal rights.

If it should come to the knowledge of the court that a party of capitalists had raised a sum of money and formed a partnership to buy the road, and had invited all bondholders to come in with them, and some bondholders had refused, while most had consented, would the court say that the recusants had a *legal right* to become partners? And would the court, beyond seeing that the sale was fairly made, and that no one was imposed upon, refuse to confirm the sale because the purchaser declined to encumber himself by an association with his enemies? If it would, then it may be asked, Is there any limit to the arbitrary power of the court?

Although in a foreclosure suit a court of equity furnishes equitable *remedies*, they are not arbitrary, but are adapted to the *legal rights* which, alone, lie at the basis, and furnish the guide, for the whole proceeding.

X.—The appellants seem to be of opinion that the court is under obligation to find for them some equivalent, or compensation, or indemnity, for having deprived them of an illegal advantage which they have been enjoying at the expense of the appellees for some eight months past.

Their present motion seems to be founded on that theory or notion.

It is respectfully submitted that in this respect they are wrong.

The fact that they are wrong, taken in connection with the consideration that all the relief asked on the present motion could have been had, if the appellants were entitled to it, on the motion already considered and determined by the court, constitutes, it is believed, a sufficient answer to the motion. If not, then a further answer is furnished by the following propositions:

XI.—The compensation, indemnity, or equivalent which the appellants ask, for having been justly deprived of an illegal advantage which they have been enjoying at the expense of the appellees, appears to be this:

1. The appellees ought to make a money deposit somewhere.

2. The amount of the money deposit should be either $229,000 or $600,000.

3. Provision should be made "out of the fund for the expenses of trust."

4. The appellees should give a release of the supersedeas bonds.

5. This court should force the appellees, in case they become purchasers, into a partnership with the appellants—should coerce matrimony upon parties who do not disguise their dislike of each other.

6. Upon the theory that the court ought to compensate them for having justly deprived them of an illegal advantage which they have been enjoying for eight months at the expense of the appellees, they propose to turn the court into brokers to negotiate a bargin between them and the appellees, one of the terms of which is to be that they will withdraw their appeal if the appellees, in case they become purchasers of the property, will divide the purchase with the appellants.

7. They propose that this court shall guaranty, or compel the appellees to guaranty, a certain dividend to the appellants out of the proceeds of sale.

8. They desire to save the privilege of filing bills of review, if they have it, or to acquire it, if they have it not.

9. Throughout the appellant's brief the fact is unblushingly avowed that they took the appeal, not so much for the purpose of resolving a question of legal right, as of obtaining a stay upon the appellees in the enjoyment of acknowledged rights. Having lost the grip they supposed they had acquired upon the appellees, they desire this court to furnish them, in any form or some form, some substitute for the now relaxed annoyance to which they have tried to subject the appellees, to be founded on a new calculation of compensations, offsets, and counterclaims, resulting in the striking of some or any balance in their favor.

XII.—The pretences upon which these moderate propositions are founded, are repeated in the appellants' various briefs importunately and with attempted pathos, but not always ingenuously, nor with strict remembrance of the facts shown by the record.

1. It has been stated on the part of the appellants that Pierson proved no bonds, that Dupuy proved only six, and that Hays proved only seventy-five. Here the attempt is made to confuse the case by not discriminating between what the appellees Hays Pierson and Dupuy proved, each in his own right severally, and what they proved jointly. They proved jointly many millions of dollars of bonds, as the master's report shows.

2. It is pretended that the surviving appellants represent somebody, or have a constituency besides themselves. Of this there is no proof, and

can be no presumption. They do not represent Charles Moran, for he proved his own bonds in his own name. He represented himself and has not appealed.

3. It is pretended that the transfers of bonds to Hays, Pierson and Dupuy are revocable. This is repeated as often and as confidently as if it were true; but it is the opposite of the truth. The form of the transfers is incorporated in the record, and it shows that the transfers are irrevocable.

4. It is pretended that Mr. Henry Amy, who is one of the sureties on the appeal bond, and who transferred $227,000 in bonds to Hays, Pierson and Dupuy, about September 1, 1877, reserved the right of revocation.

There is not the slightest foundation in truth for this pretence. The whole correspondence with Mr. Amy has been produced before this court, and it disposes of this pretence.

5. It is pretended that the court below expressed the opinion that the mortgaged property would sell for nothing under the decree as it stands. This pretence is at odds with the truth of history.

6. It is pretended that the appellants have used every effort to terminate the supersedeas, and it is said that they repeatedly offered, last summer, to submit the cause on printed briefs at the opening day of this term. The making of any such offer, even once, is denied. The reasonableness of any such offer, if made, is denied. The record did not reach this court until October 12. It was then largely (and on the part of the appel-

lants purposely) incomplete. It is very voluminous, and will be still more so when completed. No counsel who has a fair share of other business, and who wishes to do justice to his clients on this appeal, would be content with less than three months to prepare a brief upon it.

7. It is pretended as a grievance that the property is in the hands of "some of these same appellees." These "same appellees" have it in their hands against their own will, and desire to be rid of it.

8. It is pretended that the appellants did not ask a sale of the property in the court below. This pretence is contradicted by the record. Ketchum prayed a sale. So did Ziegler and his co-plaintiffs.

The consolidation order, which was consented to by all parties, recited that the suits were brought "*for the common purpose of securing a sale*," and it was upon the faith of that recital that the consolidation order was consented to. Neither of the suits was brought to vest the title to real estate in fee in the bondholders as tenants in common. None of the trustees had power to bring suit for such a purpose. They were appointed to sell, and the court had no power to vary the terms of the trust. The suits were brought to enable each bondholder to enjoy in severalty in money, if he wished, his share of the proceeds of a sale, and the decree was framed in accordance with, and so as to effect, that purpose. The so-called "Assignment of Errors" contained in the appellants' brief is an afterthought and a make shift. The case is within the ruling upon estoppel applied in

3 *Otto*, 49, *Terry* vs. *Abraham*.

9. It is pretended that Mr. Justice Bradley expressed the opinion or uttered the sentiment that some oppression was in danger of being used towards the "minority." This pretence is, if the appellees rightly understood Mr. Justice Bradley, contradicted by the record. He examined the scheme under which Hays, Pierson and Dupuy are acting, and states that the court was unable to point out any want of fairness in it. He nowhere contradicted the idea that the proprietor of a large interest has as much right to consideration, has as strong a claim to protection, has as good a title to his proportion of the proceeds of sale, as a small one; and has even as well founded a demand for indemnity against expense, unless the small proprietor has obtained the privilege of suing *in forma pauperis.*

10. It is pretended that the decree below excluded the appellants from their share of the proceeds of sale. This pretence is contradicted by the decree itself. It orders a sale to be made "for cash." Inasmuch as the bondholders are to receive the cash, it authorizes the purchaser to make his payment in bonds at their actual value, ascertained by reference to the amount bid. So far as he cannot pay in bonds he must pay in money. This, in the nature of things, is what the court could not help doing, in whatever words its decree might be framed. It could no more protect the so-called "minority," beyond this, on a foreclosure sale, than it could on a partition sale, and the court would go beyond its duty if it made the endeavor to do so. But, in truth, there is no "minority" or "majority" in point of legal right. The owner of ten bonds has a legal right to the proceeds of ten bonds, but that is no greater than the right of the owner of one bond to the proceeds of

one bond, nor is it any less. The fact that, in numerical weight and in purchasing power, one is less than ten, is a fact of nature, not of human law.

11. It is pretended that by submitting to the terms of sale, the appellants would have got $440,000 for "*their million*," while by some other process they would have got $560,000. What that other process is, is not apparent. How, by selling for something else than cash, $120,000 additional in cash would have been realized, requires superhuman vision to see.

12. It is pretended that the decree is framed so as to make it to somebody's interest to buy the road for the least he can. Can any decree be so framed as to make it anybody's interest to buy at the *highest* price possible? Would the property bring more, if creditors were excluded from competition? The decree operates, in fact, to make it the interest of any large body of bondholders to bid as high as any one.

13. It is pretended that at first the decree provided for admitting all creditors into partnership with the purchaser down to the time of sale. This pretence is contradicted by the record. No such decree was made. What the court said—as quoted in the appellants' brief—was not mandatory, but kindly and conciliatorily advisory as follows:

> "Looking at the difficulties which beset the subject on every side, we think that if we allow the non-subscribing bondholders to participate in the purchase of the property, should it be made in behalf of the mortgage combination, on an equal footing with those who have joined it, that we shall have done all that we can do under the circumstances to protect their inte-

rests. The parties representing the reconstruction scheme, through their counsel, have offered to allow them to come in, and to extend the time for doing so until the first of August. We suggest that this time should be extended to the day of sale of the property. We perceive that the trustees have the power to do this—and keep the agreement on foot by extending the time sixty days at a time. We have, therefore, proposed an additional proviso to the decree to carry out this view. We hope that it will be acceded to by the counsel for the complainants and those representing the reconstruction schemes. We do not wish to dictate these terms to the parties who propose to purchase, but suggest that, in our judgment, the interest of all parties would be subserved by an arrangement of this sort. [The counsel for the complainants having suggested that it was very desirable, if the plan of reconstruction should be generally adopted, to avoid any sale at all, and proposing to extend the time for other bondholders to come to an arrangement, to the 1st of September, the court adopted that modification, and announced that the decree would be made accordingly unless very forcible objections to it should be presented at to-morrow's session of the court.]"

XIII.—These pretences being disposed of, the propositions of the appellants, so persistently forced upon the court, notwithstanding their repeated discussion and rejection, come to be considered.

1. The appellees do not ask the appellants to withdraw their appeal. The appellees are willing that it should be argued on its merits, in due season and with proper preparation—which is due to the case and to the court—and upon a proper transcript of the record. They therefore have no offer to make as an inducement to a withdrawal of the appeal. And they earnest-

ly protest against being deprived of any legal right to which they are entitled, in order to compensate the appellants for parting with what the appellees have no use for. They carry their objection further. They earnestly protest against the conversion of this high tribunal into a brokerage board to negotiate bargains between parties who do not agree as to their legal rights. The proposition of the other side is, in substance, to dismiss their appeal when the decree is reversed.

2. Why should *the appellees* pay or deposit any money to or for the appellants, as a condition of being allowed to prosecute a decree which they have a legal right to prosecute ?

These suits were brought for the purpose of raising money to be distributed among those creditors who chose to take it.

The *appellees* do not owe the appellants anything. The decree does not establish the relation of debtor and creditor between them.

The original order of the court was that *the purchaser* should pay money, which the masters were to deposit in court for the security of the appellants. This was just ; but the appellants showed a want of confidence in the registry of the Circuit Court. This court respected their scruples, and substituted a non-negotiable bond, payable to the United States. But the suspicions of the appellants now attach to the United States.

If money is deposited by the appellees, what is to be done with it ? Is *the purchaser* to get the property for so much less, or is he to pay the full amount of his bid, and is the deposit then to be repaid to the appellees ? That would be a needlessly circuitous transaction, and, on the theory of the appellants as to the insecurity of the deposit, a very dangerous one besides.

If the appellants had proposed that the masters should ascertain the difference between the share of the proceeds coming to the appellants under the decree as it stands, and the share which would come to them upon a reversal as to the coupons of 1874, and should exact from the purchaser a bond for the payment of the difference, and that the bond should constitute a paramount lien on the mortgaged property, they would, for once, have proposed something reasonable.

3. If the appellees, instead of the purchasers, are to deposit money, why should the amount of the deposit be fixed at $600,000, or $229,000, or $75,000, or at any sum in excess of $4,000? The appellants do not represent any one but themselves,—if it be even true that they do that. They appealed in their own names, not as representatives.

It is not the duty of the court, nor of the appellees, to guarantee any certain result from a foreclosure sale. If the property brings the amount of the debt the appellants will be paid in full. If it brings less, they will get less, because entitled to less. In that event, the exaction of a larger deposit would be equivalent to the imposition of a penalty upon the enjoyment of an undisputed legal right. The appellees should not be called upon to assume a debt for which the land alone is liable, until they shall have received something belonging to the appellants.

If a deposit is made to the amount of $600,000 or $229,000, what is to become of it? Is it to be allowed to the purchaser against his bid, or is he to pay his bid without regard to the deposit?

It is not to be presumed that the property will bring less under the decree as it stands than it would if the coupons of 1874 were disallowed. The presumption is the other way: because the fund available in the purchase is larger.

4. Why should the appellees, as a condition of enjoying an acknowledged legal right, be required to deliver a release of the *supersedeas* bond? The reason assigned is, that the counsel who advised the appellants to give it, misled his clients. That reason would lead rather to the conclusion that the counsel ought to assume the liability, than that the appellees should lose the security.

The appellants have had the benefit of the bond for eight months. If a liability under it has accrued, the sureties should not shirk. If not, a release is unnecessary. It is not the province of this court to decide, in the first instance, how that is.

5. Why should it be imposed as a condition of allowing the appellees to purchase the property, that they should go into partnership with the appellants? Why should it not be imposed upon any other purchaser as well? Why should it not be imposed upon the appellants in favor of the appellees? Why should it not be imposed or dispensed with according to the extent of the purchaser's capital? Why should it not be applied if the property sells for $5,000,000, and not if it sells for $2,000,000? What rule of law or equity justifies its being imposed at all? Why should not *the appellants* be commanded to share in the purchase at the option of *the appellees?*

The appellees do not wish to buy the property, if it is to be incumbered by an enforced association with the appellants.

The creditors are entitled to a free sale of the property, unincumbreed by conditions which discourage competition and reduce the price.

The agreement under which Hays, Pierson and Dupuy are acting, creates a private trust not brought before this court for its cognisance. If its terms are altered by this court against the will of all parties, it is void, and the whole arrangement is at an end. The court can not turn Hays, Pierson and Dupuy into trustees against the conditions of the instrument, without risk of injury.

It is claimed by the appellents that they have an equity to be admitted, because their election to stay out was dictated by an over estimate of the duration of a stay, founded on bad advice. The same bad advisers are, however, the sponsorsfor the supposed equity. But the appellants made their choice deliberately. The advice they had was not so bad but that they knew there was at least a chance of the decree being affirmed, and knew, also, that an affirmance would put an end to the stay, leaving them unprovided for but at the option of the appellees.

Does it make any difference that the stay expired at the end of eight months, instead of lasting three years? No event has happened but one which they were bound to anticipate, although it has happened earlier than their astute calculations foretold, and less to their profit than they may have suggested to their advisers.

Equities are not to be guessed at. They depend upon circumstances; and here the appellee's counsel may, with propriety, repeat what was said on a former occassion, as follows:

"It was suggested heretofore by the appel-
"lants that they were aggrieved by the fact that
"the Court below fixed a period within which
"they must elect to abandon the litigation and
"share in the purchase if Hays, Pierson and
"Dupuy should make it, or to pursue the litiga-
"tion and abandon the share in the purchase.

" It was thought that the Court should make " some effort to equalize the advantages and " disadvantages growing out of an unequal distribution of property, and compel the large " proprietor (whose own industry, business skill " and good fortune had made him so) to divide " his rights with the small proprietor. To that " end it was thought of by the Court that it " should decree a strict foreclosure in favor of " all the creditors ; or should direct the trustees " to purchase for the benefit of all, in proportion to their respective interests. But it was " foreseen that this machinery would not be " adequate to the purpose of lowering the small " bondholder to the pecuniary level of the large " one, because the same preponderating influence " would, as inexorably as the laws of gravity, " and beyond the potency of any Court to counteract it, legitimately make itself felt in the administration and partition of the property, and " in the execution of the trust.

" Whether natural equity requires (as artificial "law does not) that the successful party shall share " his advantages with the defeated one is a question whose solution depends upon facts—and " here some facts are wanting. If the coupon " holder paid dollar for dollar for his coupons " in order to prevent the mortgaged property " from being sacrificed in time of depression, " while the small bondholder paid only forty " cents on the dollar for *his* securities, and if " the latter for years maintained a war with the " former, rejecting all overtures of peace, and insisting that the coupon holder should have " nothing but his legal rights—there are minds " which might be insensible to the equity of " giving to the coupon holder any less than those " rights when he has established them at an expense of scores of thousands of dollars ; and " there are those to whom it would not be clear "that equity awards to the bondholder who has raised "so loud, and maintained so long, a clamor, any more "than the law allows him, when it is found out what "that is."

If an association with the appellants is to be forced on the appellees, it should be upon condition that the appellants pay all the expenses of the litigation down to this stage of it, and of the reorganization scheme as well.

The privilege of participating in the purchase was offered the appellants as an inducement to abstain from litigation. They would not and did not abstain. They have withheld from the appellees the equivalent which the latter were to have for the rejected privilege, and yet they ask the privilege all the same.

To coerce the appellees into a partnership with the appellants would be to defeat the object of the suits, which was, to enable each creditor to sever his own share of the property from the shares of others, if he chooses.

This is neither the time nor the place to anticipate and correct possible wrong in the sale. That will be under the control of the court below.

6. Why should this Court "make provision for the expense of trust?"

The Court below reserved that and all similar questions.

Ketchum is not a trustee.

2 *Woods*, 532, *Ketchum* vs. *M. & O. R. R. Co.*

If he is a trustee, he has committed a breach of trust by making war on his beneficiaries, the coupon holders. Moran, as appears by Moran's deposition, has indemnified him.

7. Why should the Court make any compensation to the appellants at the expense of the appellees for justly depriving the former of an illegal advantage, which they have been enjoying for eight months?

XIV.—It is submitted that the present application of the appellants should be denied except, perhaps, as suggested above, at paragraph 2 on page 32.

In pursuance of that view it is respectfully suggested that the court may with propriety pass an order substantially as follows:

"Ordered that the order made on this appeal on the eleventh day of February, 1878, be so far modified as that the bond thereby required on the part of Hays, Pierson & Du Puy shall not be required, but shall be dispensed with; but that the masters upon making the sale shall ascertain the difference between the amount coming to the appellants and those whom they lawfully represent in this appeal out of the proceeds of the sale under the decree as it now stands, and the amount which they would receive out of the proceeds of such sale in case the said coupons of 1874 had been disallowed; and that the masters accept from the purchaser in part payment for his bid his bond for the amount of such difference, and interest thereon, conditioned for the payment of such difference upon the determination of this appeal, the proceeds of such bond to be appropriated to the benefit of the holders of said coupons, or to the benefit of the appellants, and those whom they may legally represent on this appeal, as the case may require, and such bond to constitute a primary purchase money lien as against the purchaser, and his representatives and assigns, upon the real estate acquired by him as such purchaser at such sale."

P. S.—After the above was placed in type, the appellee's counsel was served, at the City of New York, February 20, with a copy of an affidavit of Mr. E. H. Grandin and a notice that the appellants had filed a petition for a re-hearing of the appellees' motion to vacate the supersedeas, and that if a re-hearing was granted, the oral argument would be had on February 22.

It appears from Mr. Grandin's affidavit that an Alabama Court of Chancery has restrained Mr. Morris

Ketchum from acting as trustee, under the first mortgage of the Mobile & Ohio Railroad Company. How or why that fact should induce this court to give to the appellants indemnity or compensation for having justly deprived them of an unlawful advantage, which they have been enjoying for eight months, at the expense of the appellees, is not made clear. The fact, however, seems to point to the animus of the application now made to this court, to "*make provision for the expenses of trust.*" That application appears to be an indirect attempt to get from this court a review or reversal of an interlocutory decree of a State Court, to the end that counsel for Mr. Ketchum may obtain compensation pending the proceedings for a sale, although the Circuit Court reserved the question of such compensation until after the sale. Mr. Grandin was engaged, it appears, in an attempt to precipitate the question of fees, contrary to the decree of the Circuit Court. In view of these facts, it is presumed that this court will not look upon the application to "make provision for expenses of trust," with any favor.

Regarding the application for a re-hearing, it is respectfully suggested that, after numerous and elaborate briefs in print, and oral discussions of exceptional length and duration, argument might well be considered as exhausted. The later arguments of the appellants are merely repetitions of what they said at first, and reply is only a repetition of former responses. A re-hearing should have been applied for in respect to the order of December 10 before the order of February 11 was made. Instead of asking for a re-hearing of the order of December 10, the appellants moved for and have obtained a modification of that order after elaborate oral arguments. This involved a waiver of all claim for a re-hearing of the order of December 10.

The appellees' counsel also received, on February 20th, at New York, a copy of the printed brief used by the appellants in this court on February 18th, and to which the above reply had been already prepared, with some MS. additions.

By one of these MS. additions the appellants ask, as compensation for having been justly deprived of an illegal advantage which they have been enjoying for eight months, that "the present order be modified, or the issuing of the mandate stayed, unless the appellees stipulate to admit appellants and their *cestuis que trust* into bond purchase after the decision of appeal, and without regard to its result." This is the same proposition already so often argued. This court should not take away one legal right from the appellees as a condition of declaring them entitled to another.

By another MS. addition the appellants ask that their bond be reduced to amount of appeal bond. The objections to this proposition are embraced in what is above said. The bond, as it stands, is a contract of which the consideration, construction, and obligation will be determined whenever an attempt is made to enforce it.

The order of February 11 has already been entered of record in Mobile.

By another MS. addition the appellants ask that the time for redemption be extended to Oct. 1st. The appellants are not the owners of any equity of redemption. That interest belongs only to the junior incumbrancers' and to the mortgagor. What have the appellants to do with protecting or enlarging it? Why should the court, as a compensation or indemnity to the appellants for justly depriving them of an illegal advantage which they have been enjoying for eight months, give them a privilege which they have no interest in using and no right to use?

There are no other MS. additions; and the appellee's counsel, therefore, humbly hopes that there is, and will be, nothing more for him to reply to.

Francis N. Bangs,
For Appellees.

Nov 26 1877
Submitted

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1877.

No. 879.

MORRIS KETCHUM et al.,
Appellants,
vs.
WILLIAM BUTLER DUNCAN et al.,
Appellees.

Amended Petition and Notice, on Motion to Dismiss Appeal and Vacate Supersedeas.

JOHN A. CAMPBELL,
Of Counsel for Petitioners W. B. DUNCAN *et al.*

F. N. BANGS,
Of Counsel for Petitioners HAYS *et al.*

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, CORNER FULTON STREET.
1877.

Post

IN THE

Supreme Court of the United States. 1

OCTOBER TERM.—1877.

MORRIS KETCHUM ET AL.,
Appellants,
vs. No. 879.
WILLIAM BUTLER DUNCAN ET AL.,
Appellees.

To the Honorable the Supreme Court of the United States:

The petition of William Butler Duncan and Andrew Foster Elliot, in their own right as individuals, and 2
as trustees under the mortgage hereinafter mentioned, and of William H. Hays, William S. Pierson, T. Haskins Dupuy and Alexander Duncan, respectfully shows as follows:

In or about the year 1853, the Mobile & Ohio Railroad Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the State of Alabama, and operating also under and by virtue of the laws of the respective States of Mississippi, Tennessee and Kentucky, executed a mortgage upon its property and estate to Morris Ketchum, William R. 3
Hallett and John J. Palmer, to secure the payment of an indebtedness incurred by the said company, evidenced by bonds issued by said company for the principal sum of six million dollars, and interest thereon, which bonds bore interest, payable semi-annually, evidenced by coupons attached to said bonds respectively.

Prior to the year 1870, default was made by the said company in the payment of some of the interest coupons attached to said bonds, and thereupon said coupons were funded, and new bonds were issued there-

4 for, secured by the said first mortgage, such new bonds being known partly as sterling-interest bonds and partly as dollar-interest bonds. In the year 1875, William Butler Duncan and Andrew Foster Elliot, claiming to have become trustees under said mortgage in the place and stead of the original trustees named therein, commenced an action in the Circuit Court of the United States for the southern district of Alabama, to enforce the payment of the indebtedness secured by said mortgage, by a sale of the mortgaged property, and they were by said court appointed to be receivers of said property pending said suit, and they took possession of the property purporting to be covered by
5 said mortgage. The said William Butler Duncan and Andrew Foster Elliot, by direction of the parties interested therein, claimed in their bill of complaint in their said suit that said company had made default in the payment of all the interest which accrued upon said bonds within the year 1874. In said suit such proceedings were had that afterwards, and on or about the sixth day of March, 1876, an order was made by said court in the words and figures following:

IN THE

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF ALABAMA,

6 FIFTH JUDICIAL DISTRICT OF THE UNITED STATES.

WM. BUTLER DUNCAN, A. FOSTER ELLIOT *vs.* MOBILE & OHIO RAILROAD COMPANY, Wm. D. Dunn, George H. Young and others.	No. 90.

AT CHAMBERS, 6th March, 1876.

This cause has been submitted to the court on the bill, answers, exhibits, replication, and the orders and

proceedings in the suit, and a motion has been made 7
by the plaintiffs for the appointment of a master and a reference to him of the pleadings and proofs, to make the necessary inquiries and report, to prepare the cause for a hearing.

And after an examination of the matters submitted, and a consideration of the motion, the court orders: That James Gillette be appointed special master for this cause, and is directed to examine the mortgage or deed of trust attached to the bill as an exhibit, and to ascertain and report the railroads, branch railroads, estates, rights, property, movable and immovable, included in the terms and conditions of the same, and which have come to the possession and control of the trustees, and are subject to the decree of the court in this suit.

2. The court orders that the said master report the 8
mortgages, deeds of trust, agreements, judgments or other instruments which create a charge, lien or incumbrance on the said mortgaged property, with the order and priority of each of them, in imposing a charge upon the said property, and entitled to payment from the same.

3. The court orders the said master to report the bonds which are secured by the respective mortgages or deeds of trust, or incumbrances, and the amount thereof, and of the interest due thereon, and which form a (present or future) valid claim upon the said corporation; and if the debt exist in any other form than of bonds, then that he report the debt which may be due, or may become due, on the said several securities of the said corporation. Also the master
will report the names of the holders of the securities 9
of the company which may be presented and proved to him, and the sum due to each holder.

4. In taking proofs of the debt the master may receive the original bonds, coupons or agreements of the corporation as evidence.

He may allow to be filed with him sworn copies of the bonds, coupons or other forms of debt charging the property, to be taken before any commissioner of the courts of the United States, or other officer authorized by the laws of the United States to administer oaths and to certify depositions, with affidavit of their ownership and authenticity. It shall be lawful for the master to designate, in the cities of New York, London, Amsterdam, or elsewhere if needed or be found

10 expedient, commissioners of the Circuit Courts of the United States, or consuls or vice-consuls of the United States, to advertise for the proofs of bonds and coupons, and to take proofs of the debts according to the forms of the proofs taken of claims in bankruptcy, and to prescribe a mode for the identification of the bonds so presented and proved to the said officers. And the said master may appoint persons in other cities to take such proof, if in his judgment it may be necessary or expedient. He may also examine the books of the Mobile & Ohio Railroad Company and its officers, so as to ascertain with exactness the debt due by the corporation which is secured by mortgage or which create liens on the property of the corporation embraced in the mortgage of the plaintiffs.

5. The court orders that if the trustees in the deed
11 of trust of said corporation, dated the 1st day of July, 1871, to wit: William Butler Duncan, Adrian Iselin and Richard T. Wilson should elect to do so, to allow them to file, within sixty days after the date of the filing of this order, a petition to become plaintiffs in this bill, and to set up therein their claims as trustees upon the said mortgaged property, or any portion of the same, upon their consent to abide the order and the decree of this court; and in the event of their election to do so, the master will take proofs of the deed of trust, and shall proceed in reference to the same in the same manner as he is ordered to do in respect to the first mortgage attached to the bill and to the claims under other deeds of trust, mortgage, or other incumbrances before mentioned.

6. The master may advertise in a paper published
12 in Mobile and New York, that he is ready to receive the proofs of the debts secured by the mortgages of the company, and shall give notice in the said advertisement, of the mode of making proofs, and before whom they can be made, and he shall authorize advertisements to be made in London and Amsterdam of a similar description by the officers to be designated for the purpose by him.

And the trustees of the several mortgages which have been produced to the court, and the Mobile & Ohio Railroad Company are required to aid and to assist the master in collecting the proofs needed to making the report of the amount of the debt due on

their respective mortgages and deeds of trust, so that 13
he may be able to perform his duty with promptitude
and with accuracy in settling a report for the court.

7. The office of the master must be open for the receiving of proofs, in the City of Mobile, three days of every week, and he may receive proofs every judicial day of the week, until the 15th day of October next, on which day the time for taking proofs shall be closed, unless the time be prolonged by a special order from one of the judges of the court.

8. The master may, during this period, make separate reports to the court of the matters submitted and hereinafter described, which may be filed in the office of the clerk of the court for examination and for exceptions.

But no report in reference to the debts so filed shall
be confirmed until after the 15th day of October next 14
and unless it shall have been filed thirty days in the
clerk's office.

9. Exceptions to the reports may be filed by the parties to the bills, but should any creditor who shall prove his claim be desirous to contest any other claim proved, and the trustees representing the claim of such creditor shall neglect or refuse to make the exception proposed by the creditor, upon proof that he has made the request of the trustee, and the neglect or refusal by him, the master shall allow of the exception or contestation, and shall report on it as if made by the trustee.

10. The master shall make up his entire report or
reports, under this order, on or before the first Mon-
day of December next, and shall file the same on or 15
before that day, and the usual time for examination
and exception shall be given after the date of the filing of the report. He may, before making his report, call the parties before him, to consider the draft of the report and hear argument of counsel thereon, and the proofs shall be open to inspection.

His report shall embrace the best mode of disposing of the property, in case a sale shall be deemed necessary or proper, and his opinion of the present and prospective value, and he may report the price at which a foreclosure, without sale, may be best accomplished in the interest of all parties.

16 11. The master is at liberty to consider of a plan for the reorganization of the corporation, should the creditors of the same agree thereto. Any plan for that purpose presented by three-fourths of the creditors owing the different classes of debt, and supported by a corresponding portion of the holders of stock, he may report, with his opinion thereon. He shall take care to ascertain whether the plan proposed be assented to by the parties interested, to the extent aforesaid, before he accepts it for any purpose.

12. The master will make a separate report of the allowances to be made to the trustees for their services and as compensation, and the allowances for the charges, expenses, costs, and other forms of claim which are set forth in the deed of trust, or which have arisen in the course of the cause.

17 March 6, 1876.

W. B. Woods,
Judge.

Under the said order, owners of the bonds and coupons originally put in circulation upon the security of said mortgage, to the aggregate amount of four million nine hundred and ninety-two thousand four hundred and fifty-seven dollars ($4,992,457) in gold, and of sterling interest bonds and coupons to the aggregate amount of $820,858, gold, and of funded dollar interest bonds and coupons to the aggregate amount of $1,284,800 in currency of the United States, proved their claims before the special master appointed by the said order. 18

Among others, your petitioner, Alexander Duncan, produced and proved before said master, under said order, detached coupons which had matured in 1874, and were secured by said mortgage, to the principal amount of about $535,000; and one Louis Belloni, Jr., who had proved bonds to the amount of $6,000 under said order, requested said Duncan & Elliot to object to the allowance of said coupons as a part of the mortgage indebtedness, and said Duncan & Elliot did so object; and then, in support of said coupons, and

in opposition thereto, a lengthy and tedious litigation 19
ensued between said Alexander Duncan as the proponent of said coupons for allowance under said order, and said Belloni as such objector. During such litigation, said Hays, Pierson & Dupuy became owners of said coupons, by assignment from said Alexander Duncan, and filed with said master their claim thereon, and continued the litigation with the said Belloni. The said master, by his report, sustained the claim upon said coupons, as a part of the indebtedness, but not as entitled to priority; and said Hays, Pierson & Dupuy in the name of said Alexander Duncan ~~and your petitioners~~ excepted to said report, and said Belloni also excepted to said report.

20 In the year 1871, the said railroad company had executed a trust deed upon so much of its property as was situate in the State of Tennessee, in order to declare, acknowledge, continue and protect, in favor of an issue of bonds made by the said company, a lien upon the property of the said company situate within the State of Tennessee, prior and paramount to the lien of said mortgage of 1853, the bonds so issued amounting in the aggregate, with the unpaid coupons thereon, to the sum of two million fifty-three thousand three hundred and eight dollars ($2,053,308), and said bonds last mentioned became current and are known, as the Tennessee substitution bonds.

Your petitioners, Hays, Pierson & Dupuy, before
the month of June, 1877, had become the owners of 21
several millions of dollars of the evidences of debt issued by said company on the security of said mortgage of 1853, which claims said Hays, Pierson and Dupuy proved before said master, under said order of March 6, 1876, and which have never been disputed or objected to; and said Hays, Pierson, and Dupuy now are the owners of bonds originally issued under said mortgage of 1853, and of coupons originally attached to such bonds, to the aggregate amount of $5,993,635.65, and of funded sterling interest bonds and

22 coupons issued upon the security of said mortgage of 1853 to the aggregate amount of $918,913.92, and of funded dollar interest bonds and coupons issued upon the security of said mortgage of 1853 to the aggregate amount of $1,712,803.80, and of said Tennessee substitution bonds and of coupons originally attached thereto, to the aggregate amount of $1,954,828; and said Hays, Pierson & Dupuy have also become and now are the owners of interest coupons, in addition to those above referred to, detached from bonds of which they have not become the owners, to the aggregate amount of $80,540, the aggregate amount of paramount and subordinate liens on said mortgaged property, now, on October 18, 1877, held by said Hays, 23 Pierson & Dupuy, being $12,453,823.11 out of total outstanding issues amounting to $14,120,849.62; and the following is a correct statement of the mortgage liens of the said railroad company and of the proportion of the said liens of which said Hays, Pierson & Dupuy have become and now are the owners, holders and possessors.

(*See statement on next page.*)

STATEMENT OF THE MORTGAGE LIENS OF THE MOBILE & OHIO R. R. CO.

	OUTSTANDING ISSUE REPORTED BY MASTER.			BONDS, &C., PROVED BEFORE SPECIAL MASTER.			OWNED BY HAYS, PIERSON & DUPUY.			
	Bonds.	Coupons thereof due and unpaid.	Total of bonds and coupons.	Bonds.	Coupons.	Total of bonds and coupons.	Bonds.	Coupons.	Total of bonds and coupons.	
First Mortgage Bonds. £.	$5,609,000 00	$1,289,941 80	$6,898,941 80	£918,225 00	£187,292 55	$4,902,457 23 Gold.	$4,883,000 00	$1,110,635 65	$5,993,635 65	88%
£. Interest bonds.....	769,920 00	152,444 16	922,364 16	£141,900 00	26,652 00	$820,858 00 Gold.	767,040 00	151,873 92	918,913 92	99%
$ Interest bonds.....	1,518,000 00	365,832 00	1,883,832 00	$1,004,100 00	280,700 00	$1,284,800 00 Currency.	1,380,400 00	332,403 80	1,712,803 80	92%
Detached coupons of 1874, from bonds not owned by Hayes, Pierson & Dupuy.								80,540 00	80,540 00	
Total liens of 1853....	7,896,920 00	1,808,217 96	9,705,137 96				7,030,440 00	1,675,453 27	8,705,393 37	89%
Tennessee substitution bonds..........	1,668,000 00	385,308 00	2,053,808 00	120,000 00	91,805 00	211,805 00 Gold.	1,588,000 00	366,828 00	1,954,828 00	95%
Total of first liens....	9,564,920 00	2,193,525 96	11,758,445 96				8,618,440 00	2,042,281 37	10,660,721 37	91%
Other mortgage liens outstanding........	1,927,707 05	434,696 01	2,362,403 06	1,257,154 68	285,539 88	1,542,694 56	1,532,264 74	260,837 00	1,793,101 24	75%
Totals...............	$11,492,627 05	$2,628,221 92	$14,120,849 02	$7,152,811 03	$1,699,204 57	$8,852,015 60	$10,150,704 74	$2,303,118 37	$12,~~446~~ 453,823 11	88%

27 After the commencement and during the pendency of the said suit of the said Duncan & Elliot, and after the making of said order of March 6, 1876, and on or about the 14th day of March, 1876, the said Morris Ketchum, claiming to be still a trustee and the sole surviving trustee, under the said mortgage of 1853, also brought an action in the said Circuit Court of the United States for the Southern District of Alabama, on the Equity side of said court, to which action he made the said railroad company, and also the said Duncan & Elliot, parties defendant; and in his said bill the said Morris Ketchum claimed that the company had not made default in the payment of the coupons
28 which matured as aforesaid within the year 1874, but that the said interest had been paid and the claim therefor extinguished, and that said Alexander Duncan was not entitled to collect the same; but the said Morris Ketchum also alleged and claimed that the said company had, in the year 1875, made default in the payment of the interest which then accrued under the said mortgage of 1853; and the said Morris Ketchum brought his suit for the apparent or, at least, the avowed, purpose of enforcing, by the sale of the mortgaged property, the payment of the indebtedness which he admitted had accrued and remained unpaid under the said mortgage, as well as for the purpose of excluding said coupons of 1874 from all share in the pro-
29 ceeds of said sale, and also for the purpose of preventing said William Butler Duncan and Andrew Foster Elliot from exercising any power, authority, or right under said mortgage of 1853; but said Ketchum did not make said Alexander Duncan, or said Hays, Pierson, or Dupuy a party to his said bill.

Afterwards, and on or about the fifth day of February, 1877, Charles Moran, as attorney in fact for, and in the names of, D'Orelli Ziegler, Bernard de Watteville, Henry Jump, and Masson Chavannes, as plaintiffs and as holders of bonds issued and outstanding upon the security of the said mortgage of 1853,

claiming also that the said railroad company had not 30
defaulted in the payment of the interest which matured as aforesaid within the year 1874, and that the coupons for such interest had been paid, and claiming that there was doubt upon the question who was the trustee, or who were the trustees, entitled to act in enforcing said mortgage of 1853, brought a representative suit on the behalf of said Ziegler and his co-plaintiffs and others similarly situated, on the Equity side of the said Circuit Court, against the said railroad company, the mortgagor, and against the said Duncan & Elliot, and against the said Morris Ketchum, asking for a decree to enforce, by a sale of the mortgaged property, the pay- 31
ment of the indebtedness which they admitted had accrued under the said mortgage, excluding said coupons of 1874, but did not make said Alexander Duncan, nor said Hays, Pierson, or Dupuy a party to said bill: but your petitioners say that, before the filing of the said bill of the said Ziegler and his co-complainants, the said Ziegler and his co-plaintiffs had, in the name of Charles Moran, or Moran Brothers, put in proof before the master appointed by the said order of March 6, 1876, in the suit in which said Duncan & Elliot were plaintiffs, whatever bonds were held by them, the said Ziegler and his co-plaintiffs, and so had become parties to said first suit;
and Rudolph Merian, Eugene Renevier, Charles Car- 32
rard and Cephise Chuffard, had also, in the names of said Charles Moran, or of Moran Brothers, and by virtue of said order of March 6, 1876, proved certain first mortgage bonds and coupons held by them, before said master; but neither of the said Ziegler, Jump, Chavannes, De Watteville, Renevier, Merian, Carrard, Chuffard, Moran, or Moran Brothers, had made any objection under said order of March 6, 1876, to the claim offered for proofs by the said Alexander Duncan, or by said Hays, Pierson, and Dupuy; and said Alexander Duncan had also, under said order of reference,

33 put in proof bonds secured by said mortgage of 1853 for the principal sum of $75,000, to which no objection was made by any party.

Your petitioners further show that the said suit in which Duncan & Elliot were complainants, was ready for final hearing at a stated term of the said Circuit Court, appointed to be held at the City of Mobile on the first Monday of June, 1877; but neither of said other suits was then ready for hearing, because issues of fact had not been joined, nor had any order of reference been made nor any proofs been taken, therein; and counsel for said railroad company, and for your petitioners, Duncan and Elliot, and for said Ziegler 34 and his co-complainants, and for said Morris Ketchum, respectively, and for your petitioners Hays, Pierson and Dupuy and Alexander Duncan jointly, appeared, and certain orders were made by the said court, of which the following are copies:

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF ALABAMA.

W. B. DUNCAN, A. F. ELLIOTT, AS TRUSTEES, &c.,

vs.

35 THE MOBILE & OHIO RAILROAD Company, Rodolph Merian, *et al.*

And now come Rodolph Merien, Eugene Renevier, Charles Carrard and Cephise Chuffard, and move in open court that they may be admitted as parties defendant to the bill herein, with leave to file an answer thereto with all the rights of parties to said bill.

After hearing counsel, and the court being duly advised,

It is ordered that the said Rodolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard be, and they are hereby, admitted as parties defendant to this suit, and that they have leave to file an answer to the bill herein, and they have and exercise all the rights and privileges of parties to the record herein. 36

JOSEPH P. BRADLEY,
C. Justice.
W. B. WOODS,
Circuit Judge.

Filed June 5th, 1877.
N. W. TRIMBLE,
Clerk.

At a Stated Term of the Circuit Court of the United States, for the Southern District of Alabama, held at the Court House, in the City of Mobile, on the 5th day of June, 1877. 37

Present—Hon. JOS. P. BRADLEY,
Circuit Justice, &c.
" W. B. WOODS,
Circuit Judge.

WM. B. DUNCAN AND ANDREW F. ELLIOT
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

The parties appearing in open court, by their respective solicitors and counsel, and consenting to this order, on motion of Mr. F. N. Bangs, solicitor and of counsel for Wm. H. Hays, Wm. S. Pierson, and T. Haskins Dupuy, claiming to be the assignees and owners of the claims of Alexander Duncan, exhibited before the master in this cause under an order made March 6th, 1876, it is ordered, 38

That said Wm. H. Hays, Wm. S. Pierson, and T. Haskins Duupy be, and they are hereby, admitted to prosecute the claims of the said Alexander Duncan in this court, and, if so advised, by appeal, review and otherwise as they may be advised, in the same manner. and with the like effect, and to the same end and intent, with which the said Alexander Duncan can prose-

39 cute the same, or could have prosecuted the same if he had continued to be the holder of such claims.

JOSEPH P. BRADLEY,
C. Justice.
W. B. WOODS.
Circuit Judge.

Filed June 5th, 1877.
N. W. TRIMBLE,
Clerk.

Your petitioners further show that at the same time orders were made by the court, by consent of the parties concerned, admitting your petitioners to be defendants in said Ketchum suit and in said Ziegler suit, of one of which orders the following is a copy:

40 At a Stated Term of the Circuit Court of the United States, for the Southern District of Alabama, held at the Court Room, in the City of Mobile, on the 5th day of June, A. D. 1877.

Present- Hon. JOS. P. BRADLEY, Circuit Justice, &c.
" W. B. WOODS, Circuit Judge, &c.

MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD AND OTHERS.

41 The parties appearing in court, by their respective solicitors and counsel, and consenting to this order, it is ordered,

That Wm. H. Hays, Wm. S. Pierson, and T. Haskins Dupuy be, and they are hereby, admitted to intervene for their own interest, as defendants, in this suit, in the same manner and with the like effect as if they had been named as defendants in the bill, and had been brought into court by a subpœna, with leave to file the answer herewith submitted to the court by them, and this day filed.

JOSEPH P. BRADLEY, C. J.
W. B. WOODS, C. J.

Filed June 5th, 1877.
N. W. TRIMBLE,
Clerk.

And at the same time the following order was made in all of the said suits : 42

At a stated term of the Circuit Court of the United States, for the Douthern District of Alabama, held at the Court House in the City of Mobile, on the 5th day of June, 1877.

Present—Hon. Joseph P. Bradley, Circuit Justice, &c.
" W. B. Woods, Circuit Judge.

Wm. B. Duncan and Andrew F. Elliot, Trustees, &c.,

vs. 43

The Mobile & Ohio Railroad Company et al.

Morris Ketchum

vs.

The Mobile & Ohio Railroad Company et al.

D'Orelli Ziegler et al.

vs.

The Mobile & Ohio Railroad Company et al. 44

The parties in these several causes appearing in open court by their respective solicitors and counsel, and consenting to this order.

And it appearing to the court that the above entitled suits are instituted for the common purpose of securing a sale of the Mobile & Ohio Railroad and other property of the Mobile & Ohio Railroad Company, under the first mortgage thereof, and disputes having arisen as to the legal title of and in said first mortgage, which might embarrass the sale of the mortgaged premises, and it appearing to the court that

45 all parties claiming said legal title are before the court, and likewise the *cestuis que trust* of said first mortgage, and that a full and perfect title to said railroad and other mortgage property may be obtained under decrees in all of said suits combined.

It is, therefore, ordered that the above causes be consolidated, and proceed concurrently before this court to final decree.

And it is further ordered that all the proofs taken, orders made, and proceedings had, in the cause first above entitled, may be read upon the hearing of the causes so consolidated in the same manner and with the same effect as if taken, made and had in all of said causes, and that the evidence taken before the master in said first mentioned cause be read and used as evidence on the final hearing of said causes; and that 46 said causes be set down for final hearing on the pleadings, proofs, orders, and proceedings forthwith.

JOSEPH P. BRADLEY,
Circuit Justice.
W. B. WOODS,
Circuit Judge.

June 5th, 1877.

The above order is made without prejudice to and saving the rights of Wm. B. Duncan, Richard T. Wilson, and Adrian Iselin, as trustees for the Tennessee substitution bondholders (so-called), who have not consented to this order; and the cause is to proceed to decree without them.

JOSEPH P. BRADLEY
Circuit Justice.
W. B. WOODS,
47 Circuit Judge.

Filed—June 5th, 1877.

N. W. TRIMBLE,
Clerk.

Immediately upon the making of the said orders the said causes and consolidated cause were and was brought on to a final hearing, and your petitioners, Hays, Pierson and Dupuy, were heard by counsel, and, in support of their exceptions to said Master's report, as well as in support of their answers in said Ketchum & Ziegler suits respectively, they claimed not only that the said coupons of 1874 still continued to constitute a part of the indebtedness secured by the mortgage of 1853, but

also claimed that the said coupons were entitled to 48
priority of payment out of the proceeds of the sale of the said mortgaged premises; and the said Ketchum, in support of his bill, and the said Ziegler and his co-complainants, in support of their bill, and also said Cephise Chuffard, Rodolph Merian, Eugene Renevier and Charles Carrard, in support of their answers in the said suit of Duncan & Elliott, and said Belloni, in support of his exceptions to the master's report, contended that said coupons were not only not entitled to priority of payment out of the proceeds of the sale of the mortgaged property, but had ceased to constitute part of the mortgage indebtedness, and were not entitled to be provided for, to any extent, out of the proceeds of the 49
sale of said property.

On the hearing of the said causes there was filed a stipulation as follows:

U. S. CIRCUIT COURT.

WM. BUTLER DUNCAN ET AL.

vs.

THE MOBILE & OHIO RAILROAD COMPANY ET AL.

MORRIS KETCHUM

vs. 50

THE MOBILE & OHIO RAILROAD COMPANY ET AL.

D'ORELLI ZIEGLER ET AL.

vs.

THE MOBILE & OHIO RAILROAD COMPANY ET AL.

"The undersigned, parties who have proved their

51 claims under the order made by the Circuit Court in the first above entitled cause on March 6th, 1876, namely:

"List of the holders of the securities of the Mobile & Ohio Railroad Company who have transferred, assigned to, and deposited with W. H. Hays, W. S. Pierson and T. Haskins Dupuy, the Committee of Reorganization under the agreement, &c., dated October 1, 1876, the several bonds and securities set opposite their names, respectively.

"N. B.—Bonds of £225, £205 and £200 are estimated as $1,000 each. The principal only is included in this statement; the bonds have attached to them the coupons past due from and including the coupons which matured May 1st, 1874, on the Sterling and Interest Arrearage Bonds, July 1st, 52 1877, on the Tennessee Substitution Bonds, March 1st, 1875, on the Second Mortgage and Convertible Bonds.

"In addition thereto, all past due and unpaid coupons on the total amount of the above issues detached therefrom, and which matured May and November, 1874, and July and January, 1875, have been transferred and assigned to, and deposited with the committee."

(There follows here, in the original stipulation, a list of bondholders who had proved their claims, and assigned such claims to Hays, Pierson and Dupuy, including Alexander Duncan as a holder of first mortgage sterling bonds to the principal amount of $75,000. The list includes the names of more than five hundred in- 53 dividuals, firms and corporations, who had become assignors to Hays, Pierson and Dupuy, the aggregate amount of first mortgage sterling bonds so proved and assigned, at the date of the stipulation, appearing by the stipulation to be $3,931,000; of sterling interest bonds $765,120; of arrearage interest bonds $1,192,800; of Tennessee substitution bonds $1,555,000; of second mortgage bonds $961,990; of convertible bonds $474,925; total $8,878,835; all these amounts being exclusive of interest. A full copy of the list is printed in the petition submitted to this court on October 15, at pages 18 to 34.)

"Do hereby place on file this waiver of their objection to the allowance of the coupons of 1874, as a part of

the first mortgage debt, and their consent that such 51
coupons may be paid, with interest, out of the proceeds of sale, prior to any other claims secured by said mortgage; and we adopt and approve the acts and doings of Duncan and Elliot as trustees.

Dated Mobile, June 5th, 1877.

F. N. Bangs,
Solicitor and of Counsel for said parties.

Filed June 5th, 1877.

N. W. Trimble,
Clerk.

On the 15th day of June, 1877, there was entered a decree, in the words and figures following:

CIRCUIT COURT OF THE UNITED STATES 55

For the Southern District of Alabama.

W. Butler Duncan and A. Foster Elliot
vs.
Mobile & Ohio Railroad Company, et al.

Morris Ketchum
vs.
Mobile & Ohio Railroad Company, et al.

D'Orelli Ziegler et al.
vs.
Mobile & Ohio Railroad Company and others. 56

These causes having been consolidated and set down for a hearing at the same time under the order of this court, to be disposed of by the same decree, came on to be heard, upon the pleadings, exhibits, orders, reports, exceptions, and the testimony taken in the cause as taken before the master, and were argued by counsel; and thereupon the court, upon consideration of the premises, declares, orders, and decrees—

1. That the reports submitted by the master, under the orders and directions to him, are confirmed, and all the exceptions to the same are overruled.

57 2. The court declares and decrees the deed of trust described in the bill, executed by the Mobile & Ohio Railroad Company, dated the first of November, 1853, and appointing John J. Palmer, Wm. R. Hallett, and Morris Ketchim, the survivors and successors of them, as trustees, is a valid conveyance of the railroad of the said corporation, and of all the property therein mentioned, for the security of the uniform series of first mortgage bonds, and the interest to accrue thereon therein set forth, and that the said bonds and coupons, including the coupons which became due on the first of May and November, 1874, represented as owned by Alexander Duncan, are secured equally, and to be ratably paid from the proceeds of the property, without priority or preference among them.

3. The court declares and decrees there was a de-
58 fault on the part of the corporation aforesaid in the payment of the installments of interest promised to be paid in May, 1874, also in November, 1874, and successively in May and November since that date, and that a title accrued to the trustees under the said deed therefrom to enter into possession of the property, and to obtain a decree for the sale of the property therein described, to be enforced unless the said corporation shall pay the debt which has been ascertained to be due on the said deed of trust by the master's report in this cause.

4. The court orders and decrees that the defendants to this cause, to wit: The trustees in the second and the other deeds of mortgage of a date subsequent to that of the mortgage described in the bill as the first mortgage, pay into the registry of this court on or be-
59 fore the first day of August next, the amount of the debt ascertained to be due on the deed of trust by the master and reported to the court, and in case of any default on their part, that their equity of redemption shall be henceforth barred and foreclosed.

5. The court orders and decrees that the Mobile & Ohio Railroad Company be authorized to pay into court the amount ascertained to be due upon the reports of the master on or before the first day of August next, together with all costs in the matter with all costs in the cause, and in case of a compliance with this order, that further proceedings on this decree shall be suspended.

6. In case of a failure to make the payment as provided in this decree at the time appointed therein, to

wit, the first day of August next, the court orders 60
James Gillette, the master heretofore appointed in this cause, and Thomas H. Herndon, who is hereby appointed special master for the purpose, to advertise the property described in the said deed of trust of the date of the first day of November, A. D. 1853, as aforesaid, and all property, and franchises, and rights comprehended in its terms, for sale, at public auction, in bulk and as an entirety, for cash, to the highest bidder, on some day to be designated by them in the advertisement of sale. The sale will be made in front of the Court House, in the City of Mobile, between the hours of noon and three o'clock P. M. They will advertise the sale in a daily paper published in Mobile, and in two daily papers published in the City of New York, for eight weeks prior to the day of sale. They will appoint a crier before the sale whose fee shall not exceed 61
one hundred dollars. The masters will attend the sale in person, and take care that it be fairly and regularly conducted, and with proper regard to the rights of all persons. The master shall exact from any bidder, before making an adjudication to him, a deposit of the sum of fifty thousand dollars in money, to defray the costs, expenses, and charges incident to the trust, and a further deposit of one hundred thousand dollars in money, or of the bonds or coupons described in the said deed of trust and master's report as a part of the debt secured by the said deed, and in case of his refusal, the masters may reject the bid thus made, and proceed with the sale as if the bid had not been made. In case of any failure of a bidder to comply with the terms of sale, and the masters shall find that the bidder will not or cannot comply, they may make a re-sale on 62
the day of the sale at the same place, or they may give notice that on the day following, between the same hours of twelve noon and three P. M., they will make a sale also at the same place under the decrees according to its conditions; and they shall have power to adjourn the sale for thirty days, to be made at the same place, by adding a note to the advertisements for that purpose, should they deem that course advisable, and by causing publication of said advertisements to be continued in the same papers until the day of sale.

7. The court orders and decrees that the masters may receive in payment from the highest and last bidder, bonds and coupons which form a part of the first mortgage debt ascertained to be due or owing by

63 the master in his report, and sustained by the opinion of this court; provided, however, that a sum sufficient to pay the costs, charges, and expenses of the trust as above mentioned, whether exceeding the said cash deposit or not, and also to provide for the payment of the *pro rata* dividend which shall be due or owing to the owners of other bonds and coupons, secured under the deed of trust, must be paid in money, and provided also that if the said mortgage property shall be bid off directly or indirectly by, for, or in behalf of the bondholders and creditors who have, or shall have, entered into and subscribed the agreement for the re-adjustment of the securities of said company, dated October 1, 1876, commonly called the agreement of re-organization, then and in that case all and every bondholder and creditor of said company not having already
64 entered into and subscribed said agreement, who shall, on or before the first day of September next, enter into and subscribe the same and deposit their securities with the Farmers' Loan and Trust Company in the City of New York, or with the Bank of Mobile in the City of Mobile, as provided by said agreement, shall be, and they are hereby allowed, to participate in said bid and purchase on the same terms and on an equal footing in all respects, according to the character of their claims respectively, with the said bondholders and creditors who have heretofore entered into and signed said agreement.

8. The court orders and decrees that the masters shall make their report of the sale and proceedings connected with the same, and of the performance of the contract by the purchaser, and shall report a draft of a deed of
65 sale under this decree, to be executed by themselves, and shall file the same with the report and their signature thereto, all of which shall be subject to the final order of confirmation. The masters, in addition to the deed to be executed by them, shall prepare a deed of confirmation of the sale and of the conveyance executed by them, and a release of all claim on the property as trustees, or otherwise, with certificates of acknowledgment, fitting it for registration in the States of Alabama, Mississippi, Tennessee, and Kentucky, which deed of confirmation and release shall be executed and acknowledged by William B. Duncan, A. Foster Elliot and Morris Ketchum, as well as by the Mobile & Ohio Railroad Company, within thirty days

from the day of sale, and be reported to the court for confirmation. 66

9. The court orders and decrees, that it appearing to the court that there is a clause in the deed of trust or mortgage described in the bill, saving and reserving the rights and liens that may attach to the roadway and construction thereon, in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that State, in the event of said State aiding in the construction of the railroad of the Mobile & Ohio Railroad Company of that State, being a distance of one hundred and eighteen (118) miles; and it appearing that there was such aid, and a claim for a prior lien under the statutes in Tennessee is the subject of controversy in the Circuit Court of the United States for the Western District of Tennessee and the parties asserting such prior liens are not before this 67 court, and this claim cannot be settled here: The court orders that the sale to be made under the orders of this decree be subject to the rights and liens which exist, if any, under the statutes of the State of Tennessee, in favor of the State of Tennessee, or its grantees or assigns, or the parties asserting such prior liens, in so far as the railroad and property affected by that lien are concerned.

10. The court further orders and decrees, that the sale of the Gainesville Branch Road shall be without prejudice to a prior mortgage existing on that branch railroad, as represented in the Report of the Master upon that subject, in the reference to him, in favor of William D. Dunn, John Reid, Jr., Robert C. Crawford, trustees.

11. The court orders and decrees, that all the equities among the parties to the suit, all questions of costs and for allowances, and all other questions not disposed of or specially reserved in the foregoing decree, but properly arising under the same, are continued and reserved until after the sale and report by the masters of their proceedings thereupon. 68

June 15th, 1877.

JOSEPH P. BRADLEY,
Circuit Justice.
W. B. WOODS,
Circuit Judge.

Your petitioners, Hays, Pierson & Dupuy, referring to the proviso in the seventh paragraph of the said

69 decree prescribing that certain ~~par~~anticipated purchasers of said property should hold the same for the benefit of a class of persons therein specified, say that they, the said Hays, Pierson & Dupuy, are the holders of the securities originally held by the subscribers to the agreement of October 1, 1876, referred to in said seventh paragraph, being the securities assigned to them as hereinbefore stated; that the said Hays, Pierson & Dupuy regarded that clause of the said decree as imposing restrictions on them in the use of their own property in favor of persons who had not only not made any corresponding concession, but who had done all they possibly could to deprive your peti-
70 tioners and those they represented of the enjoyment of their legal rights; but, nevertheless, with a view to ending the litigation, and in response to conciliatory suggestions from the Court, the said Hays, Pierson & Dupuy consented to the insertion of that clause in said decree, although the same in their judgment imposed restrictions and conditions, beyond what the law authorized, upon the use and enjoyment by them of their own property; and if any person is aggrieved by that clause of the said decree, the persons so aggrieved are not the said appellants, but are the said Hays, Pierson & Dupuy, and those whom they represent.

Your petitioners further show that before the settle-
71 ment and entry of the said decree, his Honor, the learned Associate Justice of this Court presiding, delivered the opinion of the Court upon the merits of the controversy, from which opinion your petitioners make the following extracts:

Extract No. 1.—" The consolidation of these cases by agreement of the parties relieved us from the necessity of deciding between the conflicting claims of the two sets of trustees. Both being before the Court, *as well as the parties beneficially interested*, we can make a decree by which a sale of the mortgaged premises will be valid, and confer a good title."

Extract No. 2.—"The only question of importance remaining in the causes as now consolidated is, whether the interest coupons which became due in May and November, 1874, on the first mortgage bonds, are valid and outstanding securities, entitled to payment out of the proceeds of the mortgaged premises *pari passu* with the bonds from which they were severed, or even prior to said bonds, or whether they are to be deemed to have been paid and satisfied. The holder of these coupons (they not having been canceled), contends that they were purchased from the original holders thereof, and were not paid, and that by virtue of such purchase he is entitled to the full benefit of the mortgage security, and even to priority of payment over the coupons subsequently maturing, and over the principal of the bonds; and if not entitled as purchaser that he is at least entitled to be subrogated to the rights of the original holders, as if the coupons had never been paid." 72 73

Extract No. 3.—"The right of the contestants to appear and oppose the claim of the present holders of these coupons is questioned. It is said that having come before the Master and proved their own bonds without making objections to the coupons which were also presented and proved before the Master, they are now precluded from raising objections to them. The statement is not precisely accurate. One of the contestant bondholders, at least, did present objections before the Master (which objections were adopted and presented by the complainants as trustees of the mortgage,) and others have since been permitted to appear as defendants in the cause, and file an answer, which they have done, raising the very issue. In addition to this, the trustees of the second mortgage filed an answer disputing the validity of the coupons. We think, therefore, that the issue has been distinctly and properly raised." 74

But your petitioners say that the trustees of the second mortgage have not appealed from any part of the said decree.

On the day of the rendering of the said decree, the said D'Orelli Ziegler and his co-complainants, namely, Masson Chavannes, Henry Jump, Bernard de Watteville, and also the said Morris Ketchum, Rudolph

75 Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard, by E. L. Andrews, Esq., their Solicitor and Counsel, applied in open court for the allowance of an appeal from the said decree, and supersedeas thereon; and on June 16, 1877, an entry was made in the minutes of the said court in the words and figures following, viz:

UNITED STATES CIRCUIT COURT.

SOUTHERN DISTRICT OF ALABAMA.

W. B. DUNCAN ET AL.
vs.
76 THE MOBILE & OHIO RAILROAD COMPANY ET AL.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

D'ORELLI ZIEGLER ET AL.
vs.
THE MOBILE & OHIO RAILROAD
77 COMPANY ET AL.

In the above cases consolidated, the appeal to the Supreme Court of the United States heretofore prayed is hereby granted and allowed.

The supersedeas bond is hereby fixed at one hundred thousand dollars, with sureties resident in the City of New York, who may unite in said bond in any proportionate sums. The said bond shall stay execution, if approved and filed at any time within sixty days.

Filed June 16th, 1877.

N. W. TRIMBLE,
Clerk.

And the following is a copy of the opinion of the 78
court upon the said application for a supersedeas:

BRADLEY, J.—"An appeal being granted and allowed in these cases from the decree rendered therein on the 15th day of June, 1877, the question is raised as to the amount of the appeal bond to be given by the appellants, they being the plaintiffs in the second and third suits and defendants in the first.

"The decree appealed from sustained the claim of Alexander Duncan, as holder of certain first mortgage coupons to the amount of over $500,000, to come in *pari passu* with the first mortgage bondholders, and directs a foreclosure of the first mortgage and a sale of the mortgaged property to pay the bonds secured thereby, and also certain other bonds given for interest, amounting in the aggregate to about ten millions 79
of dollars. Purchasers are by the decree allowed to pay the purchase money in bonds and coupons to the extent of their proportionate interest as bondholders in the whole amount of first mortgage bonds. About four-fifths of the bondholders have agreed to and subscribed a scheme for reorganizing the company and purchasing the road.

"The court has allowed the remaining bondholders until the 1st of September to join the said scheme.

"A portion of the bondholders, holding less than one-tenth of the entire mortgage interest, are dissatisfied with the decree, and promote the appeal.

"The property being in the hands of a receiver, and not producing much, if any, more than the expenses and necessary repairs of the road, the bondholders to whom the property or its proceeds really belongs, will 80
be kept out of possession for two or three years by the intervention of the appeal.

"This delay in obtaining possession of the property or its proceeds we regard as calculated greatly to injure them.

"By having immediate possession they could make the necessary improvements and connections required by making the property much more remunerative, and could manage it much more to their advantage generally than a receiver can do.

"Or, if the property were immediately sold, they would be in possession of the interest of the purchase money, of which they will now be deprived for two or three years by the appeal.

81 "In our judgment, therefore, an appeal bond for one hundred thousand dollars is very moderate in amount.

"The appellants contend that on the principles of the decision of the Supreme Court in the case of Jerome *vs.* McCarter, 21 Wall. 17, and of , decided at the last term of said court, a bond for one hundred thousand dollars is greatly in excess of what should be required.

"They insist that in contemplation of law, possession by a receiver is equally beneficial to those who are interested in the property, as possession by the parties themselves.

"While this may be the case with regard to dead property, or even real estate generally, we think it is not so where the property, like a railroad, is perishable 82 in its character, and has to be managed, worked, repaired, and taken care of, in order to preserve it.

"We think that the owner is a better manager than a trustee or receiver, who is hampered and restrained in his management, and cannot take advantage of all those means and opportunities which the owner could do for rendering the property most profitable and productive.

"On these grounds, we think, that the damage sustained by the delay will be much more than the mere costs and expenses of the suit, and that the actual loss and injury to the owner, or in this case, the bondholders, may be taken into consideration by the court in fixing the amount of the bond; and that loss and damage, we think, will not be less than the amount we have required.

83 "The most forcible difficulty which presents itself to our minds is the measure of damages which would be applicable in a suit on the bond.

"Would it be admissible for the plaintiffs to show a loss to the bondholders by reason of advantages lost for the cause above referred to? Of this there may be a question. But our opinion is, on the whole, that such a damage would be the subject of a recovery.

"If damages are really sustained, there seems no good reason why they should not be recovered."

WOODS, Circuit Judge, concurring.

And afterwards, and on or about the fifteenth day of July, 1877, there was filed in the office of the

Clerk of said court, at Mobile aforesaid, a bond, which, 84
with the endorsements thereon, is in the words and figures following:

Know all men by these presents, that we, Charles Moran, resident of the City and State of New York, and Henry Amy, Theodore F. Moran, and Isaac R. Cornell, residents of the same place, are severally and respectively held and firmly bound unto William B. Duncan, of the City and State of New York, and Andrew F. Elliot, of the City of New Orleans, in the State of Louisiana, in the respective sums following, to wit: the said Charles Moran, Henry Amy, Theodore F. Moran, and Isaac R. Cornell, in the sum of twenty-five thousand dollars each, to be paid to the said W. B. Duncan and A. F. Elliot, their executors, administrators and successors; for which several payments, 85
well and truly to be made, each of them doth hereby bind himself, his heirs, executors and administrators, severally and respectively, by these presents.

Sealed with our seals and dated this third day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas, lately, at a regular term of the Circuit Court of the United States in and for the Southern District of Alabama, held at the City of Mobile, three certain suits brought therein for a common purpose, were, by order of said court, consolidated into a single cause:

And, whereas, in one of said suits William B. Duncan and Andrew F. Elliot, as trustees, are complainants, and Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, are defendants, on be- 86
half of first mortgage bondholders of the Mobile & Ohio Railroad Company; and in another of said suits Morris Ketchum is complainant as trustee, and W. B. Duncan and A. F. Elliot, above named, are defendants; and in another of said suits D'Orelli Ziegler, Bernard de Watteville, Masson Chavannes and Henry Jump are complainants, on behalf of first mortgage bondholders of the Mobile & Ohio Railroad Company, and W. B. Duncan and A. F. Elliot are defendants:

And, whereas, a decree was rendered in the said consolidated cause:

And, whereas an appeal from the said decree to the Supreme Court of the United States was prayed in open court on behalf of Morris Ketchum, D'Orelli

87 Ziegler, Bernard de Watteville, Masson Chavannes, Henry Jump, Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, which appeal was granted, and the order granting the same was filed with the Clerk of said Circuit Court, and a citation directed to said W. B. Duncan and A. F. Elliot, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second day of October next:

Now, the conditions of the above obligations are such that if the said Morris Ketchum, D'Orelli Ziegler, Bernard de Watteville, Masson Chavennes, Henry Jump, Rudolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard shall prosecute the said appeal to effect and answer all damages and costs, if they fail to make the said appeal good, then the
88 above obligation to be void, else to remain in full force and virtue.

Chas. Moran. [seal.]
H. Amy. [seal.]
Isaac R. Cornell. [seal.]
Theo. F. Moran. [seal.]

Taken and acknowledged before me, as to Chas. Moran, H. Amy, and Theo. F. Moran, }

Edward L. Owen,
U. S. Commissioner for the
Southern District, New York.

Witness,
D. J. Morrison,
Jos. P. Dockeray.

Witness,
89. Cecil A. Marks.

I approve the foregoing bond. Washington, July 9th, 1877. Joseph P. Bradley, Associate Justice of the Supreme Court, U. S.

And thereupon there was served upon the said Duncan and Elliot a citation in the words and figures following:

The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an allowance of appeal filed in the clerk's office of the Circuit Court of the United States, in and for the Southern District of Alabama, wherein 90 Morris Ketchum, D'Orelli Ziegler, Bernard de Watteville, Masson Chavannes, Henry Jump, Rodolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard are appellants, and you are respondents, to show cause, if any there be, why the said decree, rendered against the said appellants, as in the said order of allowance mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph P. Bradley, of the Supreme Court of the United States, this 9th day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

JOSEPH P. BRADLEY,
Associate Justice of the
Supreme Court, U. S. 91

To
W. B. DUNCAN,
A. F. ELLIOT.

But no citation whatever has been served upon said Hays, Pierson, Dupuy or Alexander Duncan, and no proceedings have been taken to secure them against any costs or damages for delay or otherwise upon the said appeal.

Your petitioners show that since the making of the said decree, the said D'Orelli Ziegler has assigned and delivered to said Hays, Pierson and Dupuy the bonds and coupons proved by him before the said master, and in respect of which it was claimed in his name (by said Charles Moran, claiming to be said Ziegler's 92 attorney in fact in that behalf) that he was aggrieved by the said decree of June 15, 1877; and said Hays, Pierson and Dupuy are now the holders of said bonds, and of the coupons attached thereto, amounting, in the aggregate, to $18,000 of principal.

The aggregate principal amount of bonds proved in said suits by the said Bernard de Watteville was $100-000, and of those proved by Henry Jump was $19,000, and of those proved by Masson Chavannes was $17,-000, and of those proved by said Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard was $40,000.

93 Your petitioners further show that as they have learned from said Charles Moran, and verily believe, the said Morris Ketchum has been acting in the conduct of said appeal and in the prosecution thereof, so far as he has prosecuted the same, at the request and instigation of the said Charles Moran, one of the sureties on said appeal bond; and they say that said Charles Moran acted as the attorney in fact of said Ziegler, De Watteville, Jump, Chavannes, Merian, Renevier, Carrard and Chuffard, in all the proceedings above referred to; and your petitioners have been informed by said Ketchum, and verily believe that said Ketchum has been indemnified by them or by said
94 Moran, and not by any other party, against any liability for damages or costs, or otherwise, which he, the said Morris Ketchum, may have incurred in the prosecution or defence of any of the said actions, or in the prosecution of the said appeal; and your petitioners say, upon information and belief, that it is impossible for the said Morris Ketchum to furnish the name or address, or specify the extent of interest, of any person who has assigned any of the aforesaid bonds or coupons to said Hays, Pierson, and Dupuy, who, after so assigning the same, has instigated, requested or invited any action, on behalf of such person, by said Morris Ketchum, as trustee under said mortgage.

Your petitioners further show that of the original
95 first mortgage bonds issued under the said mortgage of 1853, as reported by the master, said Hays, Pierson, and Dupuy have become and now are the holders of all except the principal sum of $726,000, and of the sterling interest bonds and coupons issued under the security of said mortgage, they have become and are the holders of all except $2,880 of principal money in amount, and of the dollar interest bonds issued under the said mortgage and coupons attached thereto, they have become and now are the holders and owners of all except $137,600 of principal money in amount, and of the Tennessee

substitution bonds, they have become and now are the 96
holders and owners of all except $80,000 of principal money in amount.

Your petitioners further show that the only question made on the hearing of the said causes and cause in the said Circuit Court, by the said appellants, was as to whether or not the said coupons of 1874 still continued to constitute a part of the mortgage indebtedness, and whether or not, if they still continued to constitute such part of said indebtedness, they were entitled to priority of payment out of the proceeds of said sale; that your petitioners do not anticipate that in the event of a sale of
said property, any amount exceeding the sum of 97
four and a half millions of dollars can by any possibility be obtained for the same—out of which provision must be paid for the payment of said Tennessee substitution bonds, which have, by a decision of the Circuit Court of the United States for the Western District of Tennessee, been held to be a prior lien on so much of the mortgaged property as lies within the State of Tennessee; and your petitioners say that if upon an appeal to this Court this Court shall determine that the said coupons do not constitute a part of the said mortgage indebtedness, then upon the assumption that the said property shall sell for the sum of four and a half millions of dollars, the advantage
gained by the said appellants in respect of the bonds 98
held by them, exclusive of those transferred as aforesaid by said D'Orelli Ziegler and others to said Hays, Pierson & Dupuy, will not exceed the sum of sixty-five hundred dollars.

In illustration and proof of the little injury which the appellants would sustain in case said mortgaged property should be sold and the proceeds distributed under the said decree of June 15th, 1877, and said decree should be afterwards reversed or modified by the rejection of said coupons of 1874, your petitioners show that the total amount of principal and interest

99 reported by the master to be unpaid on said mortgage of 1853, including said coupons of 1874, and coupons up to November 1st, 1876, was $9,705,137.56.

The amount reported due on said coupons of 1874, exclusive of interest thereon, was $535,106.74.

The amount of the bonds held by said appellants other than said Ziegler, adding past due coupons to November 1st, 1876, was not exceeding $204,000.

If the whole property should sell for $9,705,137.56
above the Tennessee lien, it would make no difference
to the appellants whether the coupons of 1874 were
disallowed, and the decree below reversed, or not. If
the property sells for $4,582,568.00 above the Tennessee
100 lien, and the claim on the coupons of 1874 is sustained,
as established by the decree of June 15, 1877,
there will be divided on said coupons not more than
$267,553, which, if said coupons are wholly disallowed
by a reversal of said decree, would be divided among
bondholders to the amount of $9,705,137, less $505,106.74,
the amount of the disallowed coupons of '74,
viz., $9,170,051, and would add not quite three per
cent. to the dividends on that sum; and three per
cent. on the claims held by the appellants would not
exceed $6,200. In other words, in case the mortgaged
property should be sold for one-half of the amount now
adjudged to be due, over the Tennessee lien, and the
101 proceeds of such sale should be distributed under the
decree appealed from, and said decree should be afterwards
reversed, the damages which would accrue to
said appellants as bondholders would not exceed $6,200.
The event in which the utmost damage would be sustained
by the appellants would be the event of the mortgaged
property selling for ninety-four (94) per cent. of
the entire first mortgage indebtedness, and the proceeds
of such sale being distributed under the decree
below, and such decree being afterwards reversed by
disallowing said coupons, in which events, the utmost
damages which said appellants, as bondholders, would
sustain, would not exceed $12,500; and if the claims

of said appellants amounted to $1,000,000, instead of 102
$204,000, their utmost damage, in the contingency supposed, would not exceed $70,000. The anticipated damage would be diminished in proportion to the diminution of the price obtained on a sale, as well as also by the deduction of the claim on the Tennessee substitution bonds.

Your petitioners further show that Henry Amy, one of the sureties on said appeal bond hereinabove set forth, is a member of the firm of Henry Amy & Company, of the City of New York, and that the said Henry Amy & Company proved before said master, in the said Duncan & Elliot suit, bonds to the principal amount of $104,000, and that on or about the first 103
day of September, 1877, the said Henry Amy & Company transferred said bonds and others, to the aggregate amount of $227,000, principal money, to said Hays, Pierson & Dupuy, who became, and now are, the owners thereof.

The said bonds of Henry Amy & Company were, on September 1, 1877, which was Saturday, delivered to said Hays, Pierson & Dupuy, together with a printed agreement concerning the same, which bore the signature of Henry Amy & Co. with the words, "under protest," and thereupon there took place a correspondence between said H. Amy & Co., and said Hays, Pierson and Dupuy, as follows: 104

No. 1.

H. Amy & Co. to Hays, Pierson & Dupuy.

In that branch of the Mobile and Ohio litigation, being the suits brought in the Circuit Court of the United for the Southern District of Alabama, Mr. Justice Bradley pronounced an opinion containing, among others, the following language:

"Looking at the difficulties which beset the subject on every side, we think that if we allow the non-subscribing bondholders to participate in the purchase of the property, should it be made in behalf of the reorganizing combination, on an equal footing with those who have joined it, *that we shall have done all that we*

105 *can do under the circumstances to protect their interests.* The parties representing the reconstruction scheme, through their counsel, have offered to allow them to come in, and to extend the time for doing so until the first of August. We suggest that this time should be extended to the day of sale of the property. We perceive that the trustees have the power to do this—and keep the agreement on foot by extending the time sixty days at a time. We have, therefore, proposed an additional proviso to the decree to carry out this view. We hope that it will be acceded to by the counsel for the complainants and those representing the reconstruction scheme. We do not wish to dictate these terms to the parties who propose to purchase, but suggest that, in our judgment, the interest of all parties would be subserved by an arrangement of this sort."

106 On the suggestion of counsel for Messrs. Duncan and Elliot, parties to said causes, who stated that it was very desirable, if the plan of reconstruction should be generally adopted, to avoid any sale at all, and who proposed to extend the time for bondholders to come to an arrangement to and including the 1st of September, 1877, a decree was subsequently made by the said court containing, among others, the following paragraph:

"7. The court orders and decrees that the Masters may receive in payment from the highest and last bidder, bonds and coupons which form a part of the first mortgage dèbt ascertained to be due or owing by the Master in his report, and sustained by the opinion of this court; provided, however, that a sum sufficient to pay the costs, charges and expenses of the trust as above mentioned, whether exceeding the said cash 107 deposit or not, and also to provide for the payment of the *pro rata* dividend which shall be due or owing to the owners of other bonds and coupons, secured under the deed of trust, must be paid in money, and provided also that if the said mortgage property shall be bid off directly or indirectly by, for, or in behalf of the bondholders and creditors who have, or shall have, entered into and subscribed the agreement for the readjustment of the securities of said company, dated October 1, 1876, commonly called the agreement of reorganization, then and in that case all and every bondholder and creditor of said company not having already entered into and subscribed said agreement, who shall, on or before the first day of September next, enter into and subscribe the same and deposit their secu-

rities with the Farmers' Loan and Trust Company in 108
the City of New York, or with the Bank of Mobile in the City of Mobile, as provided by said agreement, shall be and they are hereby allowed to participate in said bid and purchase on the same terms and on an equal footing in all respects, according to the character of their claims respectively, with the said bondholders and creditors who have heretofore entered into and signed said agreement."

It is evident from the above that the limitation prescribed was upon the theory held out to the court of an amicable reorganization without the sale.

Subsequently an appeal was taken from that decree, and the whole thereof to the Supreme Court of the United States, which appeal is still pending and undetermined, and a bond was filed by the appellants to
prevent a sale under the decree appealed from until the 109
determination on such appeal, the same equitable reasons which influenced the court to pronounce the above opinion in protection of the minority on the bidding for the property at any sale to be had under the decree, to continue to operate after the appeal was taken to the Supreme Court of the United States.

As you are aware, another branch of the litigation was at the time of the rendition of the above-mentioned decree pending in the Circuit Court of the United States for the Western District of Tennessee, and in that suit such proceedings were had as to present the questions respecting the validity of the so-called Tennessee substitution bonds, and the rights of the holders thereof to a priority of lien as against the first mortgage sterling bondholders. At the time of
the rendition of the first-mentioned decree the cause 110
pending in Tennessee had not been brought to a hearing on those questions; but it is apparent from other passages in the said decree, notably the ninth clause, that the Circuit Court in Alabama believed that the existence or non-existence of a prior lien for nearly two million dollars on one hundred and eighteen miles of road in Tennessee would be determined prior to the first day of September, 1877; the cause in Tennessee has been heard, but no decision has as yet been rendered. It is, therefore, palpably unjust that the first mortgage sterling bondholders should be compelled to submit to a scheme which is not predicated upon a judicial determination of the before-mentioned questions, but is at variance with the sterling bond-

111 holders' rights as asserted in said suits, or indeed to any scheme at any time prior to the day of the sale of the entire road after the priorities and extent of the various liens shall have been finally determined. Acting, however, according to the measure of our relations to our European constituents, we surrender under protest the bonds enumerated in the schedule this day left by us with you, and give under protest the prescribed power of attorney; continuing, however, to do as you are doing, to maintain our interests in the prosecution of an appeal and other litigation, involving questions of the utmost importance to the real parties in interest, without any reference to these provisional arrangements; reserving unto ourselves and those whom we represent the right to revoke the powers given and to require the return of the bonds aforesaid,
112 or to otherwise act as may seem expedient in either of the following events:

First.—In case the United States Supreme Court should decide against the claim of priority set up for Alexander Duncan's coupons by yourselves or Messrs. Duncan & Elliott.

Second.—In case the Circuit Court of the United States for the Western District of Tennessee should decide against the priority of the Tennessee substitution bonds.

And lastly.—In case the Circuit Court of the United States for the Western District of Tennessee should decide in favor of the priority of the Tennessee substitution bonds, and on appeal from such decision the Supreme Court of the United States should reverse the same in whole or in part.

113 New York, Sept. 1st, 1877.

Respectfully,
H. Amy & Co.

To Messrs. Hays, Du Puy & Pierson,
New York Cy.

No. 2.

H. Amy & Co. to the Farmers Loan and Trust Company.

To the Farmers' Loan and Trust Company:

Please take notice, that the foregoing is a duplicate of a protest this day made to Messrs. Hays, Du Puy & Pierson.

N. Y., Sept. 1st, 1877.

H. Amy & Co.

No. 3. 114

Hays, Pierson & Dupuy to H. Amy & Co.

New York, 1st Sept., 1877.

Messrs. H. Amy & Co.:

Dr. Sirs,—We do not regard your signature to the agreement of Oct. 1, 1876, in the manner in which it is made, as an assent on your part to said agreement, or as a compliance on your part with the terms of the 7th section of the decree of June 15th, 1877. It must be irrevocable, or we shall regard your so-called protest as null and without effect.

We expressly reserve all and any rights which we may have in regard to the matter.

Respectfully yours,
T. Haskins Dupuy,
Of the Committee, for 115
W. H. Hays,
W. S. Pierson, } Committee.
T. Haskins Dupuy,

No 4.

H. Amy & Co. to Hays, Pierson & Dupuy.

H. Amy & Co., Bankers.

New York, Sept. 1st, 1877.

Messrs. W. H. Hays, W. S. Pierson,
T. Haskins Dupuy:

Gentlemen,—Your favor of this day was received. In answer, we wish to state that we are advised and believe 116
that we have sufficiently complied with the provisions of the decree referred to in your favor. We regard such compliance as obtained from us by compulsion, in its nature unfair and inequitable, as the circumstances of the case referred to in our protest could not have been contemplated at the time of the rendition of the decree by the court rendering such decree, or any of the parties concerned, as likely to exist on this day.

In respect to your suggestion that the powers should be irrevocable, we beg leave to refer you to the instrument containing the power itself, on examination whereof we find that nothing in our protest contained conflicts in anywise with the terms of that instrument.

117 Trusting that we have fully complied on our part with the terms of the decree in such manner as to preserve all our rights thereunder of what kind and nature soever,

We remain, yours respectfully,
(Signed) H. Amy & Co.

No 5.

Hays, Pierson & Dupuy to H. Amy & Co.

New York, 4th Sept., 1877.

H. Amy & Co.:

Gentlemen,—Referring to your second letter to us, of 1st inst. (but not received until the 3d inst.), in connection with your first communication of that day
118 to us, and our reply to the latter, we have now to say, that we declined at the time, and again decline, to accept the bonds therein referred to, upon the terms and conditions specified by you in either of the letters, and we declined and decline to assume the relation, or undertake the duties or obligations, proposed by you in such letters and communications, and your signature "under protest" is herewith returned to you.

We are ready, upon reasonable notice from you, given to us within three days, to deliver to you, upon your application, and receipt therefor, the certificate called for by the agreement of first of October, 1876, in the same form and containing the same particulars as other certificates for like securities, the delivery of which to you, or the receipt of which by you, we shall regard as a waiver of all conditions not expressed in
119 the printed argeement of first October, 1876. And until you apply for such certificate, the bonds are at your disposal, subject to your order, and at your risk as to loss, depreciation and injury; and we disavow any responsibility for the safe-keeping or security thereof, after the delivery of this notice.

Yours, respectfully,
T. Haskins Dupuy
Of Com. for
W. H. Hays, W. S. Pierson, T. Haskins Dupuy, } Committee of Reorganization.

No. 6. 120

H. Amy & Co. to Hays, Pierson & Du Puy.

H. AMY & Co., Bankers,
NEW YORK, Sept. 4th, 1877.

Messrs. W. H. Hays, W. S. Pierson, T. Haskins Du Puy:

Gentlemen,—We have received your letter of this day, and herewith request you to issue the certificates for the securities delivered to you on the 1st inst.

Inasmuch as we are advised that the instrument to which you in your favor refer as of October 1st, 1876, is in itself a revocable instrument, we waive all conditions not therein expressed, but insist upon a strict construction of the terms and provisions thereof, and reserve all our rights thereunder. 121

Please inform us when the certificates will be ready, that we may exchange them for the temporary receipt.

Yours, resp'y,
(Signed,) H. AMY & Co.

No. 7.

Hays, Pierson & Du Puy to H. Amy & Co.

NEW YORK, 4th Sept., 1877.

H. AMY & Co.:

Gentlemen,—We have your favor of this day, accompanying a copy of the agreement of October 1st, 1876, through a part of the signature of which a line has been drawn.

We prefer, in order that no question may be raised hereafter, that your signature should be free from erasures, and, therefore, we return the paper. 122

In your letter you say: "*We are advised that the instrument to which you in your favor refer as of October 1st, 1876, is in itself a revocable instrument.*" We decline to accept your signature upon that construction or understanding of the instrument. Our own construction and understanding of your signature, if you send it, will be that it is irrevocable. Awaiting your reply, we are, respectfully, yours,

T. HASKINS DU PUY,
of Com., for
W. H. HAYS,
W. S. PIERSON,
T. HASKINS DU PUY, } Com. of Rights, &c.

123
No. 8.

Hays, Pierson & Du Puy to H. Amy & Co.

New York, 4th Sept., 1877.

H. Amy & Co.:

Gentlemen,—We have received your signature to the 1st October, 1876, agreement, and in accordance therewith, and with our correspondence of this date with you, we are preparing the committee's certificates, which will be delivered to you as soon as they can be signed by the Farmer's Loan & Trust Company, you giving the usual receipt therefor; but the certificates cannot be signed by that company until you withdraw the notice which you served on it.

124 Due notice will be given you when you can get them.

Respectfully yours,
T. Haskins Du Puy,
of Com., for

W. H. Hays,
W. S. Pierson,
T. Haskins Du Puy,
Com. of Reorganization, &c.

No. 9.

Day, Secretary, to Du Puy.

New York, October 17th, 1877.

125 T. Haskins Du Puy, Esq., of Committee of Reorganization of M. & O. Rd.:

Dear Sir,—The signature of Mess. Amy & Co. to receipt for certificate issued by the Farmers' Loan & Trust Company, under date of September 6th, '77, for bonds deposited with the committee, reads as follows:

"Received Certificates, as per Committee's letter of Sept. 4, 1877.
H. Amy & Co."

Yours truly,
A. F. Day,
Sec.

And the said Du Puy says that said H. Amy & Co. gave a written receipt for said certificates, which receipt is in these words: "Received Certificates, as per Committee's letter of Sept. 4, 1877." 126

And as the result of said correspondence, the said Henry Amy & Co. delivered to said Hays, Pierson & Dupuy a copy of said agreement bearing the signature of said Henry Amy & Co., without any qualification, and said Henry Amy & Co. received from said Hays, Pierson & Dupuy certificates similar to certificates which had been delivered to all other parties who had delivered any of the aforesaid bonds or coupons to said Hays, Pierson and Dupuy, of which certificate the following is a skeleton copy: 127

Form of Certificate.

MOBILE & OHIO RAILROAD.

CERTIFICATE OF DEPOSIT, UNDER AGREEMENT DATED OCT. 1ST, 1876.

This certifies that
of ha under and pursuant to the terms of agreement between the creditors of the Mobile & Ohio Railroad Company and said company, bearing date the first day of October, 1876, deposited with of
and thereby transferred to Wm. H. Hays, Wm. S. Pierson, and T. Haskins DuPuy, as provided for by said agreement, the following claims against the Mobile & Ohio Railroad Company, viz.: 128

DESCRIPTION OF CLAIMS WITH COUPONS.

TITLE.	NO.	AMOUNT.	EACH COUPON.	TOTAL NO. OF COUPONS.	NO. OF COUPONS TO BE FUNDED UNDER AGREEMENT.

129

Convertible Bonds (Registered), &c., &c.	No.	Interest from.	Amount.

The said claims so deposited and transferred are held by said depository, subject to the order of said Wm. H. Hays, Wm. S. Pierson and T. Haskins Du
130 Puy, and their successors, under and subject to the terms and trusts, for the purposes and with the rights, powers and duties expressed in said agreement, and upon the new securities specified in said agreement being created for distribution in the proportions herein below stated, the bearer hereof, upon presentation and surrender hereof at the depository in Mobile, or New York, as required by said agreement, will receive said new securities in exchange for those deposited and transferred hereby :

1. For the principal amount of each Sterling First Mortgage Bond of £225 each..................	$440 in new First Mortgage Bonds.
And for each Coupon thereof up to May 1st, 1877............	36 " " "
And for Coupons maturing November 1st, 1877...........	6 " " "
131 And also........................	560 in First Preferred Income and Sinking Fund Debentures.
2. For the principal amount of each Sterling Interest Arrearage Bond B, of £200 each..............	$440 in new First Mortgage Bonds.
And for each Coupon thereof up to May 1st, 1877...	36 " " "
And for Coupons maturing November 1st, 1877...........	6 " " "
Also................ .. .	560 in First Preferred Income and Sinking Fund Debentures.

Sterling interest Arrearage Bonds C, £100 each, and Coupons thereof, will receive one-half the above respectively.

3. For each $1,000 of the principal amount of the Interest Arrearage Bonds of O, P, Q, F to F 4.	$310 in new First Mortgage Bonds.
And for six months' Interest Coupons on each such principal amount of $1,000 up to May 1st, 1877.....	36 " " "

And for such Coupons maturing November 1st, 1877..........	6 in new First Mortgage Bonds. 132
And also for each such principal of $1,000....................	690 in First Preferred Income and Sinking Fund Debentures.

For smaller amounts in proportion.

4. For the principal amount of each Sinking Fund Gold Bond (Tennessee Substitution) of $1,000 or £205 each....................

£205 each....................	$626 in new First Mortgage Bonds.
And for Coupons thereof up to January 1st, 1877............	36 " " "
And for Coupons maturing July 1st, 1877....................	30 " " "
And also....................	374 in First Preferred Income and Sinking Fund Debentures.

5. For the principal amount of each Second Mortgage Bond L, R, S, T, Rr, Ss, Uu, and the Interest Coupons thereof up to the 1st day of June, 1877, dollar for dollar, in the Second Preferred Income and Sinking Fund Debentures.

6. For the principal amount of each Convertible Bond, and the interest thereon up to the 1st day of June, 1877, dollar for dollar, in the Third Preferred Income and Sinking Fund Debentures. 133

7. Judgments and Floating Debts will be settled, as per terms of the agreement, in Fourth Preferred Income and Sinking Fund Debentures.

This certificate is transferable from hand to hand, by delivery, without writing, at the option of the holder, but the holder may, by endorsement, limit the transferability thereof.

In witness whereof,
have hereto subscribed their names, this
day of 187 .

Your petitioners further show that there has been exhibited to them by Mr. Adrian Iselin, of the City of New York, an assignor of bonds and coupons to said Hays, Pierson & Dupuy, an original letter written to said Iselin in the French language by said D'Orelli Ziegler, of which the following is a correct translation: 134

ZURICH, Sept. 4th, 1877.

Referring, to-day, to the contents of your letter of 29th May, on the subject of the Mobile & Ohio matters, I have reflected well on its contents, and on all those (letters) which you have had the kindness to write me on this subject.

First not willing to have a suit of law in my name, and still less liking to be brought into a controversy with you, I requested our friend Mr. Chas. Moran

135 most positively to abstain in my name from a suit, and to place my bonds in the Hays-Dupuy scheme, so as to terminate, so far as I was concerned, this existing litigation.

Mr. Moran replied that an amicable arrangement would be difficult, owing to dissentients who had joined his cause, and were too numerous to accord any facility in this direction, to which I replied that it would be better to abstain from an appeal in the name of the whole against certain compensations which you will judge equitable to allow him and other persons who had become sureties, and who had studied the matter and incurred a risk in securing such a high bond.

Even supposing your party carry the day, the opposition will always find some way which, without upsetting your plans, will always cause you embarrassment. 136

These observations are simply my personal ideas, without any pretension or value, and this letter is merely to inform you that my bonds will henceforth figure in your lists.

PESTALOZZI AU THALHOF.

And the name, Pestalozzi au Thalhof, is the name under which the said D'Orelli Ziegler conducts his business.

Your petitioners, Hays, Pierson & Dupuy, further show that on the twentieth day of August, 1877, they delivered to the Special Masters appointed by said decree of June 14, 1877, a notice as follows: 137

U. S. CIRCUIT COURT, 138

SOUTHERN DISTRICT OF ALABAMA.

WILLIAM BUTLER DUNCAN AND Andrew Foster Elliot, Trustees, &c.,

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

MORRIS KETCHUM

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

Consolidated Causes. 139

D'ORELLI ZIEGLER ET AL.

vs.

THE MOBILE & OHIO RAILROAD COMPANY ET AL.

To JAMES GILLETTE and THOMAS H. HERNDON, Esqrs., Special Masters appointed by the decree of June 15, 1877. 140

Gentlemen,—We are advised and instructed to inform you that we do not regard the execution of the said decree, so far as it requires you to make a sale of the mortgaged property, as stayed or superseded by any of the proceedings heretofore taken in the nature of an appeal by Morris Ketchum, D'Orelli Ziegler and their co-appellants. No bond has been given on that appeal, except a bond to William Butler Duncan & Andrew Foster Elliot, in their individual names, and they are not, as individuals, parties to the litigation. No bond or security of any kind has been given to us, and no citation has been served upon us. As we are advised, the legal effect of the bond given is, at the ut-

141 most, to stay only the proceedings of Andrew Foster Elliot & William Butler Duncan as individuals. Under the circumstances, we think it is your duty either to proceed to execute the decree, or to apply to the court for its instructions in the premises.

Dated New York, August 20, 1877.

Yours respectfully,
William H. Hays,
William S. Pierson,
And T. Haskins Dupuy,
By C. W. Bangs,
Their Solicitor.

As your petitioners are informed by said Masters, and believe, the said Masters did what these petitioners,
142 Hays, Pierson and Dupuy, say that they requested the said Masters to do, namely, furnish a copy of the said notice to E. L. Andrews, Esq.; and your petitioners, Hays, Pierson, and Dupuy, are informed by said Masters, and believe, that said Masters received from Mr. Andrews a counter notice, of which a copy has heretofore been put on the files of this court; but your petitioners say that they have no knowledge as to the truth of the matters of fact stated in said counter notice.

As your petitioners are informed and believe, the said Masters thereupon applied to his Honor the Circuit Justice for instructions, and, afterwards, the said
143 Masters placed upon the files of the said court at Mobile the opinion of the Circuit Justice upon such application, as follows:

"The suits were consolidated and treated as one, one decree was made therein, and an appeal taken in open court, and the appellants desired to give an appeal bond satisfactory to the court to stay execution. The bond presented was approved for that purpose. It it is defective for want of form I should certainly feel bound, under the circumstances, to allow the appellants to file another bond. At all events, until the court orders otherwise, it seems to me that the Masters should not take it upon themselves to decide that the appeal bond is ineffective. Of course, I am willing to hear any application on the subject that can be properly decided at Chambers. But it seems to me that it is hardly necessary for the Masters to go to that trouble. If the parties are dissatisfied with the bond it is rather for them to make application to the court or a judge at Chambers to direct the Masters to proceed, notwithstanding the appeal. 144

JOSEPH P. BRADLEY."

A true copy.

JAMES GILLETTE,
Master.

Filed Sept. 18, 1877,
N. W. TRIMBLE,
Clerk.

Your petitioners further say, that on or about the fifth day of September, 1877, they caused to be delivered to said Morris Ketchum a written request as follows: 145

OFFICE OF THE COMMITTEE OF REORGANIZATION
of the
MOBILE & OHIO RAILROAD COMPANY,
No. 11 Pine street.

NEW YORK, 5th Sept., 1877.

To MORRIS KETCHUM, Esq.:

Claiming to be a trustee under the first mortgage or deed of trust of the Mobile & Ohio Railroad Company.

Dear Sir,—We have to inform you that we are the holders of sterling bonds secured by said mortgage, exceeding in amount the principal sum of $1,788,000, and of interest bonds secured by said mortgage, exceeding in amount the principal sum of $2,146,200, and of detached coupons secured by said mortgage, exceeding in amount the sum of $730,000, and of coupons still attached to the bonds held by us, exceeding in amount the sum of $985,000. 146

As such holders, we have to request, and do request of you, in whatever capacity you are, or may claim to be, acting, to desist from the further prosecution of an appeal taken by you, or in your name, to the Supreme Court of the United States, from a decree of the Circuit Court of the United States for the Southern District of Alabama, on 15th June, 1877, in a suit to fore-

147 close said mortgage, and to discontinue, dismiss, and abandon that appeal.

Respectfully yours,
T. Haskins Dupuy,
Of Com. for
W. H. Hays, } Committee
W. H. Pierson, } of
T. Haskins Dupuy, } Reorganization.

Your petititioners further show that the damage to said Hays, Pierson & Dupuy as owners of said bonds and securities, and to the interests represented by them as such owners, which damage would arise from a stay in the execution of said decree for the period
148 likely to elapse before said appeal can be regularly heard, will largely exceed one hundred thousand dollars; that besides the loss of interest and other losses referred to in the foregoing opinion of Mr. Justice Bradley, the improvement of the property is delayed and embarrassed, connections and trade contracts with other roads and with steamship companies are prevented from being made, and the necessity of acting constantly under the supervision of the court is productive of great expense and embarrassment, and your petitioners estimate the damage arising from all such causes at not less than $250,000 per annum.

Your petitioners, Hays, Pierson, Du Puy and Alex-
149 ander Duncan, further show that on or about the 20th day of August, 1877, they caused to be presented to Mr. Justice Bradley, out of court, a petition of appeal, as follows;

IN THE 150

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF ALABAMA.

WILLIAM BUTLER DUNCAN AND Andrew Foster Elliot, Trustees, &c.,

vs.

THE MOBILE & OHIO RAILROAD Company and al.

MORRIS KETCHUM

vs.

THE MOBILE & OHIO RAILROAD Company and al.

D'ORELLI ZIEGLER AND AL.

vs.

THE MOBILE & OHIO RAILROAD Company and al.

Consolidated Causes. 151

To the Honorable the Supreme Court of the United States:

The appeal of William H. Hays, William S. Pierson, T. Haskins Du Puy and Alexander Duncan, respectfully shows as follows: 152

The complainants in the several causes above entitled, prior to the year 1877, filed their respective bills of complaint in the Circuit Court of the United States for the Southern District of Alabama, for the avowed purpose of obtaining satisfaction of an indebtedness incurred by the Mobile & Ohio Railroad Company, and secured as to the payment thereof by a mortgage or deed of trust, made by said company in the year 1853, the said William Butler Duncan and Andrew Foster Elliot claiming to be trustees under said mortgage, and claiming that said company had made default in the payment of coupons for interest on said indebtedness, which became due May 1, and had made

153 default also in the payment of coupons for interest on said indebtedness, which became due on November 1, 1874; the said Morris Ketchum claiming to be sole trustee under said mortgage, and claiming that said Duncan and Elliot were not trustees under said mortgage, and claiming that said company had not made default in the payment of any of said coupons, and that said coupons did not continue to constitute any part of the indebtedness secured by said mortgage, and said D'Orelli Ziegler and his co-complainants, claiming that said company had not made default in the payment of any of said coupons, and that said coupons did not continue to constitute any part of the indebtedness secured by said mortgage, and claiming to be entitled to sustain their action as holders of part of the indebtedness secured by said mortgage, and that
154 said Duncan and Elliot were not trustees under said mortgage, and said Ketchum, as well as said Ziegler and his associates, claiming to be entitled to restrain and enjoin said Duncan and Elliot from proceeding to enforce the payment or promote the collection of any part of the said indebtedness.

In said action of said Duncan and Elliot, your petitioners, as successive holders of the said coupons, intervened as parties for the protection of their own interests, and afterwards, the said court, by its order made on or about the 9th day of June, 1877, in substance directed all said causes to be consolidated, and to proceed together to a hearing and to a decree, and thereupon your petitioners, before said hearing was had, became and were parties to said cause, as consolidated, and were, on said hearing, heard by counsel as such
155 parties.

The said Court, by its decree or order bearing date the 15th day of June, 1877, after such hearing, adjudged and decreed in substance that said coupons did continue to constitute a portion of said indebtedness, but refused to adjudge or decree that the funds in the hands of the receivers appointed in said cause and causes (which funds consisted of the net income of the mortgaged property) should be applied, in the first instance, to the payment of the instalments of interest which became due on the principal of said indebtedness in the order in which such instalments became due; and also refused to adjudge and decree that said coupons above referred to were entitled to priority of payment out of the proceeds of the sale of said mortgaged property before payment of any part of the coupons which subsequently matured, and before payment of any of the principal of said indebtedness, each of which refusals was, as your petitioners claim, erroneous, and your petitioners were, and are aggrieved thereby; and the said Court adjudged by its said decree of June 15, 1877, that the bonds representing the principal of said indebtedness and the coupons for interest which matured after November 1, 1874, were secured equally with coupons which matured May 1, 1874, or November 1, 1874, and were to be ratably paid from the proceeds of the property without preference or priority among them, in which particular the said decree was, as your petitioners claim, erroneous; and the said Court further at the same time and by the same decree adjudged that the masters appointed by said decree to make sale of said mortgaged property, should receive in payment from the last and best bidder bonds which had not matured at the time of said decree upon an equal footing with coupons which had matured on or before November 1, 1874, in which particular, and in other particulars, the said decree was, as your petitioners claim, erroneous, and they were and are aggrieved thereby. 156 157

Wherefore, these appellants appeal to the Supreme Court of the United States, from so much and such parts of the said decree of June 15, 1877, as they were and are aggrieved by as aforesaid, and from each and every part of said decree which denies or omits to provide a remedy for the rights and claims of these appellants.

And these appellants respectfully pray that the pleadings, proofs, depositions, affidavits, orders, decrees, and other proceedings in the said cause and causes may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court of the United States will proceed to hear the cause, and that the said decree of the said Circuit Court may be modified, amended or reversed, as justice to these appellants may require, in the respects and as to the matters aforesaid, and that such further or other decree may be made as to the said Supreme Court shall seem just. 158

Dated August 13, 1877.

William H. Hays,
William S. Pierson,
T. Haskins Dupuy,
Alexander Duncan.
By C. W. Bangs, their Solicitor.

159 Upon the presentation of the said petition, there was endorsed thereon and signed by the said justice an approval, as follows:

"The foregoing appeal allowed, bond approved, and citation signed, this 20th day of August, 1877.

"JOSEPH P. BRADLEY,
"Associate Justice of the
Supreme Court,
U. S."

Simultaneously with the allowance of the said appeal, the said Hays, Pierson, Dupuy, and Alexander Duncan furnished the security required by law to be taken on the signing of a citation, and a citation was
160 signed by the said justice in favor of the said Hays, Pierson, Dupuy and Alexander Duncan, as appellants, and addressed to said Ketchum, Ziegler, Chavannes, Jump, DeWatteville, Chuffard, Merian, Renevier, Carrard, Belloni, Elliot and W. B. Duncan, as respondents, and so, by the allowance of the said appeal, and the acceptance of the said security and the signing of the said citation, the said Hays, Pierson, Dupuy and Alexander Duncan say that, as they are advised and believe, they were recognized as parties having an interest in the execution of the said decree, and as entitled to take, and to be heard upon, an appeal therefrom.

161 Your petitioners further say that so far as they know or are informed or believe, no offer has been made by the appellants to submit the cause on printed briefs, and that in fact the record itself is not yet printed.

Your petitioners, Hays, Pierson and Du Puy, further show that on the sixth day of October, 1877, they, being under the impression that an appearance for them on said appeal taken in open court on June 16th, 1877, was necessary in order to give them a standing in this court to move to dismiss such appeal and vacate the supersedeas thereon, caused to be mailed to the clerk of this court, from the City of New York, a notice of appearance by their solicitor on said appeal; and on the same day, said Hays, Pierson and Du Puy caused notice to be served on the solicitors for said appellants of the intention of said Hays, Pierson and Du Puy, to move to dismiss said appeal and vacate said supersedeas; that the transcript of the record on said appeal was not filed, nor the cause docketed, in this court before October 12, 1877; and that on October 12, 1877, before said petitioners knew whether or not said transcript had been filed and the appeal docketed, and before they knew under what title the cause was docketed, if docketed at all, they caused to be mailed to the clerk a notice as follows: 162

United States Supreme Court. D'Orelli Ziegler *et al.* *vs.* The Mobile & Ohio Railroad Company *et al.* 163

D. W. Middleton, Esq., Clerk: Sir,—The notice of appearance heretefore delivered by me to you, is hereby countermanded and withdrawn; and you are requested not to file or enter the same until further advised; and at all events you are notified that the appearance is for the purpose of dismissing the appeal against William H. Hays, W. S. Pierson, T. Haskins Du Puy, and Alexander Duncan, and for the purpose of moving for a vacatur of the procedings, if any, existing upon the said appeal, and for the purpose of otherwise objecting to the said appeal and supersedeas. Dated New York, October 12, 1877.

Yours, etc.,
C. W. Bangs, 164
Solicitor for Hays, Pierson, Du Puy,
and Alexander Duncan.

Your petitioners therefore pray the court that the said appeal or appeals herein above appearing to have been taken, may be quashed and dismissed as against your petitioners, Hays, Pierson, Dupuy and Alexander Duncan, and as against your petitioners, William Butler Duncan and Andrew Foster Elliot, as trustees or otherwise; and that any supersedeas or stay of execution heretofore granted as against your petitioners may be vacated and set aside, and leave given to your

165 petitioners respectively, to prosecute and enforce the said decree, notwithstanding said appeal or appeals; or that if this honorable court shall refuse to grant the relief above prayed unqualifiedly, then that such relief may be granted, unless said appellants shall file a new supersedeas bond, to said Hays, Pierson and DuPuy as obligees, in a penalty of not less than five hundred thousand dollars, or upon your petitioners filing in this court a bond to be approved by the court, in a penalty of not more than $75,000, securing to the said appellants, other than said Ketchum, the difference between the amount which they would receive out of the proceeds of the said sale,
166 in case the said coupons of 1874 are, on the said appeal, disallowed as a part of the mortgage debt, and the amount which the said appellants would receive in case the said mortgaged property shall be sold and the proceeds of said sale distributed under the said decree, which security your petitioners are able and willing to give, and hereby tender to the said appellants, if required by the court; or that your petitioners may have such further or other or different relief as the nature of their case may require, and as may be proper in the premises.

And your petitioners will ever pray, &c.

W. H. Hays,
W. S. Pierson,
167 T. Haskins Du Puy,
Alexander Duncan,
By F. N. Bangs,
Their Counsel.

W. Butler Duncan,
A. Foster Elliot,
Trustees and individually by
John A. Campbell,
Their Counsel.

United States of America, }
Southern District of New York, } ss.: 168

William H. Hays, T. Haskins Du Puy and William Butler Duncan, being duly and severally sworn, do depose and say, and each for himself says, that he is one of the petitioners above named; and the said William H. Hays and T. Haskins Du Puy are the attorneys in fact for the purposes of this petition, of Alexander Duncan; and each of the said affiants says, that he has read the foregoing petition, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters and things therein stated upon information and belief, and as to those matters he believes it to be true; and each of the said 169 affiants says that so far as the said petition relates to his own acts and deeds it is true; and so far as it relates to the acts and deeds of other persons, he believes it to be strictly true.

Sworn to before me this 22d }
day of October, 1877, }
Wm S. Bainton
(L.S.) (139) Notary Public
N.Y. Co.

W. H. Hays,
T. Haskins Du Puy,
W. Butler Duncan.

IN THE SUPREME COURT

Of the United States. 170

October Term, 1877.

Morris Ketchum *et al.*,
Appellants,

vs. No. 879.

William Butler Duncan *et al.*,
Appellees.

Gentlemen,—There is herewith served upon you a copy of a petition which has been or will be filed in the

171 office of the clerk of this court, and you are notified that at the court room of this court at the Capitol, in the City of Washington, on Monday, November 19, 1877, at the opening of the court on that day, or as soon thereafter as counsel can be heard, the court will be moved for an order in conformity with the prayer of the said petition, and the motion heretofore noticed for November 5, 1877, will not be made on that day, and the court will be moved that in determining the motion for a vacatur of the supersedeas which has already been made and is now under advisement, the present petition be taken into consideration.

Dated New York, October 20, 1877.

172 Yours, &c.,

F. N. Bangs,

Of counsel for William H. Hays, William S. Pierson, T. Haskins Du Puy, and Alexander Duncan.

John A Campbell,

Of Counsel for Duncan & Elliott, Trustees, &c.,

To E. L. Andrews, Esq.,
Solr. and of counsel for Morris Ketchum, Rudolph Merian *et al.*

E. H. Grandin, Esq.,
Solr. and of counsel for D'Orelli Ziegler *et al.*

P. & T. A. Hamilton, Esqs.,
Solrs. and of counsel for Duncan & Elliott.

G. N. Stewart, Esq.,
Solr. and of Counsel for M. & O. R. R. Co

IN THE

Supreme Court 173

OF THE UNITED STATES.

MORRIS KETCHUM ET AL.,
Appellants,

agt. 174

WILLIAM BUTLER DUNCAN ET AL.,
Appellees.

To E. L. ANDREWS, ESQ., *Solicitor and of Counsel for D' Orelli Ziegler, Appellant.*

Sir,—We have to inform you that the claims and demands against the Mobile & Ohio Railroad Company, proved by D'Orelli Ziegler in the court below, in the cause in which this appeal is taken, have been transferred 175 and assigned to the undersigned, William H. Hays, William S. Pierson and T. Haskins Du Puy, under an instrument subscribed by the said D'Orelli Ziegler or his constituted agents, which instrument, among other things, contains the following clauses :—

176 "*First.*—The said William H. Hays, William S. Pierson and T. Haskins Du Puy, are hereby constituted assignees in trust, agents, managers and attorneys of the said parties hereto, who are creditors of the Mobile & Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing and controlling the same, for the purposes, in the manner, and with the powers hereinafter specified."

"*Second.*—Each of the parties hereto, being a creditor
177 of the said Mobile & Ohio Railroad Company at the time of the execution of this instrument, assigns, transfers, delivers, and makes over to the said William H. Hays, William S. Pierson and T. Haskins Du Puy, all the evidences of debt issued by said company, and claims against said company, now held by such subscribers hereto, whether in the shape of bond, coupon, note, judgment, open account, unliquidated demand, unpaid voucher or otherwise, to be held by the said Hays, Pierson and Du Puy, as such assignees, agents, managers and attorneys, in the manner and for the purposes and upon the trusts so hereinafter declared concerning the same. Upon this instrument being
178 subscribed by all the creditors of said corporation, holders of evidence of debt issued by said corporation, or of other claims against the same, the said assignees, agents and attorneys shall have and hold the claims and evidences of debt of such creditors, with full power and authority to cancel, surrender, release and discharge all such evidences of debt, claims and demands so transferred to them, upon receiving from said Mobile & Ohio Railroad Company new evidences of debt and securities to the extent and in the manner hereinafter provided." * * * *

"*Fifteenth.*—The said assignees and attorneys, as 179 transferees and assignees of the subscribers to this instrument, shall have the same rights and relations to the foreclosure suits now pending, and to the complainants in said foreclosure suits, and to the receivers in said suits, and to the funds in their hands, which the subscribers to this agreement now have or would have if they continued to be holders of the bonds and claims subscribed thereto, and shall be entitled to the same share of the proceeds of the present management of the property of said company, and to the same share of the proceeds of the sale of such property, which their assignors would have upon a discontinuance of said foreclosure suits or upon an accounting or upon a sale or distribution of the proceeds." 180

In the name of the said D'Orelli Ziegler and in our own names we hereby direct you, as assuming to be the solicitor and counsel of the said D'Orelli Ziegler, to dismiss, vacate and abandon the appeal heretofore taken in his name to the Supreme Court of the United States; and in the name of the said D'Orelli Ziegler and in our own names we authorize and direct you, as assuming to be the counsel and solicitor of the said Ziegler, to consent that the motion which is now pending to dismiss the appeal in this cause, and to vacate the superdsedeas granted thereon, shall be granted by this court. 181

We are, respectfully, your obedient servants,

William H. Hays,
William S. Pierson,
T. Haskins Dupuy.
By C. W. Bangs,
their Solicitor and Counsel.

Dated New York, October 22, 1877.

182 United States of America,
Southern District of New York. } ss.

Thomas W. Fitzgerald, Jr., being duly sworn, deposes and says, that on the 22nd day of October, 1877, he served the annexed notice on E. L. Andrews, Solicitor for D'Orelli Ziegler and others by delivering a copy thereof to and leaving a copy with a person in charge of the office of said Andrews, at his office, No. 52 Broadway, in the City of New York, in the Southern District of New York, in the absence of said Mr. Andrews from his said office.

Thos. W. Fitzgerald, Jr.

183 Sworn to this 22d
day of October, 1877. }

Wm. S. Bainton,
(139) Notary Public,
N. Y. Co.

No. 879.

IN THE

SUPREME COURT of the UNITED STATES.

OCTOBER TERM, 1877.

MORRIS KETCHUM et al.,

Appellants,

vs.

WILLIAM BUTLER DUNCAN & ANDREW FOSTER ELLIOT.

Appellees.

Brief on Amended Petition to Vacate Supersedeas and Dismiss Appeal.

F. N. BANGS,

Of Counsel for Petitioners, HAYS *et al.*

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON ST.

U. S. Supreme Court,

OCTOBER TERM, 1877.

MORRIS KETCHUM ET AL., Appellants, *vs.* WILLIAM BUTLER DUNCAN AND ANDREW FOSTER ELLIOT, Appellees.	No. 879.

Brief for Hays, Pierson, Dupuy and Alexander Duncan, on Motions to dismiss Appeal and vacate Supersedeas.

A motion to vacate the supersedeas granted on this appeal was argued orally at the present term, viz., on October 15. A motion is now made upon an amended petition to dismiss the appeal itself. The amended petition contains what was in the original petition, together with additional facts which the frame of the answer filed to the motion rendered it necessary for the petitioners to state, in order that the case might be more precisely understood. And the court is now moved (*fol.* 171) to take this amended petition into consideration in determining the motion which was argued on October 15.

The facts shown by the amended petition are these:

In June, 1877, there were pending in the U. S. Circuit Court for the Southern District of Alabama, three suits in equity to obtain relief for holders of bonds and coupons issued by The Mobile & Ohio Railroad Company, payment of which was secured by a mortgage made by that company in 1853.

These three suits were begun in succession, one after the other.

The first was begun in 1875, by William Butler Duncan and Andrew Foster Elliot, claiming to be sole trustees under the mortgage of 1853 (*Petition*, *fols.* 2 *to* 5).

The second was begun in 1876, by Morris Ketchum, claiming to be sole trustee under that mortgage (*fol.* 27).

The third was begun in 1877, by Charles Moran, attorney in fact for, and in the names of, D'Orelli Ziegler, Masson Chavannes, Henry Jump and Bernard De Watteville, bondholders secured by the mortgage.

This was a representative suit brought on behalf of not only the nominal plaintiffs, but on behalf of the class to which they belonged (*fols.* 29, 30).

The three suits had one purpose in common, which was, to have the mortgaged property sold, and the proceeds of the sale applied to the payment of such of the indebtedness as might be found to be unpaid (*fols.* 4, 28, 31).

In other respects, the objects of the suits were dissimilar and discordant.

By direction of the parties interested, Duncan and Elliot claimed in their bill that the outstanding indebtedness embraced coupons for interest which matured in 1874 to the amount of upwards of $535,000, and that those coupons still remained unpaid (*fol.* 5).

Ketchum claimed that the coupons of 1874 had been paid by the railroad company, and that the holders of those coupons were not entitled to share in the proceeds of the sale which he prayed for (*fol.* 28). He also claimed that Duncan and Elliot were not trustees under the mortgage of 1853, and he asked to have them enjoined from acting as such (*fol.* 29).

Ziegler, De Watteville, Jump and Chavannes, or Moran in their name, made the same claim which Ketchum did in respect to the coupons of 1874, but insisted that they were entitled to proceed as bondholders for a decree of foreclosure, because it was a question between Duncan and Elliot, and Ketchum, who was rightful trustee under the mortgage which lay at the bottom of each of the suits (*fol.* 30).

Moran was the instigator of the later proceedings in the Ketchum suit (*fol.* 93).

At the commencement of the litigation, Alexander Duncan was the owner of the coupons in dispute (*fol.* 18).

He proved them before a master under an interlocutory order of reference made by the court in the Duncan and Elliot suit (*fols.* 6 *to* 17) on March 6, 1876, which was before the commencement of either of the other suits. Under the authority of this order, his claim was objected to by Duncan and Elliot, and was disputed by Belloni, a bondholder, at whose request the objection had been taken, and it was sustained by the petitioners Hays, Pierson and Dupuy, to whom Alexander Duncan assigned the coupons. Alexander Duncan also proved a claim for $75,000 in bonds, which claim no one disputed (*fols.* 18 *to* 20, *fol.* 33).

Ziegler, De Watteville, Jump and Chavannes had also, under the same order, and before commencing their suit, proved the bonds held by them (*fol.* 31).

Eugene Renevier, Rodolph Merian, Charles Carrard and Cephise Chuffard had also, under the same order, proved bonds held by them (*fol.* 32).

Although Ketchum, in his bill, and Ziegler and his co-plaintiffs, in their bill, asked, as part of the relief which they prayed for, that the coupons of 1874 might be excluded from all share in the proceeds of sale, the holder of the coupons was not made a party to either of those bills (*fols.* 27 to 30).

The petitioners, Hays, Pierson and Dupuy, are not only assignees of the coupons originally held by Alexander Duncan, but of undisputed first mortgage claims which they proved before the Master, to the amount of several millions more. They hold $8,705,393.37 of a first mortgage indebtedness amounting to $9,705,137. They hold $1,954,828 of an indebtedness of $2,053,828 specially secured by a first lien on so much of the property as is situate in Tennessee. They hold $1,793,101.24 out of a total of $2,362,463.06, secured by junior mortgages. They hold, in all, claims to the amount of $12,453,823.11, out of a total mortgage indebtedness of $14,120,849.02 (*fols.* 20 to 26 and *fol.* 97).

When the Circuit Court sat at Mobile in June, 1877, the Master who had been appointed by the order of March 6, 1876, in the Duncan and Elliot suit, to pass upon disputed claims, had made his report. He had sustained the coupons as a part of the mortgage debt, but had refused to award them priority over other claims. Belloni had excepted to the report, and so had Hays, Pierson and Dupuy, in the name of Alexander Duncan. The Duncan and Elliot suit was ready for hearing; but in the other suits proof had not been taken nor issue joined (*fol.* 33). But measures were taken to reduce the volume of the litigation, simplify its complexity, and hasten its termination. To this object the court kindly lent its aid, declaring (as is probably within the memory of the learned associate justice of this court who presided) that the contest as to who was trustee was trifling in comparison with the greater interests involved (*see* fol. 71).

The measures taken were as follows:

1. Hays, Pierson and Dupuy were admitted into the Duncan and Elliot suit to prosecute the claims

which had been proved by Alexander Duncan (*fol.* 38). *These claims included both bonds and coupons.*

2. They were allowed (fols. 39, 40) to intervene and answer for their own interest, as defendants in the Ziegler suit. They were thus identified as the parties against whom Ziegler and his co-plaintiffs asked relief in respect to the coupons of 1874. They were admitted "in the same manner and with the like effect as if named in the bill as defendants and brought in by *subpoena*."

3. They were allowed (fols. 39, 40) to intervene and answer for their own interest, as defendants in the Ketchum suit. They were thus identified as the parties against whom Ketchum asked relief in respect to the coupons of 1874. They were admitted "in the same manner and with like effect as if named in the bill as defendants and brought in by *subpoena*."

4. Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, who had become proponents of their claims under the order made March 6, 1876, in the Duncan and Elliot suit (*fol.* 32), without objecting to the coupons, were allowed to remedy the defect by coming in as defendants and answering in that suit (*fol.* 35).

5. First mortgage bondholders to the amount of $5,888,920 (*fol.* 53), who had assigned their claims to Hays, Pierson and Dupuy, waived the dispute concerning the coupons, and allowed the claim made on their behalf.

6. In view of the fact that all these suits were brought "*for the common purpose of securing a sale*" of the mortgaged property, and that there were disputes

concerning the legal title to the mortgage, and that all parties claiming that legal title were before the court, *as well as "the cestuis que trust under said first mortgage,"* all parties consented, and the court ordered, (*fols.* 41 to 47) "*that the causes be* CONSOLIDATED *and proceed* CONCURRENTLY before this court to final decree." It seems to be apprehended by our adversaries, and, perhaps, by the learned Justice who presided at Mobile, that the present petition overlooks and disregards this fact of consolidation. But, on the contrary, the petitioners take large cognizance of that fact, and rely upon it.

7. The proofs taken and proceedings had in the Duncan and Elliot suit were made available in the cause as consolidated (*fol.* 46), and the proofs taken before the Master were ordered to be treated as proofs in the cause.

This learned court will perceive at a glance the effect which this disposition of the litigation had upon the relative attitudes of the parties.

1. All CONSENTED and CONCURRED in the *common purpose of securing a sale.* There was no antagonism on that point.

2. The rival claimants to the office and title of trustees assumed the place of dummies and puppets in the litigation. The court called the question between them a "bagatelle."

3. The creditors were constituted *domini litis.*

4. The litigation was transferred to the court from the master's office upon the proofs taken before him. The order of March 6, 1876, was treated as the authority for the contest, and the claims and

objections received by him were treated as the pleadings. The order of March 6, 1876, and the proceedings under it, were translated to the consolidated suit.

5. The litigation was reduced to the simple question of the continued obligation and lien of the coupons of 1874 (fol. 72).

6. The plaintiffs in the consolidated suit were Ketchum, Ziegler, Chavannes, DeWatteville, Jump, W. B. Duncan, Elliot, Hays, Pierson, Dupuy, Alexander Duncan, and all the proponents of claims under the order of March 6, 1876.

These "CONCURRED" as against their common enemies, the debtor and junior incumbrancers, in the "*common purpose of securing a sale.*"

There was no war among them as far as it regarded that purpose. The antagonism grew out of the order of reference and the proceedings under it, and that antagonism was between Hays, Pierson, Dupuy and Alexander Duncan on one side, and Belloni, Ziegler, Chavannes, Jump, De Watteville, Merian, Renevier, Carrard, and Chuffard on the other. Neither W. B. Duncan nor Elliot (after they had objected to the coupons), nor Ketchum, had anything to do with it. They were spectators or stakeholders.

In this attitude of the litigation and the parties, the court proceeded to hear the controversy about the coupons, and that only (*fols.* 47, 72).

In pursuance of the "*common purpose*" in which all "CONCURRED," it, by its decree, rendered on June 15, 1877 (*fols.* 55 to 68):

1. Established the validity of the mortgage.

2. Decreed (*nisi* redemption) a sale; and

3. Declared all the bonds issued under the mortgage to be a part of the existing indebtedness.

So far, its decree was by the consent and concurrence and in aid of the common purpose, of all the plaintiffs in the CONSOLIDATED bill.

But it still remained to dispose of the litigation which had grown up, not under the consolidated bill, but under the order of reference and the proceedings before the master, and the exceptions to his report. These were the result of the consolidated bill, but were not the bill itself.

Upon the merits of the only question controverted on the hearing (*fol.* 72), the court (*fol.* 56):

1. Overruled the exceptions to the master's report.

2. Declared the continuing obligation and lien of the disputed coupons.

3. Provided that the coupons should be received by the master, in payment for the property, upon an equal footing with the bonds.

The court did not dispose of the funds remaining in the hands of the receivers who had been appointed in the cause (*fols.* 4, 5). Nor did it direct what should be done with the proceeds of sale, in case bonds or coupons were not tendered in payment, or in case the price should be paid in money. It reserved these questions and all others until after the report of sale (*fol.* 68).

Further: The court, anticipating that Hays, Pierson & Dupuy might become the purchasers, and, under the permission given by the court, use the bonds and coupons held by them as a part of the purchase money, imposed, in advance, an incumbrance upon their purchase by directing (*fols.* 63, 64,) that they should allow the parties who, thus far, had bitterly opposed Hays, Pierson & Dupuy in the attempt to realize and enjoy their legal rights, to share in the purchase, if such parties should elect to do so by September 1st, 1877. But Hays, Pierson & Dupuy consented to this in response to conciliatory suggestions from the court (*fols.* 69, 70).

It is obvious, from the foregoing statement, that the decree was partly by consent and concurrence, and in harmony with the "*common purpose of securing a sale.*" So far as it established the validity of the mortgage, and the binding obligation of the bonds, and a right to a sale, it was a consent decree. It was *in invitum* only so far as it respected the disputed coupons, and in that particular, it was partly hostile and partly favorable to all concerned. So far as it denied priority to the coupons, it favored the contestants. So far as it admitted the coupons, it favored the proponents. So far as it directed bonds to be received in payment, it gratified all alike. So far as it directed coupons to be received in payment, it partly suited the proponents. So far as it refused to distribute the money in the hands of the receivers, or to distribute the cash proceeds of the sale, it pleased or disappointed one side as much as the other.

No sooner had the decree been rendered, than Ketchum, Chavannes, Jump, De Watteville, Merian, Renevier, Carrard, Chuffard, and Ziegler, (or Moran, in Ziegler's name, but, as will hereafter appear, without his authority), elected to stand on what they regarded as their legal rights. They elected not to use the opportunity to become copurchasers with Hays, Pierson & Dupuy. They set themselves at work to obstruct and defeat the COMMON PURPOSE in which they had thus far consented and concurred. To this end, they took a comprehensive, sweeping appeal in open court, on June 16th, (*fol.* 75,) without excepting those parts of the decree in which they had concurred, and without excepting any party. The appeal was, in form, from the whole decree, and against everybody. They did not, at that time, offer any security, but an order was made (*fol.* 77,) allowing the appeal, fixing the supersedeas bond at $100,000, and providing that it should stay execution if approved and filed at any time within sixty days. The appeal was thus left inchoate and incomplete.

An attempt was made to complete and consummate it by subsequent proceedings out of court or in Chambers, on July 9th. These proceedings consisted in the approval of a bond in which Elliot and W. B. Duncan, without any affix, are the only obligees, and the signing of a citation, in which Elliot and W. B. Duncan, without any affix, are the only persons cited and admonished to respond (*fols.* 84 to 91). In the recitals of the bond (*fol.* 86), no reference is made to the fact that Hays, Pierson & Dupuy were parties to the litigation.

These proceedings left the case in the following attitude, viz., an appeal from the whole decree had been taken in open court, in form against everybody, and allowed. The appeal was afterwards defined as an appeal in which Duncan & Elliot were the only persons intended to be respondents. An order made in advance gave to the subsequent proceedings the effect of a supersedeas to the whole decree, as against every one entitled to enforce the decree, and there is on file an opinion of the Circuit Justice, which seems to the petitioners to imply, if it does not expressly state, that the decree cannot be executed in their favor, until the court shall so direct (*fols.* 137 to 144).

As to the parties, the proceedings in question left them in the following relation: Judge Woods, Circuit Judge, in the case of *Ketchum* vs. *The Mobile & Ohio R. R. Co.*, 2 *Woods*, *p.* 532, held that Ketchum was not trustee, and that Duncan and Elliot were. Judge Bruce, the District Judge holding Circuit, subsequently, on the hearing of a plea to Ketchum's bill, decided that Ketchum was trustee, and that Duncan and Elliot were not. This he did apparently uninformed of Judge Woods' decision, for he did not refer to it as authority or otherwise. This division of opinion was not reconciled by the decree appealed from. The question was regarded as immaterial. Ketchum, Elliot and W. B. Duncan were reduced from the position of officers to that of privates. They were treated as dummies and puppets, or, at best, as parties only for conformity, and for the safety of those substantially interested No decree was made in favor of either of them. The decree was against them; because it ordered a release from them to the purchaser (*fols.* 65, 66). Now, Ketchum, a nominal plaintiff in the consolidated bill, joins with some of his co-plaintiffs in that bill, and four defendants in that bill, in an appeal from all parts of the decree, as well those which were incorporated into the decree in answer to his prayer and with his concurrence, as those which were granted *in invitum.* To that part of his appeal which affects the consent portion of the decree, he brings in as sole respondents two of his co-plaintiffs in the consolidated bill, nominal parties, retained in the litigation only for the safety of others. To that part of his appeal which affects the only substantial interest involved in the litigation, he brings in, as sole respondents, two of his co-plaintiffs in the consolidated bill, nominal parties, retained in the litigation only for the safety of others; *and such respondents had, in the court below, objected to the claim in dispute, and had left its maintenance to its actual owners.* On an appeal so initiated and consummated, the actual owners of the claim are omitted; and yet they are stayed in the enforcement of that claim ,under the decree, by a supersedeas granted in advance, and granted upon the theory that they were about to be cited and secured.

If there is any act of Congress, or system of practice, which authorizes this disposition of the parties and the litigation, it must of course be acquiesced in; but the petitioners, Hays, Pierson, Dupuy and Alexander Duncan seek respectfully to take the sense of this court upon that subject by moving to dismiss the appeal and take off the supersedeas.

The appellants endeavor to show that the learned court below is responsible for whatever irregularities have occurred. In aid of that position, they produce a draft of an appeal bond, originally running to Hays, Pierson & Dupuy as co-obligees with Elliot and W. B. Duncan, but the names of Hays, Pierson & Dupuy have been erased; and they say that if the erasure was not made by the hand of the learned Justice, it was made by his direction, and in his presence. The bond contains an interlineation, which, also, they say, was made by the learned Justice; but, upon inspection, it will be seen that the interlineation is in pencil while the erasures are in ink. The draft of the citation is not produced. In its engrossed form it contains only the names of Elliot and W. B. Duncan as respondents. If the bond was altered, it was probably done in order to conform it to the citation.

But, it is submitted, the law and the rules of the court must be complied with as much by judges as by practitioners. A bond, if otherwise defective, is no better because drawn or dictated by a member of the court than it would be if drawn or dictated by a member of the bar.

There are other facts material to the questions raised. Since the making of the decree appealed from, Ziegler has assigned his claims against the railroad company to Hays, Pierson & Dupuy (*fols.* 92, 134). They own the interest which he had. They do not wish the appeal to be prosecuted. The papers (*fol.* 134) indicate that it was taken in his name without his authority. It was taken in his name jointly with the other appellants by a common solicitor and counsel, Mr. Andrews (*fol.* 75), acting under the direction of a common attorney in fact (*fol.* 93).

He has, by proper authority, withdrawn from and abandoned the appeal (*fol.* 173). He did not join with the other appellants in their answer to the original petition filed on these motions.

Henry Amy, one of the sureties on the appeal bond, has, since the taking of the appeal, joined with his firm of Henry Amy & Co. in transferring and assigning to Hays, Pierson, & Dupuy, bonds held by that firm, to the principal amount of $227,000 (*fols.* 103 to 133).

Hays, Pierson & Dupuy have requested Morris Ketchum to withdraw from and abandon the appeal (*fol.* 146).

The petitioners, Hays, Pierson, and Dupuy and Alexander Duncan have taken an appeal, by the allocatur of Mr. Justice Bradley, (who also signed a citation on their behalf) from some parts of the decree (*fols.* 151 to 161); but not from those parts to which they consented and in which they concurred in pursuance of the common purpose. Their standing as parties interested in the execution of the decree has therefore been recognized, but they have not obtained, nor even applied for, a *supersedeas.* They have taken the risk of the proceeds of sale remaining in court pending the appeal, or of being able to obtain restitution if the proceeds shall have been distributed.

The utmost damage which the appellants Chavannes, Jump, De Watteville, Merian, Renevier, Carrard, and Chuffard (now that Ziegler has parted company with them) in case the decree below should be executed, and then reversed in their favor as to the disputed coupons, is $12,500 (*fol* . 95 to 102). The petitioners have in their petition, offered, conditionally, to furnish indemnity against this damage (*fols.* 165 to 166). But the indemnity could be furnished in another form, to wit, by the petitioners stipulating (as they now and here offer to do, if this court thinks it just and equitable to require it) to waive so much of the decree as authorizes the Masters to receive in payment any of the coupons which matured in 1874, reserving their rights as couponholders on the distribution of the cash which may be paid into court, until the appeal of Ketchum and his co-appellants shall be determined, if that appeal is not dismissed.

The papers also show (*fol.* 81) that the learned court below, in fixing the amount of the appeal bond, stated that it considered a bond for $100,000 as very moderate security to the petitioners against the damage which they will sustain from the delay (*fol.* 148).

The present motions, on their merits, are to be considered, first, with reference to the condition of things existing at the time when the appeal was taken; and second, with reference to what change of circumstances has occurred since.

The petitioners, Hays, Pierson and Dupuy, have shown, by their papers, that the right of appeal, and to an auxiliary stay, as allowed and exercised in this case, is operating oppressively to them, and to an extent far beyond what is necessary for the protection of the pecuniary interests of the appellants.

The only interest of the appellants is, to reverse that part of the decree which allows the masters to receive the disputed coupons in payment. The limit of that interest is $12,500. If the appeal and supersedeas were restricted to the protection of that interest, the petitioners as couponholders would not complain, but they are so used as to deprive the petitioners and many others of an undisputed right to the enjoyment of other property of the value of several millions of dollars, and, so far as the decree affects that other property, there is not even a pretence that the decree is erroneous, nor a claim that it should be reversed.

Conceding the sacred character of the right of appeal, yet it cannot be denied that other rights are equally sacred and worthy of preservation, and that they ought not to be needlessly sacrificed to the first.

To the case at bar applies emphatically the language used by this court, in *Sage* vs. *R. R. Co.*, 93 *U. S. R.*, 412. "A supersedeas is a statutory remedy. It is

" only obtained by a strict compliance with all the required conditions, none of which can be dispensed " with. Time is an essential element in the proceeding, and one which neither the court nor the judge " can disregard. If a delay beyond the limited time " occurs, the right to the remedy is gone; and the " successful party holds his judgment or decree free " and discharged from the means of staying proceedings for its collection or enforcement. This is a " right which he has acquired, and of which he cannot be deprived without due process of law."

In arguing the propositions stated below, reference is made to the appeal allowed, and supersedeas granted, in open court, on June 16 (*fol.* 77). Those proceedings were in form against all concerned in the suit, including the present petitioners. As against them, an appeal was allowed *in presenti*, and a supersedeas was granted in advance, and it is to the appeal so allowed, and the supersedeas so granted, that the present motions apply.

THE ARGUMENT of the petitioners, Hays, Pierson and Dupuy, in support of their motions, is briefly as follows:

A.—As to dismissing the appeal in question.

I.—That appeal should be dismissed in consideration of the condition of things existing up to July 9, 1877, because:

1. Being left inchoate and incomplete on June 16, it was never afterwards perfected as against the petitioners, but was, by subsequent proceedings, abandoned as against them, and reduced to an appeal against Elliot and W. B. Duncan alone.

2. As finally defined and limited, it was an appeal by parties not competent to segregate themselves from the group to which they had been assigned by universal agreement, and by the order of the Court, and not competent to attach themselves to a different and independent group for the purpose of an appeal.

3. The only parties brought in to respond are nominal parties, having no interest in the subject matter of the appeal, who objected to the claim which the appellants question, and whose status as the representatives of the parties substantially interested is in dispute.

4. The appeal embraced portions of the decree which the appellants prayed for, consented to and concurred in, in pursuance of a common purpose.

5. The appeal was joint in form, but, as to one of the nominal appellants, was taken without his authority.

6. The apeal is made, even in its modified form, the basis of an oppressive, and, in its operation, an unjust and unnecessary supersedeas, declared to exist even after the original form of the appeal had been changed or abandoned.

To deal with these propositions separately:

1. *The original appeal was inchoate and incomplete, and was never perfected as against the petitioners.*
   20 *Howard*, 289, *Mussina* vs. *Cavazos*.
   93 *U. S. R.*, 86, *Kitchen* vs. *Randolph*.
   94 *U. S. R.*, 112, *Dayton* vs. *Lash*.

An appeal and a citation, whether the citation be actual or constructive, must accompany each other and be accompanied with security, in order to make either the appeal or the citation effectual. This was originally the law, and it has not been altered by sec. 1007 of the Revised Statutes. That section clearly couples the appeal and the security together as requisite to the completion of an appeal within sixty days, and much more clearly so as the basis for granting a supersedeas after sixty days. Here no security was given to the petitioners, at the time of the allowance of the appeal, and none was given afterwards; and by the terms of the bond given and citation signed on July 9 (*fols.* 84 *to* 91), the appeal taken in open court was defined and reduced to an appeal in which Elliot and W. B. Duncan were the sole respondents.

2. *The appeal in its original as well as in its final shape was by parties having no right to segregate themselves from the group to which they had been assigned by universal agreement and by order of the court, and no right to attach themselves to an independent group for the purpose of an appeal.*

By the consolidation order, which was made by consent to carry a common purpose into effect (*fols.* 44, 45), Ketchum, Ziegler, Chavannes, Jump, DeWatteville, Hays, Pierson, Dupuy, Elliot and W. B. Duncan were, in effect, constituted, by agreement, co-plaintiffs in the consolidated suit. They made a compact to promote the common purpose. Though they had not unity, they had community, of interest, so far as they had any interest whatever. The nominal co-plaintiffs, Ketchum, Elliot and W. B. Duncan, retained in the litigation for conformity, and for the safety of others, were grouped by their own consent with Chavannes, DeWatteville, Jump and Ziegler, interested co-plaintiffs in a representative suit, and with Hays, Pierson and Dupuy, creditors in their own right, as against the debtor to effect a common object. *This grouping was by agreement*, and none of the parties to the agreement have a right to disturb it in order to defeat the common purpose, by deserting their co-plaintiffs and joining with four defendants, who had been admitted into the litigation to defeat a particular claim, but not to defeat the common object. At least, the appellants had not the power to separate the group and break up the agreement without a summons and severance in the court below.

20 *Howard*, 289, *Mussina* vs. *Cavazos.*

3. *The appeal in question should be dismissed because the only parties brought in to respond to it are nominal parties having no interest in the subject matter of the appeal, who objected to the claim which the appellants question, and whose* STATUS *as representatives of the parties substantially interested is in dispute.*

The only respondents on the appeal are Elliot and W. B. Duncan, without any affix. They are not challenged to come here and defend the claims of their *cestuis que trust.* It is denied by some of the appellants that they are trustees for any one. No question, between them as trustees and any of the appellants, was passed upon by the court below, or is material here, though some such question may become material hereafter upon the determination of the matters reserved by the decree. Elliot and W. B. Duncan did not except to the master's report. They had no interest in the only question which was argued. Bringing them here brings only dummies; and when and if they come, they bring no question which this court can hear or determine. No question arose between them as individuals and any of the appellants. They objected to the coupons in dispute; and an appeal on which they are the only appellees is unilateral, and would be dismissed by the court *sua sponte*, or even on motion of strangers to the record.

1 *Black*, 416, *Cleveland* vs. *Chamberlain*.

The final controversy in the court below was upon the exceptions to the master's report; and the appellees Elliot and W. B. Duncan were not parties to that controversy. The petitioners are indispensable parties to the appeal.

93 *U. S. R.*, 38, *Terry* vs. *Abraham*.

It would not be competent for Elliot and W. B. Duncan to prosecute an appeal in their own names, as trustees, in the interest of only part of their constituency.

93 *U. S. R.*, 412, *Sage* vs. *R. R. Co.*

It is a just deduction that Elliot and W. B. Duncan are not the proper parties to be cited here to defend a partial interest at the expense of the trust fund, or at their own expense either; particularly in a case where the owners of the interest were of record defending it in the court below.

1 *Grattan*, 416, *Commonwealth* vs. *Ricks*.

4. *The appeal in question should be dismissed, because it embraces portions of the decree which the appellants prayed for, consented to, and concurred in, for a common purpose.*

2 *Vesey, Sen.*, 488, *Harrison* vs. *Rumsey*.
Ambler, 229, *Bradish* vs. *Gee*.
5 *Johns. Ch.*, 564, *French* vs. *Shotwell*.
20 *Johns.*, 668. *Same case.*

12 *Id.*, 521, *Monell* vs. *Lawrence*.
4 *Paige*, 476, *Leitch* vs. *Cumpston*.
1 *Cowen*, 709, *Atkinson* vs. *Marks*.
2 *Woods*, 628, *Anderson* vs. *R. R. Co.*

The facts assumed in this proposition are shown by the papers to have existed. The appellants united with the promoters of the first suit in asking for a decree of sale. They agreed to pursue that common purpose, irrespective of what might be the amount of the debt, or the respective interests of the parties. Upon that mutual agreement all subsequent proceedings were based, and the appellants had the benefit of the agreement. Now, they attempt, by an appeal from the whole decree, to defeat or delay the execution of the common purpose which they agreed to favor. But, *consensus tollit errorem.*

8 *Dana*, 12, *Story* vs. *Hawkins*.

It is obvious that the decree, as a decree of sale, can never be reversed, at least on this appeal.

5 *J. J. Marshall*, 638, *Amos* vs. *Stockton*.
6 *Id.*, 508, *Kercheval* vs. *Berry*.

Even in an inferior court, a party would not be allowed to avail himself of pending litigation for his own benefit, and at the same time to set up a claim in opposition to the theory on which the litigation is based.

2 *Woods*, 323, *Forbes* vs. *R. R. Co.*
Id. 628, *Anderson* vs. *R. R. Co.*
13 *Blatchford*, 312, *Stevens* vs. *R. R. Co.*

5. *The appeal in question should be dismissed, because it was joint in form, but, as to one of the appellants, was taken without his authority.*

The appeal was taken by one common solicitor, acting for all the appellants, under the direction of a common attorney in fact, acting in the name of all (*fol.* 75, 93). Each was therefore chargeable with notice of the attorney's want of authority to appeal in Ziegler's name.

11 *Wallace*, 356, *The Distilled Spirits.*

Each of the appellants, other than Ziegler, was cognizant, through his attorney in fact, of Moran's want of authority to act for Ziegler, and of the concealment of it from the court—which vitiated everything.

If it is said that each of the appellants had a distinct interest, the answer is that in the suit of Ziegler, DeWatteville, Jump and Chavannes they claimed to be joint representatives; but Ziegler declined to unite in exercising the authority of a representative on an appeal, and exercised that authority against an appeal. The appellants Merian, Renevier, Carrard and Chuffard, as proponents of claims under the order of March 6, 1876, had submitted to the pervading theory and purpose of the Duncan and Elliot suit and could not go in conflict with it (2 *Woods*, 323;) and the object of that suit, originally and after the consolidation was, to effect the sale against which this appeal is taken. None of the appellants have any distinct or several interests or rights in either enforcing or defeating a sale. The several interests attach only to the proceeds.

6. *The appeal in question ought to be dismissed, because, being defective in form and substance, it is made, even in its modified form, the basis of an unnecessarily oppressive supersedeas.*

The supersedeas was originally granted so as to embrace the petitioners and all parts of the decree. Although the form of the appeal was changed, the supersedeas was declared to be still in force as against all parties (*fols.* 139 to

144). The appeal is the primary obstruction to the execution of the decree.

The petitioners are the parties most largely interested in enforcing the decree, and the parties who could have enforced it, if the supersedeas had not been taken. They are creditors; and it is in right of creditors, and not of Ketchum, or Elliot, or W. B. Duncan, that the sale was decreed. The petitioners have, by the decree, acquired a right to turn in their bonds and coupons for the land, and a right to shar in the cash proceeds. It is *their* right which intercepted.

Calvert on Parties, p. 56.
2 *Hills Ch.*, 72, *Chesnut* vs. *Champion.*

In all bills of this sort, " the whole administration and settlement of the estate is assumed by the court, the assets are marshalled, and the decree is made for the benefit of all the creditors.. The other creditors may come in unde the decree, and prove their debts before the master to whom the cause is referred, and obtain satisfaction of their demands, equally with th plaintiffs in the suit: and under such circumstances they are treated as parties to the suit.

Story's Eq. Pl., sec. 99.

II.—The Appeal in question should be dismissed, as to some or all of the Appellants, in consideration of matters which have occurred since it was taken ; because

1. Ziegler, assuming the appeal to have been originally taken by his authority, has withdrawn

from it by transferring his interest in the subject matter, and by express notice (*fol.* 92, 135, 173). It is no longer the joint appeal of the original appellants.

2. Ketchum appealed only in the voluntarily assumed character of trustee. He has no personal interest to protect. His *status* as trustee was disputed, and has not been established. He appeals against his *cestuis que trust*, whom he invited into the litigation by the order of March 6, 1876, the responsibility for which, and the proceedings under which, he consented to adopt (*fol.* 46). He takes this appeal (against the will of most of his assumed beneficiaries *fol.* 146) in order to prevent the sale, which, in the execution of his trust, he ought to promote, and in the interest of only a portion of his beneficiaries. This he cannot do.

   93 *U. S. R.*, 412, *Sage* vs. *R. R. Co.*

B.—As to Vacating the Supersedeas, in case the Appeal is not dismissed.

I.—The supersedeas granted in open court on July 16 (*fol.* 77) should be vacated, because

1. The petitioners occupy a relation to the litigation which entitles them to prosecute and enforce the decree, and possess themselves of their share of its fruits.

   Calvert on Parties, p. 56.
   7 *Paige*, 585, *Innes* vs. *Lansing*.
   1 *Wallace*, 655, *Blossom* vs. *R. R. Co.*
   11 *Id.*, 459, *Cowdrey* vs. *R. R. Co.*
   Story's Eq. Pl., *sec.* 99.

2. The supersedeas in question was granted in open court, in advance of a bond, upon an appeal then inchoate and incomplete, apparently intended to be consummated at a future time as against the petitioners, but from which they were afterwards, by necessary implication, discharged.

3. The bond is not available to the petitioners. It is not made to them, nor to any one in trust for them. It is made to Elliot and W. B. Duncan, in their personal capacity. It does not recognize their trusteeship. It does not clearly bind the obligors to pay any damages sustained by the coupon holders.

   1 *Hennens' La. Digest*, *pp.* 48, 49, 50.

4. The fact that Ziegler did not authorize the appeal, or the independent fact that he has withdrawn from it, or the independent fact of the dismissal of the appeal as against either of the appellants, affects the obligation of the sureties. They did not covenant to answer for the consequences of any appeal but one to which Ziegler and Ketchum were, and were to remain, parties.

5. The appellants, if entitled to appeal from a consent decree, are not entitled to stay its execution.

   2 *Woods*, 628, *Anderson* vs. *R. R. Co.*

   They are entitled to stay the execution only of that portion which they contended against in the court below.

6. The security given was considered by the learned Circuit Court as very moderate. The papers now show that it is very inadequate (*fols.* 81, 148).

C.—The court has power to vacate, or impose conditions upon, a supersedeas, where it operates oppressively, if the object of the supersedeas can be accomplished by other means not operating oppressively.

Every court has inherent power to prevent its process from being abused, or used for purposes of oppression or extortion, even where, for ordinary purposes and in ordinary cases, the process issues as of right: "and it is always in the power of a court to suspend its own rules, or to except a particular case from their operation, if the purposes of justice require it." These principles are stated in

20 *Howard*, 254, *U. S.* vs. *Breitling.*
42 *Barbour*, 549, *Baldwin* vs. *Mayor.*

And the duty of a court to save suitors from an abuse of process is recognized in

59 *N. Y. R.*, 112, *Adriance* vs. *Lagrave.*

In the present case, the appellants have availed themselves of the 29th rule of this court to stay, by means of a very insignificant bond, the enjoyment, by the proprietors, of conceded rights of property, of the value of several millions of dollars, and this for the protection of an interest not exceeding $12,500 in value (*fol.* 96 to 102). If the fund consisted of eight millions of hard dollars, on deposit in the court below, and the dispute affected only five hundred thousand of those dollars, surely this court would not, if it could help it, impound the other seven and a half millions, until the dispute about the comparatively insignificant fraction could be decided.

Here the court can protect the appellants without oppressing the respondents, by accepting the offer which the petitioners make (*fol.* 165): or, by exacting a heavier bond from the appellants; or, by requiring, if it is just and right to do so, that the petitioners shall, pending the appeal, waive that portion of the decree below which authorizes the Master to receive coupons in payment of the sum bid at the sale. The effect of such a waiver will be, that so much more money will have to be paid into court, and it will remain there, until the appeal shall be determined. If the decree shall be affirmed, coupon holders will get it. If not, bond holders will get it.

D.—The court should not extend favors to the appellants by making any nunc pro tunc order or permitting any amendatory proceeding on the part of the appellants; because

1. Such a proceeding would be in aid of an appeal originally taken by Ketchum without authority, and in Ziegler's name against his will.

2. Such a proceeding would be in aid of an appeal, the taking of which was in violation of an agreement, and in disregard of a common purpose, in which all consented to concur.

3. Such a proceeding would inflict great damage on the petitioners without corresponding benefit to the appellants.

4. Such a proceeding is beyond the power of the court. Under sec. 1,007 of the Revised Statutes, as expounded in 93 *U. S. R.*, 86, *Kitchen* vs. *Randolph*, the right to allow a supersedeas after

sixty days depends upon an appeal having been allowed and the security given which is required by law upon the signing of a citation, within the sixty days. In this case those conditions were not complied with. The appeal taken on June 16th was abandoned, as against the petitioners, on July 9th, and no security was given to them within the sixty days.

The abandonment of the appeal, as against the petitioners, was not accidental. It was deliberate, for their names were purposely omitted from the bond.

E.—The fact that the petitioners have appealed from some parts of the decree does not impair the force of the petition.

They have not asked for a supersedeas.

If the making of a sale involves the carrying into effect of those parts of the decree from which they appeal (as it does not, because their appeal is largely from omissions in the decree), there will be no one to complain, and no one to be complained of, but themselves.

But the court can impose what conditions are proper in this respect.

F.—The appearance of the petitioners on the appeal taken against them on June 16, under the circumstances stated in the petition (fol. 161 to 164), does not prejudice them.

3 *How.* 693, *McDonough* vs. *Millauden.*
13 *Id.* 150, *Buckingham* vs. *McLean.*

G.—It was suggested heretofore by the appellants that they were aggrieved by the fact that the court below fixed a period within which they must elect to abandon the litigation and share in the purchase if Hays, Pierson and Dupuy should make it, or to pursue the litigation and abandon the share in the purchase. It was argued that the court should make some effort to equalize the advantages and disadvantages growing out of an unequal distribution of property, and compel the large proprietor (whose own industry, business skill and good fortune had made him so) to divide his rights with the small proprietor. To that end it was proposed that the court should decree a strict foreclosure in favor of all the creditors; or should direct the trustees to purchase for the benefit of all, in proportion to their respective interests. But it was foreseen that this machinery would not be adequate to the purpose of lifting the small bondholder to the pecuniary level of the large one, because the same preponderating influence would, as inexorably as the laws of gravity, and beyond the potency of any court to counteract it, legitimately make itself felt in the administration and partition of the property, and in the execution of the trust.

Whether natural equity requires (as artificial law does not) that the successful party shall share his advantages with the defeated one is a question whose solution depends upon facts—and here some facts are wanting. If the coupon holder paid dollar for dollar for his coupons in order to prevent the mortgaged property from being sacrificed in time of depression, while the small bondholder paid only forty cents on the dollar for *his* securities, and if the latter for years maintained a war with the former, rejecting all overtures of peace, and insisting that the coupon holder should have nothing but his legal rights—there are minds which might be insensible to the equity of giving to the couponholder any less than those rights when he has established them at an expense of scores of thousands of dollars; and there are those to whom it would not be clear that equity awards to the bondholder who has raised so loud, and maintained so long, a clamor, any more than the law allows him, when it is found out what that is.

It may be that questions of this kind have no bearing on the matter of the present petition.

II.—The petitioners submit that their motion should be granted.

F. N. Bangs,
Of Counsel for Hays, Pierson, Dupuy and Alexander Duncan.

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EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

In the Supreme Court

OF THE UNITED STATES.

MORRIS KETCHUM ET AL.,
Appellants,

vs.

WILLIAM BUTLER DUNCAN AND
ANDREW FOSTER ELLIOT,
Appellees.

No. 879.

Reply to Brief Filed for Appellants.

By agreement between counsel on both sides, assented to, as it is understood, by the Court, time is allowed to counsel for the parties who move to dismiss the appeal, to reply to the briefs filed on the part of the appellants.

It would not be necessary to use that privilege if the learned counsel for the appellants had not shown some misconception of the grounds on which the motion is based. Such misconception seems to render it advisable to re-state some of those grounds, which will be done with the greatest possible brevity.

The motion to dismiss the appeal involves four inquiries (1.) Who are appellees; (2.) Who are appellants; (3.) Have the appellants such a relation to the litigation as entitles them to a review in this court, as against the appellees, of the determination made by the court below upon the matters which the appellants bring here by the appeal; (4.) Does the appeal bring anything of which the court can take cognizance?

1.—WHO ARE APPELLEES.

The appeal, taken in open court on June 16th, was an appeal as against every party to the litigation. But the petitioners submitted in their original brief that the terms of the citation controlled the entry upon the record, and reduced the appeal to one in which Elliot and W. B. Duncan were sole appellees. This did not seem to them an unreasonable position, in view of the action which this court took in *Owings* v. *Kincannon*, 7 *Peters*, 399.

In harmony with this view, it is stated in the brief filed by the appellants on Oct. 15, in answer to the motion to vacate the supersedeas (p. 6, *end of second point*) that "these petitioners" (Hays, Pierson & Dupuy) "were not such adverse parties to the reversal "of the decree as would have justified the appellants "in making them respondents to the appeal." * * * "They could have had the appeal dismissed as against "them." "They are not stayed now. It was not in-"tended to stay them, because," &c. (p. 8, *point* 4.) These expressions seem to concede to the proceedings of July 9 the same effect which we now claim for them, viz.: that they amounted to an abandonment of the appeal taken in open court, so far as that was an appeal against H. P. & D.

2.—WHO ARE APPELLANTS.

Originally the appellants were Ketchum, Ziegler, Chavannes, Jump, De Watteville, Merian, Renevier, Chuffard, and Carrard. These appellants did not, in the court below, occupy the same relation towards each other and towards other parties and towards the litigation, which they assume on the appeal. They have shifted ground. In the court below, Ketchum, Ziegler, Chavannes, Jump, and De Watteville united with Elliot and W. B. Duncan in a consolidated suit in which they all claimed to be acting for and representing bondholders. It was as representatives that they claimed a standing. After the cause had reached the stage at which there was made (on March 6th, 1876) an interlocutory decree, providing for the admission of creditors as litigants in *propriis personis*, Ketchum, Elliot, W. B. Duncan, Ziegler, Chavannes, Jump, and De Watteville became mere sponsors for the litigation and ceased to be the litigants with each other. They agreed to occupy CONCURRENT and harmonious ground, sinking their differences and leaving the discord among creditors to be settled under the order of reference, they themselves agreeing to ask for a decree of sale in favor of those who should establish rights under the order of reference.

Merian, Renevier, Carrard and Chuffard, after having availed themselves of the order of reference without objecting to the coupons, and having then answered, not for the purpose of defeating the suit as a foreclosure suit but for the purpose of defeating the coupon claim, also ratified and adopted the order of reference and the proceedings under it. The second mortgage bondholders had objected to the coupons, and so had Belloni. Thus, Merian, Renevier, Carrard and Chuffard were originally at one with the second mortgage bondholders, Elliot & Duncan, and Belloni, in the court below. Now, Ketchum, Chavannes, Jump, De Watteville, Merian, and their co-appellants, disturb this grouping. Part of those claiming to be trustees, namely, Ketchum, claiming to be trustee *de jure*, and Chavannes, Jump, and De Watteville, claiming to be trustees *ex necessitate*, desert their co-trustees Elliot and W. B. Duncan. Part of the objectors to the coupons, viz.: Merian, &c., desert their co-objectors; and these two bands of deserters unite together.

It is needless to say that Belloni may yet appeal. So may the second mortgage bondholders. So may Elliot and W. B. Duncan. This presents the very condition of things which this court reprobrated in *Masterson* vs. *Herndon*, 10 *Wallace*, 416, and in *Sage* vs. *R. R. Co.*, 93 *U. S. R.*, 412.

If the suit of Elliot and W. B. Duncan had been prosecuted to decree by itself, could Elliot have severed from his co-trustee and prosecuted an appeal by himself, in order to defeat a particular claim, making W. B. Duncan sole appellee?

3. THE RELATION OF THE APPELLANTS AND THE APPELLEES TO EACH OTHER AND TO THE LITIGATION IN THE COURT BELOW.

It is stated in the brief filed by the appellants on October 15 (*p. 5, second point*), with entire correctness "that the consolidation of the causes took place subsequently to all changes in the parties to the individual suits." It is also true that the consolidation order adopted and ratified the interlocutory order of reference of March 6, 1876, by consent of all parties.

That order must be deemed to have been made after the filing of the Ziegler bill, and after the putting in of the answer of Merian, Renevier, Carrard and Chuffard. At any rate, the four last named had confined their contestation to the coupon claim, of which they, in their answer, designated Hays, Pierson and Dupuy to be the holders.

So there is no appellant here who, before the Master, objected to any bond or coupon.

But if Elliot and W. B. Duncan are sole appellees, there is no party on either side of the appeal but those who objected to the coupons in the court below, at some stage of the litigation there. That is, although the appellants did not object to the coupons before the master, they did so otherwise; and the appellees so objected at the instance of Belloni; and, on such an appeal, it is sought to overthrow the decree of the court below which allowed the coupons.

If, on the other hand, Hays, Pierson, and Dupuy are regarded as appellees, it is clear that they ought not to be herded with Elliot, W. B. Duncan, Belloni and the second mortgage bondholders, and that the appellants cannot, as against them, raise any question here, not litigated in the court below. They cannot deny the right of Hays, Pierson and Dupuy to a decree of sale, for the appellants asked for that decree. They cannot deny the rights awarded to Hays, Pierson and Dupuy as bondholders, for they invited Hays, Pierson and Dupuy into the litigation to establish, and they did not question, those rights. The utmost they can question is the right of Hays, Pierson and Dupuy, as coupon holders, if, without having excepted to the Master's report, as Belloni alone did, they can question even that right. Should they be permitted to intercept the enjoyment of acknowledged rights simply because doubtful ones are in debate?

4. There is no assignment of errors filed with the transcript, as required by section 997 of the Revised Statutes. It is, therefore, impossible to say what the appellants complain of, or claim to be aggrieved by, except by inference from the positions they assumed in the court below. They cannot complain if we explore the record to pick out errors on which they decline to put a finger.

It is stated in Phillips' Practice, *p.* 208, that the provision in the judiciary act of 1789, "for the assignment of error and prayer for reversal has never been treated by the court otherwise than as directory merely, and in practice it has never been enforced." No case is here referred to. It is not intended by this remark to disparage the authority of Phillips' Practice, but only to justify the observation that if the view taken by the court is as stated in the text book, it is one of those things which are authenticated more by tradition among members of the bar in daily attendance upon the court, than by reports of adjudged cases. But the same learned author shows, at *pp.* 210, 211 and 212, how rigidly the court, even before the passage of the Revised Statutes, enforced its own rule upon the same subject, treating that rule, far from directory, as being imperative and mandatory in the highest sense. The rule had a practical object; which was, apparently, to enable the court to determine, before going into the merits, whether the appellants had raised any question for the court to take cognizance of. The statute had the same practical, meritorious, and labor saving purpose. If one is worthy of enforcement, the other is.

It is submitted that the Court sits to do practical justice in reference to practical affairs, but not to deal with what may turn out to be mere abstractions. Here a vast property and vast interests are involved. The road in question, as the record shows, is five hundred miles long. It runs from the Ohio to the Gulf, bisecting four States. Established and unquestioned rights of property, to the amount of $10,000,000, are held in suspense at the arbitrary will of proprietors to the amount of $176,000, claiming an enhancement of their recovery, out of that portion of the fund awarded to coupon holders, to the amount of not more than $12,500, and yet not claiming any reduction in the recovery of their fellow bondholders. If the court is compelled to retain the cause in the shape in which it is brought here, it is compelled to do practical injustice to large interests; while, if it can reduce the appeal within legitimate bounds, it can avoid the sacrifice of these immense rights, without hazarding even the smallest pecuniary claim of the appellants.

F. N. Bangs,
Of Counsel for Petitioners, &c.

Supreme Court of the U.S.

D. ORELLI ZEIGLER, AND OTHERS,

vs.

WM. BUTLER DUNCAN AND A. FOSTER ELLIOTT.

A Motion on the part of Hayes, Pierson and Dupuy to Vacate an Order of Supercedeas and Dismiss Appeal.

JOHN A. CAMPBELL,
Attorney to support Motion.

Murphy & Co., Printers & Stationers, 182 *Baltimore street, Baltimore.*

In the Supreme Court of the U. S.

D. ORELLI ZEIGLER, AND OTHERS,

vs.

WM. BUTLER DUNCAN AND A. FOSTER ELLIOTT.

A Motion on the part of Hayes, Pierson and Dupuy to Vacate an Order of Supercedeas and Dismiss Appeal.

I. A STATEMENT OF THE FACTS IN THE RECORD OF THE CAUSE.

The Mobile and Ohio Railroad Company, having a railroad and branch roads above five hundred miles in length through four States, and a large landed estate, made default in 1874 in the payment of interest on a first mortgage executed in 1853, and also on other mortgages, and has remained in default. In May, 1875, Wm. Butler Duncan and A. Foster Elliott, who were recognized as trustees by the corporation and by all the mortgagees, filed a bill to enforce this first mortgage, making therein all junior incumbrances, and the corporation, defendants. They were admitted into possession, as trustees and receivers, without opposition. In March, 1876, the cause being at issue, an order of reference was made to ascertain the amount of the debt, the priorities among the parties, a mode of sale, and all other material facts, preparatory to a hearing, and allowing parties to contest each other's claims. The Master made his report in the spring of 1877, exceptions were filed to the allowance of the single claim of Alexander Duncan, and at the June term of the Circuit Court of the United States, at Mobile, was ready for a hearing, and was set down upon all the proceedings and a motion for an order of sale.

This is a statement of the first case.

2. In March, 1876, after the order of reference in the first suit, a bill was filed by a Morris Ketchum, who had been a trustee in the first mortgage of 1853. In April, 1863, the Court of Chancery in Alabama, at Mobile, upon a bill filed, had removed him from that office. He had been made a party by publication under the statutes of the State, and the old and accustomed order of proceeding under the statutes had been followed. He was charged with neglect of duty, corrupt practice while in office, and that he was absent from the State, in New York, and could not perform his duties. All sufficient grounds for his removal under ancient statutes of that State. The statutes then in force allowed eighteen months to a non-resident to show cause against a decree. But in consequence of the war this term had been extended to similar judgments and decrees from time to time until 26th June, 1869.

Ketchum had acquiesced all this while. Trustees were appointed in his place, and of others who had died, who were the immediate predecessors of Duncan and Elliott, had continued possession. The first cause was at issue before Ketchum had been sought out and drawn forth from his obscurity to claim a title. His bill impeaches the title of Duncan and Elliott, and avers he was the only trustee, the chancery decree of Alabama being void, as he alleged.

His bill is filed to foreclose this mortgage. The parties to the bill as defendants are the same as those in the first bill, viz: The railroad corporation, the junior incumbrances, and Duncan and Elliott in addition.

This is the second case.

3. The third case was commenced under the same patronage. Several Swiss or French bondholders for small sums, in March, 1877, filed this bill making Ketchum, Duncan and Elliott parties, and making the corporation and junior incumbrances parties. There is discovered in each of these documents a furious and burning thirst for the administration of the property. The extrusion of Duncan and Elliott and the appointment of one of their own nominees as receiver, was obviously the *summum bonum* proposed by the agent of these humble petitioners from the continent of Europe. Moran is the patron of the two bills.

Neither of these cases were in any condition for a hearing in June, 1877. In neither were there issues joined. In neither had there been a decision to entertain the bill upon answers filed. Not a particle of testimony had been taken. In some instances parties had not appeared.

II. THE CONSOLIDATION ORDER OF JUNE, 1877.

The case first mentioned having been called at the June term, a motion was made by one of the defendants to consolidate the three cases. The plaintiffs in the two incomplete cases insisted and the Court proved favorable. The plaintiffs in the first suit yielded a consent after the Court had announced its favor to the motion. This order is printed at folios 38 to 41.

The title of each of the suits is set forth; the order is represented as one made by consent; the motive is stated that the three suits had the common object to secure a sale of the property of the Mobile and Ohio Railroad Company. The Court thought that the sale could be made by the control it had of all the claimants of the title of trustee, and the presence of the *cestui que trusts.*

The Court ordered the three cases to be *consolidated* and to proceed to *final decree.* All the testimony and reports made in the first suit were to be used as if they had been taken in each case. In the decree of sale, (folios 101 to 114,) the recital is that the causes had been *consolidated* and *set down* for a hearing at the *same time* to be disposed of in *the same decree*, and in the bond taken and approved we are informed that the suits "being *brought for a single purpose and were consolidated into a single cause.*"

The effect of this consolidation of the three suits, of the cumulation of the several demands of several parties materially inconsistent and contrary to and precluding each other, as in the case of Ketchum and of Duncan and Elliott, would have offended the most fundamental and controlling principle of the law of procedure, if it had been made arbitrarily and without terms.

The inconsistent and contradictory demands for the office of trustee, were, by the *consent order*, withdrawn from the determination of the Court until after the sale. The contestants abdicated, if we may use the term, the office of trustee in the cause, to secure the common purpose of a sale. No discussion took place at the hearing upon the rights of the trustees, or of their claim to dispose of the property, or to take charge of the execution of the decree. The discussion was confined to the ascertainment of the debt upon exceptions to a single decision in the Master's Report and the form of sale. The Court directed the sale to be made by its own Masters, and directed that the claimants of the office of trustee should execute a deed of confirmation and release prepared by those Masters.

The trustees, like silver in the time of Solomon, were accounted of, as nothing.

This exhibition of the consolidation order, enables me to show the case as it was then consolidated. On the record as a single case its title would be,

Wm. B. Duncan, A. Foster Elliott, Morris Ketchum, D. Oreilli Zeigler, and other Swiss levies of Moran, *Plaintiffs.*

against

The Mobile and Ohio Railroad Company; the trustees of junior mortgages, Dunn, Young, &c., &c. Wm. H. Hayes, Wm. S. Pierson and T. H. Dupuy, *Defendants.*

Besides these, a portion of the Swiss guards had been ranged as defendants in the first cause—these were Merion, Renevier, Carrord and Chufford.

The two bills last filed attacked with acrimony the claims of Alexander Duncan by name, but took care not to make him a party to their bills. Upon the consolidation of the suits his assignees, Hays, Pierson and Dupuy, were admitted as defendants to defend this claim against the alliance, and they answered.

They are supported by the sanction of several hundred bondholders, having bonds for $87\frac{8}{10}$ per cent. of the entire debt of the corporation, and 86th part of the first mortgage debt. Upon the argument this claim was sustained by the Court. So that the Master's report made in the case of Duncan and Elliott, before stated, with all of its findings, was adopted and confirmed by the decree. Whatever was claimed in the bill of Duncan and Elliott was established and declared, save what was reserved under consolidation order, the title to the office of trustee.

III. THE APPEAL.

By the established practice of the Supreme Court, no appeal can be taken from a final decree affecting the plaintiffs and defendants generally, in any fragmentary way. The whole case must be brought up at the same time, and all parties must be joined in the appeal, (the excepted case stated in the 6th How., 201, and other cases are not forgotten,) in order that the grievance complained of might be examined with all the parties before it, who were in the Court of first instance.

All plaintiffs at law—all complainants in equity, are so related to the cause that they must join in a writ of error or an appeal, and so all the defendants at law or in chancery, must join in a writ of error or appeal as a general rule. The case where a distinct, separate and independent claim or issue is disposed of, is the excepted case. Upon the subject, the jurisprudence of the Supreme Court of the United States and of the States, where there is no alteration of the rules of procedure on the subject agree.

Owings *vs.* Kinconnon, 7 Pet., 399.

Todd *vs.* Daniel, 16 P., 521. 20 Wall 152

Brockett *vs.* Brockett, 2 How., 238; 20 How., 280; 9 Paige, 66; 4 Paige, 102-107.

1 Ala. Rep., 126; 24 Ala., 293; 26 Ala., 461.

The names of all parties interested that a judgment shall not be disturbed, must be included in the appeal and in the bond or the appeal will be dismissed. Those only are parties to the appeal who are secured by the bond.

12 Rob. Rep., 203; 10 Ann., 232; 11 Ann., 504; 12 Ann., 71; 13 Ann., 392, 441; 14 Ann., 315, 688.

1 Hennen's Dig., p. 49, s. 11, 13.

Justice Spofford, in Lawrence *vs.* Burruss, 12 Ann., 483, says that where a motion for appeal is taken in open Court without petition or a specification of parties, the only test for ascertaining the appellees must be to find their names in the bond executed by appellants.

After the Court had ascertained the debt, ordered the sale, pretermitted the disputed questions of title, there was a prayer for an appeal from the decree and an allowance by the Court, with *supercedeas*, upon the execution of a bond within sixty days.

The appellants are the plaintiff, Ketchum, in the second suit. D. Orelli Zeigler and asssociates are the plaintiffs in the third suit, filed in 1877, and which suits formed subjects for the consolidation. The bond tells us that Merion, Renevier, Carvord and Chufford are defendants in the first suit on behalf of the bondholders of first mortgage. The plaintiffs, Ketchum, Zeigler and others, did not join their co-plaintiffs, Duncan and Elliott, nor notice them in any manner in the motion or order. Neither do the defendants, Merion, Renevier, Carvord and Chufford notice their co-defendants in any of the cases.

When we come to the bond and citation, we find that Wm. Butler Duncan and A. Foster Elliott are the only obligees, and when we come to the citation, they are the only respondents. No other party has been notified. The Mobile and Ohio Railroad Company, the representatives of second and other mortgages, and the owners of the bulk of the debt of the corporation, are permitted to stand aloof as uninterested parties. The Court has seen that the pleadings, proofs and exceptions question the debt due by coupons of 1874 of these parties, and the incumbrancers litigated and contested claims in the bill.

Under the consolidation order, the only personal question affecting Duncan and Elliott was adjourned. They were not allowed in the decree to perform any function in the sale. Ketchum was placed in the same attitude. What controversy, in the decree, between them was in any manner adjudged? The bond is from one plaintiff to another plaintiff, each disputing the other's title and each agreeing that an adjudication should be indefinitely postponed, as a bagatelle, in the opinion of the Court, was only involved. Nor can we assume the bond to be made to them as trustees. All of these appellants *denied* them to be trustees; their fendants generally, in any fragmentary way. The whole case must be brought up at the same time, and all parties must be joined in the appeal, (the excepted case stated in the 6th How., 201, and other cases are not forgotten,) in order that the grievance complained of might be examined with all the parties before it, who were in the Court of first instance.

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IV. UPON THE INVALIDITY OF THE APPEAL.

To perfect an appeal to the Supreme Court of the United States in a Chancery suit, there must be the allowance of the appeal, a bond to secure the appellees in their costs and a citation.

The order in the Court is a commencement. If there was a formal petition, a designation of parties, an offer of bond and an allowance, it would be a valuable commencement.

1. In this case some plaintiffs in the consolidated case, some defendants in the consolidated case, pell-mell, announced an intention to appeal, and asked the Court to fix the amount of a bond to be a *supercedeas.* No explanations were given, neither was there any offer of a bond. The Court granted sixty days to all to make bonds.

Such an order of appeal is not to be deemed as equivalent to a citation.

The Article of the Revised Statutes (sec. 1000, p. 187,) requires every Justice signing a citation on a writ of error, to take sufficient security to prosecute the appeal to effect. The allowance of the writ, signature of citation, and taking a bond are concomitant acts. The Court decided that this being done in term time when the decree was given, citation was not needed. If done at any other time citation is necessary.

Yeaton *vs.* Lennox, 7 Pet., 220.

But in this case there was no bond nor citation, only an allowance to make bonds in a particular sum and with good security which the Court would consider and, if satisfied, sanction. The question is will the order in June, authorizing a bond to be made in future, fulfil the Statute in respect to the signature and service of a citation? It does not. The Article of the Revised Statutes (sec. 1007, p. 188,) refers to the cases of *supercedeas* only. The party must get his writ and his citation, leave a copy of the writ in the Clerk's office. The Justice ought to require, when he signs the writ and citation to take the bond required for all cases, a bond for costs. But the *supercedeas* follows the service of the writ. The security may be given for a *supercedeas* in sixty days after judgment. The service of writ of error must be made in ten days to operate as a *supercedeas*.

In this case there was nothing done but to have an allowance of an appeal in Court without bond or citation, and no service was made of decree or citation upon the map of defendants.

2. Within the sixty days a bond was given to two persons as if they had been the only parties to the record. These immaterial parties, too, in the appeal.

The appeal to be operative must be accompanied or followed by a sufficient bond. The bond must be made to the proper parties, and to all the parties to be secured.

Davenport *vs.* Fletcher, 16 How., 142.
Martin's R., N. S., 317; 25 Ala., 109.
3 La. Ann., 339; 26 Ala., 85.

It will not do to promise a bond or to manifest a purpose to appeal. The bonds must be prepared and presented to the judge and sanctioned.

Mussina *vs.* Cavazos, 20 How., 280.

The execution of the bond so as to perfect the appeal is a matter *stricti juris*. Unless it be given there can be no remedy. So this court has settled.

Railroad *vs.* Harris, 7 Wall., 574.

The Supreme Courts of Louisiana adopt the same rule.
12 Ann., 71; 10 Ann., 55.
5 Paige, Ch. Rep., 170.

The case comes to this court without a bond to any person on the record, save only to Butler and Elliott. Butler and Elliott have no interest in the decretal orders personally, and in the conditions of the case no representative capacity which charged them with any obligation to the other parties on the record. They were bagatelles.

No bond was proffered to any other party.

No citation was issued to any party but them.

V. THE PROPOSITION TO AMEND THE PROCEEDINGS.

The statutes of the United States exempt the United States from filing a bond as a condition to obtain an appeal or writ of error. All other appellants must file a transcript with a citatition, and the signature of a citation by the judge, and the execution of a bond approved by him as concomitant acts. Every person cited must be secured by the party citing him. The citation and the bond accompanying the transcript includes only two parties to the record as appellees. The record shows that the Mobile and Ohio Railroad Company—three sets of trustees in junior mortgages—the owners of 87 per cent. of the bonded debt of the corporation, including first mortgage debt, are parties defendant in this consolidated suit on the record, and are not noticed in any petition for appeal in any bond, in any citation. We have testimony of the appellants that they were not esteemed to be material parties to any appeal. The motion does not in any direct or intelligible way include them, and they are excluded in all other papers filed.

The same confusion of thought appears in the organization of the bond of appellants. Ketchum, the sole plaintiff in the second suit, was combined and consolidated with Duncan and Elliott, and D. Orelli Zeigler and his Swiss guard combined and consolidated with Ketchûm and Duncan and Elliott. The second phalanx of Swiss was ranged by their leader as defendants in the suit of Duncan and Elliott. In the appeal the Swiss and Ketchum plaintiffs set upon their co-plaintiffs, and the phalanx deserted the side of defendants and joined their countrymen, to destroy Duncan and Elliott on appeal. It is apparent that their notion was to leave the Mobile and Ohio Railroad Company the junior incumbrances, the owners of 87 per cent. of the bonded debt at Mobile till they had finished their combat at Washington with Duncan and Elliott, the only parties cited, the only parties assured, the sole respondents. What order can this Court make to rectify the alignments among these parties? To place plaintiffs on the same line involves the destruction of the only bonds and citations to be found in the record of the case. To enable Merian, Renevier and Carvord (Cephise Chufford is a woman, and probably vivandiere of this phalanx,) to return among the defendants they must go back to the Court in Mobile, obtain appeal in the name of all defendants, and summon and sever those who have a place on the record to elect their position if that be unpleasant to them.

Todd *vs.* Daniel, 16 Pet., 521.

VI. ON THE AMENDMENT.

The Statutes of the United States establish rules for bringing cases into this Court. They make no accommodation with errors, mistakes, blunders or other effeminate practice. It is no easy matter, sometimes, for a Judge at New Orleans to determine whether a case is equitable or legal. This Court rejects a case in Chancery brought up by writ of error, or a case at law brought up by appeal. The parties cannot plead error in the Judge so as to amend—much less his counsel to them for relief. A Judge has signed a writ of error in which the parties were not included or described, or a citation variant, or a bond to a wrong party, but this Court did not allow a correction.

16 How., 142-144.

The Judge has taken an insufficient bond to operate as a *supercedeas*—the Court did not allow a new bond to be made.

16 How., 135.

The Court has generally refused to qualify, or to modify, or to bend these Statutes.

VII. ON THE AMENDMENT AND AS TO THE FACTS.

The suit of Duncan and Elliott was commenced and conducted to an issue, without opposition as to their title, before Morris Ketchum made his appearance with Belloni, who proves six bonds.

The Swiss opposition of Moran commenced after the Master had nearly completed his report upon the entire case.

Ketchum filed his bill, but had not, in more than a year's time, brought it to issue.

The bill of the Swiss came in shortly before the case of Duncan and Elliott had set down the case for a hearing. They had not brought the parties into Court.

None of these were defendants in the other case. These parties all were admitted by the Court, at the hearing of the case, on the *consolidation order*.

They pleaded the *purpose is the same* in all the suits. All desire a sale of the property; all want the property out of Court.

This most important prayer in every bill can be granted by the Court for the benefit of every creditor, without trial of the trustee's title. The consolidation order as made they solicited and moved for, we consenting, so that the *common purpose* might be allowed.

We were fully prepared. The Court's decree corresponds entirely with the case prepared by Duncan and Elliott. That case was opposed in respect only to one claim presented to the Master.

All these Swiss claimants proved before that Master, without opposition, all are confirmed as creditors, by the decree confirming the report.

Upon the rendition of the decree, all of these *new comers* prayed for the allowance of an appeal from said decree, and it is granted and allowed. But the conditions to complete it according to the Statutes of the United States are inseparable from such an order and could not be dispensed with. These conditions have not been performed; the record shows no performance. They are now before the Court upon a default. They ask something from the Court as bounty to relieve them from the consequences of default. We answer that the consideration *for consent* to the *consolidation* was, that all the parties to that consent had a *common purpose* and desire to have the property sold. By the consent to this consolidation given by the plaintiffs, every one of these parties became parties to the record and were heard. They might have appealed against the decree without a supercedeas or appealed to reëxamine the claims of Alexander Duncan, but the precise purpose of this *appeal* is to defeat the COMMON *purpose* which they claimed to *desire* and came to promote. It appears that there are a small minority of the creditors of the corporation. Their whole claim, as shown in their pleadings, is a trifle as compared with the others. Their procrastination in bringing suits and in becoming parties to the litigation and the irregularities in their proceedings show that obstruction is their main purpose.

The damages they may sustain from a sale, is obviously a minimum as compared with the injury to other parties by a delay for two or three years.

The mass of the creditors have agreed to measures of settlement. The same proposition was tendered to every bondholder, and the Court renewed the proposition with the consent of the trustees and all the counsel, to continue till September, 1877. The measures are liberal and just. But these parties reject them, and say that they will concede nothing of their legal rights. They, as first mortgage bondholders, will take what the law entitles them to and not less. But now having committed gross irregularities, and been guilty of manifest defaults, they ask for lenity, and pray for extreme, not to say licentious, indulgence.

The answer may be made that having sought for legal claims, and those only they should be content with what the law gives to them. Hast thou appealed to Cæsar, then by Cæsar, thou shalt be judged—the law must be followed.

The Court will see among the bondholders persons having large interests, and persons having one, two and ten bonds, several hundred in all.

These several hundred persons, holding twelve millions of the debts of this corporation, combined to make a settlement on terms which the *Judges of the Circuit Court* commended as equitable. Is there any justice in the generosity or liberalty, or indulgence, which postpones the adjustment of their claims under the decree by a sale of the property under the existing conditions? These appellants still may prosecute an appeal, under legal conditions and a proper procedure.

JOHN A CAMPBELL,
Attorney to Support Motion.

In the Supreme Court of the U. S.

No. 879.

MORRIS KETCHUM, ET AL.,

vs.

WM. BUTLER DUNCAN AND A. FOSTER ELLIOTT.

Motion for the Dismissal of the Appeal.

I.

The Supreme Court of the United States exercises its jurisdiction over the final decrees of Circuit Courts only, through an appeal made by a party or parties to the decree, and aggrieved by a decision of that Court. The appeal is designed to place the cause in the Supreme Court in the plight and condition it had in the Circuit Court. The plaintiffs prosecuting an appeal must notify the appellee, assure him against the loss of costs and in case of stay of execution, against damages in event of the failure of the appeal. All the parties to the suit who have any interest in the maintenance of the decree must be a party to the appeal, as appellants or appellees.

Rev'd Statutes, secs. 692, 992, 1000, 1007, 1012.

Simpson *vs.* Greeley, 20 Wall., 153; 9 Paige, 66; 34 Barb., 594; 6 Paige, 273; 11 Wend., 227.

II.

The suit above mentioned was organized into its present form at the hearing in the Circuit Court in June, 1877. Three suits with distinct plaintiffs, were, by the order of the Court and consent of the parties, consolidated so as to form *one suit* to be disposed of by the *same decree.* (Fols. 43 and 47.) The Court disposed of the consolidated suit by the *same decree* the 15th June, 1877. (Fols. 51 and 68.) The consolidation order and the decree assume, that the legal title to all the property is vested in some parties to the consolidated suit. That it was not material to designate this trustee prior to the sale of the property. That all of the equities under the mortgage could be determined irrespective of that issue, and that the claimants might, after the sale of the property, be required to confirm the sale, and release to the purchasers. Thus the *common purpose* of all the suits pending and which were consolidated could be accomplished. The decree was so framed. Upon the promulgation of this decree nine persons prayed an appeal from the decree signed with *supercedeas.*

One of these persons is Morris Ketchum. He claimed in his bill he was the only trustee. He contested the title of Duncan and Elliott, and brought his suit to foreclose against the mortgagor (Mobile and Ohio Railroad Company) and the junior incumbrancers, who were the defendants in all of the three suits consolidated. The court did not determine the claim of Ketchum. It was reserved with his consent. He has no interest in any question settled in the decree. His appeal is made against Duncan and Elliott, his co-plaintiffs. He gives to them a bond and a citation, and to none other. Their relations to the decree are the same as his own, and neither of them in the form of the suit under the consolidation are entitled to dispute the decree of sale. A party bringing an appeal must have a direct interest in the matter of the decree upon which the appeal is taken.

Idley *vs.* Bowen, 11 Wend., 227.
Cuyler *vs.* Moreland, 6 Paige, 223.
7 Paige, 18; 48 Penn., 328.

III.

Morris Ketchum, the plaintiff in one of the consolidated suits, is joined by Orelli Zeigler and three associates, plaintiffs in the third of the consolidated suit. They unite in the bond and the citation, and select Duncan and Elliott as sole obligees and respondents. This suit was for themselves and those who would join them in the suit as bondholders. Ketchum and Duncan and Elliott were defendants and the railroad company ~~are~~ an junior incumbrancers.

This appeal against their co-plaintiffs in the consolidation, against a decree made to carry out the common perpose, in conjunction with Ketchum, seems to establish that there was a latent purpose in the institution of the suits, which the court did not discover. This purpose was to embarrass the prosecution of any suit, for the purpose of making a sale or other settlement of the property. The only purpose manifest is to have some share in the control and disposition of the property. Duncan and Elliott fill the eyes and the thoughts of the appellants. Their papers designate no other parties. The joinder of these co-plaintiffs with Ketchum in the appeal only aggravates existing irregularities, and increases their number.

IV.

But this Comedy of Errors is made more sensational by the introduction of Merian, Renevier, Chufford and Carrord. These Swiss bondholders, came into the suit of Duncan and Elliott after the case was set down for a hearing and had been called. They hold ten bonds each. They are described in the bond as defendants on behalf of first mortgage bondholders. These four defendants in the Duncan and Elliott suit, and defendants in the consolidated suit, in which Morris Ketchum and Zeigler and associates are plaintiffs combine with these parties to appeal.

They select Duncan and Elliott as sole appellees or respondents. The emptiness of the pretensions of these eight bondholders is shown by the fact that they own about two hundred bonds, and above 86 per cent. of the whole first mortgage debt is held by Hayes, Pierson and Dupuy parties to the record of the cause—parties to the decree, and yet have no part in this appeal whether as appellants or appellees. The aim of the appeal seems to be to hold the property from sale and to obstruct the settlement of the affairs of the corporation.

V.

It is a rule of Equity pleading that parties having conflicting interests should not be joined as complainants in the same suit, and rarely are defendants allowed to contest conflicting claims with one another.

9 Paige 255, 1 Cushing 86.
2 Bland 264, 3 Gray 308.
3 B. Mon. 581.

The Consolidation order embodies an explanation and an apology for the consolidation of suits where there was an irreconcilable conflict among the respective plaintiffs as to their title to the property. It adjourned the controversy until after the equity of the parties under the mortgages had been settled, the property sold and distributed, the deeds made and the only question open was concerning *allowances*, expenses, &c.

By this order consented to by all the parties to the cause, the trustees were all postponed. The Court in the order notices that all the *cestui que trusts* were before the Court. Hayes, Pierson and Dupuy represented some several hundreds holding $\frac{87}{100}$ of all the bonded debt of the Company.

Nevertheless, an appeal is allowed to Morris Ketchum, one plaintiff: Orelli Zeigler and three other plaintiffs and to four defendants, to contest the decree rendered, with only Duncan and Elliott as appellees and obligees in the appeal bond.

VI·

An appeal may be granted in open court by motion or by petition. A careful solicitor or judge will prefer that the application shall be made in writing and when the case is at all complex, that the parties be designated and their place in the appellate court defined—when this is done we agree that the allowance of an appeal in open court dispenses with a citation.

This dispensation is borrowed from the rules of procedure in cases of appeal under the civil law. The Code of Louisiana, prescribes "that when an appeal has been granted in open Court, the Judge shall fix the amount of security and cause the same with the order allowing the appeal to be entered upon the minutes of the Court, and in such case no citation or other notice to appellee shall be necessary." But the adoption of this ancient rule of practice does not dispense the appellants from making proper persons appellants, nor does it diminish their obligation to designate the appellees, and to furnish them with the good and sufficient security the statute requires.

The appellant must give the bond, payable to the proper parties, and no person omitted is a party.

Lawrence *vs.* Burrus, 12 La. Ann., 483
Davenport *vs.* Fletcher, 16 How., 142.
6 Martin's R., N. S., 317.

VII.

When the origin of the suit of Morris Ketchum is considered, that he was searched for, and is indemnified by parties who are not in this cause as plaintiffs or as defendants. When we find these foreign bondholders from Switzerland coming after the proof of their claims, and when the Master's report was about to be closed with a new bill in one aspect to forclose the mortgage, and in another aspect maligning the trustees and receivers, to extrude them though they were supported by holders of $\frac{87}{100}$ of the bonded debt of the corporation. When we notice the fact that a single person dictates their movements, arranges their plans, furnishes their bond, and is patron of his own scheme of reorganization, the conclusion is irresistible that the appellants are *mere puppets*, and that the appeal does not faithfully, truthfully, sincerely represent the creditors it professes to represent, and that the purpose on the part of the mover, is contrary to social duty, and designed to embarrass, prolong, and obstruct the settlement of the affairs of the corporation and the creditors under the mortgage. Such a suit is reprobated in Courts of Chancery as illusory, vexatious, a mere mockery—a device of the barrator, who like horse leeches suck only, the corrupted blood of the law. Cases are quoted in which all relief is refused to such suitors.

Robson *vs.* Dodds, L. R. 8 Eq. cases 301.
Forrest *vs.* M. S. & L. R. Co. 4 D. F. & J. 126.
L. R. 3 Eq. case 422.

VIII.

But the irregularity we notice in respect to the joinder of the plaintiffs and the selection of appellees becomes more apparent, when we connect them with the decree under examination. The Mobile and Ohio Railroad Company is mortgagor, and held the equity of redemption and was defendent in all of the suits, and without which none could have been heard.

The Junior incumbrancers, representing an equity of redemption and several millions of second mortgage debt, and three persons, Hayes, Pierson and Dupuy who held 87 per cent. of all of the debt, and Alexander Duncan whose claims were impeached and are impeached, are also defendants of whom no notice has been taken in any of the proceedings to perfect the appeal. No citation, no bonds for them.

This Court has no jurisdiction to alter a decree in any particular, unless the *party* interested to sustain the decree be cited; *ex parte Crenshaw*, 15 Peters S. C. R., 115. Without the presence of the parties it will not proceed to hear an appeal.

34 Barb., S. C. R., 594.
4 Paige Ch. R., 102.
47 N. Y. Rep., 677.
2 Barb. Ch. R., 430.

For the reasons before mentioned, and those set forth in a brief filed previously, we pray a dismissal of the appeal.

J. A. CAMPBELL,
Sol. for Duncan and Elliott.

MURPHY & CO., PRINTERS, BALT.

Supreme Court of the United States.

ZEIGLER et al.
vs.
DUNCAN & ELLIOTT.

No. 879.

When this decree was rendered, the present appellants, being holders of the bonds of the Mobile & Ohio R. R. Company, prayed an appeal in open court, and this was allowed.

A bond to operate as a supersedeas was approved within the time fixed by the court, and this bond has been here adjudged to be in all respects good.

The motion is now made to dismiss the appeal.

Such a motion can only be heard on the record as it stands, no statements or certificates *dehors* the record can be received in support of it.

Hudgins vs. *Kemp*, 18 How., 530.

The appeal is not inoperative because of the suggestion that Zeilger has deserted it. It remains effective on behalf of the other appellants.

Todd vs. *Daniel*, 16 Pet., 523.

Nor will the court go into the Record for the purpose of declaring whether other parties should have been joined in the appeal.

The appeal was allowed specifically to the present appellants and to no others.

On such a motion for the dismissal of a writ of error,

" want of jurisdiction and irregularity of the writ are the only grounds for dismissal. Where a judgment has been rendered which the party is entitled to have reversed in the court and it comes here for such reasons upon proper process duly issued, all other questions must await the final hearing.

Hicker vs. *Fowler*, 1 Bl. 95;
New Orleans Railroad vs. *Morgan*, 10 Wall. 256;
Day vs . *Washburn*, 23 How. 309.

These principles are alike applicable to appeals. And we submit, that on this motion, the appeal cannot be dismissed if the record shows—

1st. A final decree;

2d. That the appellants were parties in interest and parties to the record;

3d. That the amount in controversy is within the jurisdiction;

4th. That appeal was duly prayed for and allowed.

As to citation, if the appeal had been allowed out of term, the motion to dismiss for want of citation would not be allowed, for the court would impose such terms on the appellant as justice might require.

Dayton vs. *Lash*, 94, U. S. 112.

But here citation was not necessary, the appeal having been granted at the term and in open court; and, as the validity of the bond has been already determined, the appeal cannot be dismissed if the record answers these propositions in the affirmative, which we submit it clearly does.

P. PHILLIPS,
For Appellant.

Morrison & Nathan, Law Printers, 23 Dey Street, N. Y,

UNITED STATES SUPREME COURT.

Morris Ketchum et al.,
Appellants,

vs.

William Butler Duncan et al.,
Appellees.

Brief for Appellants, on Motion to dismiss Appeal.

There can be no motion regularly before the Court at the present time, except, perhaps, the motion to dismiss the appeal.

On the 8th day of October the appellants were served with papers purporting to be "Petition and Notice to dismiss Appeal and vacate Supersedeas."

The former portion of the motion was made returnable on November 5th, and the latter on October 15th, though both motions were made on the same papers.

In pursuance of that notice, the motion to vacate supersedeas (to increase the amount of the appeal bond, and to permit the appellees to execute the decree on giving a bond to the appellants) was argued before this Court on October 15th ult. While that motion was under advisement by the Court, and after the appellants were served with the brief on the motion to dismiss, they were subsequently, on October 22d, served with papers entitled, "Amended Petition and Notice on Motion to Dismiss Appeal and Vacate Supersedeas," and two "Briefs on Amended Petition to vacate Supersedeas and Dismiss Appeal." These papers were accompanied by a notice of withdrawal of the motion to dismiss, theretofore noticed for November 5th, and stating that on November 19th that motion would be renewed. "And the Court will be moved that in determining the motion for a vacatur of the supersedeas which has already been made and is now under advisement, the present petition be taken into consideration." About the same time, the Court was requested in writing by the moving parties to withhold its decision, to enable them to avail of the aforesaid new papers, not used on the hearing. This request the appellants opposed. Paragraph 4, Rule 20.

On the 29th of October, the Court rendered its decision denying the motion or motions which had been made. On the 5th of November the moving parties withdrew in open Court their motion to dismiss, made for that day.

There is now left the motion above described made for November 19th, and based on voluminous papers and briefs purporting on their face to refer to the various motions to vacate the supersedeas, increase the bond and other matters already decided by this Court. We submit that motions already heard cannot be reargued in this way. No rehearing has been granted by the Court; nor would we be compelled to submit to a reargument of motions of the character of those already decided, without any opportunity for oral discussion.

The form in which this case is now presented to the Court, imposes upon us the necessity of selecting from the papers served on us, those portions which may relate to the motion to dismiss, and of disregarding those matters which have already been determined by the Court.

We have not deemed it necessary to submit affidavits rebutting the many irrelevant matters in the papers of the moving parties. The Opinion of this Court, and the Answer already filed by us, sufficiently set forth the material facts. The grounds of dismissal, as near as we can ascertain them, intermingled as they are with the grounds of the previous motions, appear to be as follows:

FIRST.

That the order of consolidation deprived all the trustees and the claimants to the trusteeship of their title to the trusteeships for the future of the litigation, and it is deduced from that premise, that they are not competent to sustain the appeal, and that there is a relegation to the various bondholders of record for the further progress of the litigation.

The Associate Justice sitting in Circuit, who made the order of consolidation, granted the appeal thereunder, and determined the admission of the parties thereto. There is a total misconception in the papers of the moving parties in regard to the consolidation, and that appears to be basis of these motions. There was a distinct recognition of the trusteeship of all the claimants for the purposes of this cause, and that too by consent. Only in this way could the proceedings in the Duncan suit be utilized, because the Circuit Court had just decided that the decree of the Alabama Court rendered in 1863 against Ketchum in New York, attempting to take away his estate on the sole ground that he was an "alien enemy of the Confederate States," was null and void.

Besides, one of the suits brought by the foreign bondholders making all the claimants to the trusteeship, defendants, was for the purpose of eliminating that question from the litigation. But the Court, instead of entering the decree under that suit, consolidated the suits brought by Ketchum and Duncan with it, thus preserving the position of those parties to the litigation.

As the opinion just rendered by this Court determines, it was Duncan and Elliott claiming the legal title to represent the coupons as well as the bonds, that the appellants were bound to consider in framing their appeal. Indeed it is difficult to conceive how Duncan and Elliott can complain of the appeal as against Hays, Dupuy and Pierson for the non-joinder of these latter. The Brief filed on the previous motion shows that Duncan and Elliott were the only successful parties below, and the only parties who control the execution of the decree. The appeal in open Court at the same term was ample notice to intervenors fully represented by them, those intervenors having entered a general appearance in this Court, and being themselves appellants from the decree.

SECOND.

It is claimed that the appeal is in improper form, and one of the parties has withdrawn. The appeal was prayed in open Court at the same term, and on the same day on which the decree was entered and was then and there granted. The prayer for appeal was reduced to writing, specifying the various terms of the consolidated causes, and was entered on the minutes of the Court. When the Court considered and passed upon it, after argument, none of these objections now urged to the form of the appeal were suggested to the Court below. Then they might have been corrected, if well founded. For instance: whether complainants in one of the suits which were consolidated could unite in the appeal with defendants in another of those suits. That was an entirely different question, as this litigation was then presented to the Circuit Court, from such a question in the case of a single suit, and the consolidation was in the judgment of the lower Court, and is scarcely revisable here, at least on a motion.

As to the authority to use the name of one of the appellants, Mr. Ziegler, his own letter is sufficient evidence of that, and the original in a foreign language we have demanded from our opponents in order to place it or an impartial translation before the Court, but without success in obtaining it. With abundant proofs of authority from Mr. Ziegler we shall not encumber the files of the Court.

There is nothing whatever to justify the claim that the appeal was joint. The prayer for appeal and all the proceedings, the bond, the citation, all negative such an assumption.

Besides the trustee, several individual bondholders, they being parties to the several suits which were consolidated, were by order in the consolidated cause permitted to become appellants, and to represent six hundred thousand dollars of bonds, and they are sufficient, without Ziegler's eighteen bonds, to sustain the appeal. The very interests and relations of the parties appellant—trustee, and cestuis que trust—the later being several and individual bondholders, on its face rebuts any pretence of a joint appeal or any subjection to the rules that control appeals by joint parties to the record.

THIRD.

Claimed that Hays, Dupuy and Pierson are not cited.

There has been abundant and indeed superabundant citation.

None was needed on an appeal taken as this was in open Court at the same term.

The additional citation to Duncan and Elliott was supererogatory.

The general appearance of Hays, Dupuy and Pierson would obviate the defect, if any. The effort to withdraw that appearance was unavailing. As the object of citation is notice, such a withdrawal if allowed, would be permitting parties to declare solemnly on the record that they have notice, and then pretend for the purposes of a motion, that they have not notice.

The opinion already rendered by the Court really

FOURTH.

The motion claims that a bond for costs should have been given simultaneously with the grant of the appeal.

A bond for costs and damages has been approved and filed. This Court has adjudged that bond to be valid and sufficient to stay execution. That a bond for costs must be given instanter with the appeal to render it effectual has been denied by repeated decisions of this Court, and it has been held that it may be given afterwards.

The position that a bond should have been given to Hays, Dupuy and Pierson for costs, in order to make an effectual appeal as against them is disposed of by the decision of this Court just rendered, for it can scarcely be claimed that if they be not necessary parties to a supersedeas bond they are necessary parties to a bond for costs. It would follow from that position, that though they are stayed, there is no appeal pending. The Court has in fact decided that there is a bond for their benefit for costs and damages too.

FIFTH.

It is claimed that because we asked for a sale of the road we cannot appeal from a decree on the main question—For whose benefit is that sale to be had? That is, if something is decreed on behalf of other interests, it precludes an appeal by the defeated party if the *character* of relief granted is similar to what he would have desired on his own behalf.

See Folio 57
" " 41 to 52

No. 879.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1877.

MORRIS KETCHUM et al.,
Appellants,
vs.
WILLIAM BUTLER DUNCAN et al.,
Appellees.

Answer of the Mobile & Ohio Railroad Company, to Petition of Hays et al., to be Heard Nov. 19, 1877.

GEORGE N. STEWART,
Solicitor and of Counsel for
THE MOBILE & OHIO R. R. CO.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, CORNER FULTON STREET.

In the Supreme Court 1

OF THE UNITED STATES.

OCTOBER TERM, 1877.

In the Matter of the amended Petition and Notice, on motion to dismiss the appeal of *Morris Ketchum and others* against *William Butler Duncan and others*, in the cause No. 879, in said court, which motion is to be made in said court by William Butler Duncan, Andrew Foster Elliot, William H. Hays, William S. Pierson, T. Haskins Dupuy and Alexander Duncan, on the 19th of November, 2
1877, as per notice of motion.

The Mobile and Ohio Railroad Company, by its counsel, answering the said petition, admits notice of said proposed motion; and it admits the substantial truth of the matters stated in said petition, and in behalf of the interests of its stockholders, The Mobile and Ohio Railroad Company protests against the said appeal of said Ketchum and others, and unites with the said petitioners in said motion, and prays that the same may be granted, and that the said appeal may be dismissed at the cost of said appellants.

And in support of said petition and motion, and of 3
this answer, The Mobile & Ohio Railroad Company

4 submits that there was no question pending in the court below between Morris Ketchum, one of the appellants on said appeal, or any other of the said appellants, and William Butler Duncan and Andrew Foster Elliot, the appellees on said appeal, which can be the subject of an appeal to this court. And the counsel for the Mobile & Ohio Railroad Company refers this court to the following case, reported in 25 *Weekly Reporter*, No. 42, and in the *Law* and *Equity Reporter* for October 10, 1877, Vol. 4, No. 15, p. 405. :

" Court of Appeals.

" From the Court of Bankruptcy.

" *In re* Joseph—*Ex parte Cooper*.

5 " Aug. 2, 1877.

" Appeal from Mr. Registrar Spring—Rice, sitting
" as chief Judge.

" Joseph, a trader, on July 4, filed a liquidation pe-
" tition, and the next day applied to have Cooper made
" receiver, but the hearing was adjourned for two days.
" On the 5th, some of the creditors, professing to be a
" majority in value of those set out in the bankrupt's
" statement of his affairs, signed under R. 262, a paper
" nominating and appointing Cooper receiver, and on
" the same day other creditors, also claiming to be a
" majority in value, signed another paper naming and
" appointing one Barrow receiver. On the adjourned
" day the Registrar, on the application of the second
" set of creditors, appointed Barrow receiver, and
6 " Cooper appealed.

" *Winslow, Q. C., & Bagley*, for appellant.

" *F. Knight*, (*Roxburgh, Q. C.*, with him), for Bar-
" row. As a preliminary objection, the appeal cannot
" be entertained.

" *Winslow, Q. C.*, and *Bagley, contra:* As Cooper
" has been appointed receiver, by a majority of
" those set out as his creditors by the bankrupt, he
" has a right to come to the court for assistance to put
" him in possession of the property.

" James, L. J.: The receiver cannot be allowed to
" present this appeal. The Registrar said to him, in
" effect, 'You need not trouble yourself any more
" 'about this matter.' If a creditor had appealed, he

" must have been heard; but as the sole interest of the
" receiver in the estate is for his percentage, he cannot be permitted to enter into litigation for that. 7

" BAGGALLY & COTTON, L. JJ., concurred.

" *Appeal dismissed with costs.*"

GEORGE N. STEWART, Solicitor
and of Counsel for
The Mobile & Ohio R. R. Co.

IN THE

Supreme Court 1

OF THE UNITED STATES.

MORRIS KETCHUM ET AL.,
Appellants,

vs.

WILLIAM BUTLER DUNCAN AND
ANDREW FOSTER ELLIOTT, 2
Appellees.

No. 879.
October Term,
1877.

William D. Dunn, William Dickson, and George H. Young, who, as trustees for bondholders secured by a second mortgage made by the Mobile & Ohio Railroad Company, were defendants in certain suits pending in the Circuit Court of the United for the Southern District of Alabama, in one of which Morris Ketchum was complainant, in another of which William Butler Duncan and Andrew Foster Elliot were complainants, and in another of which D'Orelli Ziegler and others were complainants, answering the amended petition of 3 William H. Hays, William S. Pierson, T. Haskins Dupuy, Alexander Duncan, William Butler Duncan, and Andrew Foster Elliott for a dismissal of the above-entitled appeal, say:

That the order of March 6, 1876, set forth in said

4 amended petition, was made as therein stated, and that afterwards, by an order made in all of said suits on June 5, 1877, of which a copy is set forth in said amended petition, said order of March 6, 1876, and the proceedings thereunder, were, by consent of all parties, adopted and ratified; and the litigation thereafter proceeded for the common purpose of securing a sale, and of enabling creditors to litigate their respective claims with each other under said order of March 6, 1876.

That it was the intention of said order of March 6, 1876, to enable every party claiming the benefit of either of the mortgages therein mentioned to exhibit
5 his claim on his own behalf before the master, and, on his own behalf, to contest the demand exhibited by any other creditor;

That Rudolph Merian, Eugene Renevier, Charles Carrard, Cephise Chuffard, Masson Chavannes, Henry Jump, Bernard de Watteville, and Morris Ketchum, did not, nor did any or either of them, make any objection before the master to any claim exhibited by Alexander Duncan before the master, nor did Charles Moran nor Moran Brothers make any such objection; nor did either of said parties take any exception to the report of the master;

That said Alexander Duncan proved a claim before the master as a bondholder to the principal amount
6 of $75,000, to which no objection was made by any party;

That said Hays, Pierson, and Dupuy proved claims before the master as first mortgage bondholders to the amount of several millions of dollars, to which no objection was made by any party, and said master in his report stated that said Hays, Pierson, and Dupuy were such bondholders, and in that respect no exception was taken to such report;

That said Hays, Pierson, and Dupuy were not admitted as defendants in said suit in which said Duncan and Elliott were plaintiffs, but were, by an order which is set forth in full in said amended petition, admitted

into said suit to prosecute the claims which had been 7
proved before the master by said Alexander Duncan;

That the only parties who availed themselves of said order of March 6, 1876, to object, before the master, to the allowance of the claim filed by Alexander Duncan as the holder of the coupons which matured in 1874 were William Butler Duncan and Andrew Foster Elliott, as trustees, and Louis Belloni, Jr., and these respondents;

That these respondents had, in their answer to the Bill of Complaint in said Duncan and Elliott suit, objected to the allowance of said coupons;

That said Belloni excepted to the report of said
master in allowing said coupons, and said Hays, Pier- 8
son, and Dupuy, in the name of Alexander Duncan, excepted to said report for that the said master did not award priority to said coupons, but no other party objected to said report upon the subject of said coupons;

That said Belloni has not taken any appeal to this court, nor have these respondents taken such appeal;

That the answer of said Merian, Renevier, Carrard, and Chuffard to the bill of complaint of said Duncan and Elliott is as follows:

CIRCUIT COURT OF THE UNITED STATES,

FIFTH CIRCUIT AND SOUTHERN DISTRICT OF ALABAMA. 9

WILLIAM BUTLER DUNCAN AND
ANDREW FOSTER ELLIOT,
Complainants,

vs. — In Equity.

THE MOBILE & OHIO RAILROAD
COMPANY AND OTHERS,
Defendants.

The answer of Rudolph Merian, Eugene Renevier. Charles Carrard and Cephise Chuffard, to the bill of

10 complaint filed in the above entitled cause by William Butler Duncan and Andrew Foster Elliott.

Come now the said Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, and protesting that the said complainants are not trustees of the first sterling mortgage of the Mobile & Ohio Railroad, and that they have no such interest, right or title in said railroad, or in the other property of said company, as in said bill of complaint they have stated and set forth; and further protesting that said Duncan, Iselin and Wilson have not, nor has any holder of any of the said securities, known as Tennessee Substituted bonds, any interest, right or title to, or in, that part of said railroad which is within the State of Tennessee, without waiving or in anywise consenting to the same, and reserving all their rights in relation
11 thereto, and all manner of exception to said bill, nevertheless, for answer to said bill of complaint, or to so much thereof as they are advised it is material for them to make answer unto,

Answering, say:

That they are not (nor is any of them) citizens of, or residents within the United States of America, but they are aliens and foreigners; that the said Merian, Renevier, and Carrard are, and each of them is a citizen and resident of the Republic of Switzerland, and that the said Chuffard is a citizen and resident of the French Republic, and that they are the holders and owners of bonds of the Mobile & Ohio Railroad Company, of the class denominated and described in the said bill of complaint as first mortgage sterling bonds, and which
12 are secured by the mortgage to said Ketchum, Hallett and Palmer, and thereby entitled to all the rights, liens and security by the same provided to the total sum of forty thousand dollars in par value, and they file this their answer, as well in behalf of other holders of like bonds to the amount of over six hundred thousand dollars, as for themselves.

Further answering, these defendants say: That the said Mobile & Ohio Railroad Company had not made default in the payment of the instalments of interest which accrued, matured and fell due upon its said first sterling mortgage bonds, upon the first day of May and November, 1874, respectively, and that it had not refused payment thereof; but, on the contrary, they say

that the same were, at and after the said respective 13
dates of their maturity, to wit, May 1st, 1874, and November 1, 1874, fully paid and discharged to the holders thereof, by the said Railroad Company, and the same are not in equity outstanding debts of said company, or in any manner secured by said mortgage.

Further answering, these defendants say: That the said interest which so accrued and matured, on said first days of May and November, 1874, was evidenced by coupons on interest warrants originally attached to bonds from which they were cut or detached by the holders and owners thereof for presentation to and payment by said railroad company, that they are now presented and claimed to be held and owned by William H. Hays, William S. Pierson and T. Haskins Dupuy, by transfer from Alexander Duncan, who is
claimed to have acquired them when overdue from the 14
firm of Duncan, Sherman & Co., who claimed to have purchased the same from the holders thereof, partly at, but principally after, their maturity.

Further answering, these respondants say: That said Alexander Duncan is, and said Duncan, Sherman & Co. were and are estopped to claim that said interest is unpaid; that the complainants were, at the maturity thereof, both partners of said firm, both directors of said company, whereof said Duncan was President and ex-officio Chairman of its Executive Committee, and said Duncan, Sherman & Co. were, and had long been the financial agents of said company; that said interest was paid with funds and moneys provided by said Duncan, Sherman & Co. in the usual manner to the
holders thereof, without any knowledge on their part 15
that the same were not paid, and without any intention of selling the same, at times when said Duncan was in full possession and control of all the income and assets of said company, and the same were pledged by the Board of Directors thereof to the payment of the interest upon said first mortgage bonds, and were placed in the hands ot said Duncan, Sherman & Co., as such financial agents, for that purpose, and were sufficient for that purpose, but were and are claimed by said Duncan, Sherman & Co. to have been by them diverted from such application, and applied to the reduction of the unsecured debt of said company, to themselves and others.

16 And having fully answered, these defendants pray to be hence dismissed.

(Sgd.)

Geo. Hoadley,
E. L. Andrews,
Solicitors for Defendants.

Filed—June 5th, 1877.

(Sgd.)

N. W. Trimble,
Clerk.

That the following is a copy of the answer interposed by the said Hays, Pierson & Dupuy to the bill of complaint of said Morris Ketchum, and their answer interposed to the bill of complaint of said Ziegler and his co-plaintiffs is in the same terms under 17 an altered title:

UNITED STATES CIRCUIT COURT.

Morris Ketchum
vs.
The Mobile & Ohio Railroad Company.

18 The joint and several answer of William H. Hays, William S. Pierson and T. Haskins Dupuy to the bill of complaint exhibited in this court by Morris Ketchum against the Mobile & Ohio Railroad Company and others as defendants.

These defendants allege and aver that they are the holders of bonds issued by the Mobile & Ohio Railroad Company upon the security of their first mortgage mentioned in the bill of complaint in this cause to the amount of three millions nine hundred thousand dollars and upwards, and of interest arrearage bonds issued on the security of the first mortgage to the amount of $1,192,800, and of sterling interest bonds issued under the security of said first mortgage to the amount of $765,120, and of bonds issued upon the second mortgage of said corporation to the amount 19 of $961,990, and of all the coupons attached to said bonds and now remaining overdue and unpaid, and also of coupons formerly attached to said bonds, and which matured in the year 1874, to the amount of $535,000 and upwards, all of which claims they aver and allege are entitled to be paid in the order of their maturity, out of the proceeds of the mortgaged premises mentioned in the bill of complaint in this cause; and they deny all the averments and allegations in said bill of complaint which in any way tend to impeach, impair, weaken, or diminish the claims arising upon the said bonds and coupons; and these defendants accept and adopt the answer made in this cause by the Mobile & Ohio Railroad Company, and the answer made in this cause by William Butler Duncan and Andrew F. Elliot. 20

(Sgd.)

F. N. Bangs,
Sol. for Defts.

That all the matters above stated appear by the transcript of the record filed in this court, but that no assignment of errors on the part of said Ketchum and his co-appellants is attached to said transcript, as required by sec. 997 of the Revised Statutes; that these respondents are not informed of the errors which said appellants intend to assign, but that, as these respondents are advised and believe, it is not competent for the said appellants to assign as error the making of any decree which they prayed for and united in obtaining; 21 that these respondents consented to the consolidation order set forth in the said amended petition because the plaintiffs in said suits respectively claimed to be in pursuit of the common purpose of obtaining a decree of foreclosure and sale, and because each waived all question of the right of the other to have such decree made, and because after such waiver no question remained to be disposed of except the continuing obligation and lien of the said coupons of 1874; and inasmuch as the interests of the second mortgage bondholders will be promoted by a speedy

22 sale, and inasmuch as the decree of sale can be carried into effect without prejudice to the rights of those who object to the coupons of 1874, and greatly to the advantage of those mortgage bondholders whose claims are undisputed, these respondents do not object to the granting of the prayer of the said amended petition in so far as it prays for a dismissal of the appeal from such parts of said decree as order a sale of the mortgaged property, and as authorizes bonds to be received in payment.

Wm. G. Jones,
Solicitor for Wm. D. Dunn,
Wm. Dickson and Geo.
23 H. Young, Trustees, &c.,
Appellees.

Approved
Wm G. Jones Sol'r
in Cir. Ct. for
Trustees of 2nd
Mortgage

George N. Stewart
Sol'r for Trustees
of the 2d Mortgage
of R. R. Co.

879 [illegible]

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1877.

D'ORELLI ZIEGLER and al.,
Appellants,

VS.

WILLIAM H. HAYS and al.,
Appellees.

Petition and Notice, on Motion to Dismiss Appeal and Vacate Supersedeas.

C. W. BANGS,
Solicitor for Appellees.

Oct 20 1877

~~Denied~~

Denied

NEW YORK.
Evening Post Steam Presses, 208 Broadway.

IN THE

Supreme Court of the United States. 1

D'ORELLI ZIEGLER ET AL.,
Appellants,
vs.
WILLIAM H. HAYS, ET AL.,
Appellees.

To the Honorable the Supreme Court of the United States:

The petition of William H. Hays, William S. Pier- 2
son and T. Haskins Du Puy, respectfully shows as follows:

In or about 1853, the Mobile & Ohio Railroad Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the State of Alabama, and operating also under and by virtue of the laws of the respective States of Mississippi, Tennessee and Kentucky, executed a mortgage upon its property and estate to Morris Ketchum, William R. Hallett and John J. Palmer, to secure the payment of an indebtedness incurred by the said company, evidenced by
bonds issued by said company for the principal sum 3
of six million dollars, and interest thereon, which bonds bore interest, payable semi-annually, evidenced by coupons attached to said bonds respectively.

Default was made by the said company in the payment of the interest coupons attached to said bonds prior to the year 1870, and thereupon said coupons

4 were funded, and new bonds were issued therefor, secured by the said first mortgage, such new bonds being known partly as sterling-interest bonds and partly as dollar-interest bonds. In the year 1875, William Butler Duncan and Andrew Foster Elliot, claiming to have become trustees under said mortgage in the place and stead of the original trustees named therein, commenced an action in the Circuit Court of the United States for the southern district of Alabama, to enforce the payment of the indebtedness secured by said mortgage, by a sale of the mortgaged property, and they were by said court appointed to be receivers of said property pending said suit, and took possession of the
5 property purporting to be covered by said mortgage. The said William Butler Duncan and Andrew Foster Elliot, by direction of the parties interested therein, claimed that said company had made default in the payment of all the interest which accrued upon said bonds within the year 1874. In said suit such proceedings were had that afterwards, and on or about the sixth day of March, 1876, an order was made by said court in the words and figures following:

IN THE

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF ALABAMA,

6 FIFTH JUDICIAL CIRCUIT OF THE UNITED STATES.

WM. BUTLER DUNCAN, A. FOSTER Elliot *vs.* MOBILE & OHIO RAILROAD COMPANY, Wm. D. Dunn, George H. Young and others.	No. 90.

AT CHAMBERS, 6th March, 1876.

This cause has been submitted to the court on the bill, answers, exhibits, replication, and the orders and

proceeding in the suit, and a motion has been made 7
by the plaintiffs for the appointment of a master and a reference to him of the pleadings and proofs, to make the necessary inquiries and reports, to prepare the cause for a hearing.

And after an examination of the matters submitted, and a consideration of the motion, the court orders: That James Gillette be appointed special master for this cause, and is directed to examine the mortgage or deed of trust attached to the bill as an exhibit, and to ascertain and report the railroads, branch railroads, estates, rights, property, movable and immovable, included in the terms and conditions of the same, and which have come to the possession and control of the trustees, and are subject to the decree of the court in this suit.

2. The court orders that the said master report the 8
mortgages, deeds of trust, agreements, judgments or other instruments which create a charge, lien or incumbrance on the said mortgaged property, with the order and priority of each of them, in imposing a charge upon the said property, and entitled to payment from the same.

3. The court orders the said master to report the bonds which are secured by the respective mortgages or deeds of trust, or incumbrances, and the amount thereof, and of the interest due thereon, and which form a (present or future) valid claim upon the said corporation; and if the debt exist in any other form than of bonds, then that he report the debt which may be due, or may become due, on the said several securities of the said corporation. Also the master
will report the names of the holders of the securities 9
of the company which may be presented and proved to him, and the sum due to each holder.

4. In taking proofs of the debt the master may receive the original bonds, coupons or agreements of the corporation as evidence.

He may allow to be filed with him sworn copies of the bonds, coupons or other forms of debt charging the property, to be taken before any commissioner of the courts of the United States, or other officer authorized by the laws of the United States to administer oaths and to certify depositions with affidavit of their ownership and authenticity. It shall be lawful for the master to designate, in the cities of New York, London, Amsterdam, or elsewhere if needed or be found

10 expedient, commissioners of the Circuit Courts of the United States, or consuls or vice-consuls of the United States, to advertise for the proof of bonds and coupons, and to take proofs of the debts according to the forms of the proofs taken of claims in bankruptcy, and to prescribe a mode for the identification of the bonds so presented and proved to the said officers. And the said master may appoint persons in other cities to take such proof, if in his judgment it may be necessary or expedient. He may also examine the books of the Mobile & Ohio Railroad Company and its officers, so as to ascertain with exactness the debt due by the corporation which is secured by mortgage or which create liens on the property of the corporation embraced in the mortgage of the plaintiffs.

5. The court orders that if the trustees in the deed
11 of trust of said corporation, dated the 1st day of July, 1871, to wit: William Butler Duncan, Adrian Iselin, and Richard T. Wilson should elect to do so, to allow them to file, within sixty days after the date of the filing of this order, a petition to become plaintiffs in this bill, and to set up therein their claims as trustees upon the said mortgaged property, or any portion of the same, upon their consent to abide the order and the decree of this court; and in the event of their election to do so, the master will take proofs of the deed of trust, and shall proceed in reference to the same in the same manner as he is ordered to do in respect to the first mortgage attached to the bill and to the claims under other deeds of trust, mortgage, or other incumbrances before mentioned.

6. The master may advertise in a paper published
12 in Mobile and New York that he is ready to receive the proofs of the debts secured by the mortgages of the company, and shall give notice in the said advertisement of the mode of making proofs, and before whom they can be made, and he shall authorize advertisements to be made in London and Amsterdam of a similar description by the officers to be designated for the purpose by him.

And the trustees of the several mortgages which have been produced to the court, and the Mobile & Ohio Railroad Company are required to aid and to assist the master in collecting the proofs needed to making the report of the amount of the debt due on their respective mortgages and deeds of trust, so that

he may be able to perform his duty with promptitude 13
and with accuracy in settling a report for the court.

7. The office of the master must be open for the receiving of proofs, in the City of Mobile, three days of every week, and he may receive proofs every judicial day of the week, until the 15th day of October next, on which day the time for taking proof shall be closed, unless the time be prolonged by a special order from one of the judges of the court.

8. The master may, during this period, make separate reports to the court of the matters submitted and hereinafter described, which may be filed in the office of the clerk of the court for examination and for exceptions.

But no report in reference to the debt so filed shall
be confirmed until after the 15th day of October next,
and unless it shall have been filed thirty days in the 14
clerk's office.

9. Exceptions to the reports may be filed by the parties to the bill, but should any creditor who shall prove his claim be desirous to contest any other claim proved, and the trustees representing the claim of such creditor shall neglect or refuse to make the exception proposed by the creditor, upon proof that he has made the request of the trustee, and the neglect or refusal by him, the master shall allow of the exception or contestation, and shall report upon it as if made by the trustee.

10. The master shall make up his entire report or
reports, under this order, on or before the first Monday of December next, and shall file the same on or
before that day, and the usual time for examination
and exception shall be given after the date of the filing 15
of the report. He may, before making his report, call
the parties before him, to consider of the draft of the
report and hear argument of counsel thereon, and the
proofs shall be open to inspection.

His report shall embrace the best mode of disposing of the property, in case of sale shall be deemed necessary or proper, and his opinion of the present and prospective value, and he may report the price at which a foreclosure without sale, may be best accomplished in the interest of all parties.

11. The master is at liberty to consider of a plan for the reorganization of the corporation should the creditors of the same agree thereto. Any plan for that purpose presented by three-fourths of the credit-

16 ors owning the different classes of debt, and supported by a corresponding portion of the holders of stock, he may report, with his opinion thereon. He shall take care to ascertain whether the plan proposed be assented to by the parties interested, to the extent aforesaid, before he accepts it for any purpose.

12. The master will make a separate report of the allowances to be made to the trustees for their services and as compensation, and the allowances for the charges, expenses, costs and other forms of claim which are set forth in the deed of trust, or which have arisen in the course of the cause.

March 6, 1876.

W. B. Woods.
Judge.

17 Under the order above set forth the owners of the original issue of bonds and coupons put in circulation upon the security of said mortgage to the aggregate amount of four million nine hundred and ninety-two thousand four hundred and fifty-seven dollars ($4,992,457) in gold, and of sterling interest bonds and coupons to the aggregate amount of $820,858, gold, and of funded dollar interest bonds and coupons to the aggregate amount of $1,284,800 in currency of the United States proved their claims before the special master appointed by the said order.

In the year 1871, the said railroad company executed a trust deed upon so much of its property as was situate in the State of Tennessee, in order to declare,
18 acknowledge, continue and protect in favor of an issue of bonds made by the said company, a lien upon the property of the said company situate within the State of Tennessee, prior and paramount to the lien of said mortgage of 1853, the bonds so issued amounting, in the aggregate, with the unpaid coupons thereon, to the sum of two million fifty-three thousand three hundred and eight dollars ($2,053,308), and said bonds last mentioned became current, and are known as the Tennessee substitution bonds.

Your petitioners have become and now are the owners of bonds originally issued under said mortgage

of 1853, and of coupons originally attached to such 19
bonds, to the aggregate amount of $5,938,329.65, and of funded sterling interest bonds and coupons issued upon the security of said mortgage of 1853 to the aggregate amount of $918,913.92, and of funded dollar interest bonds and coupons issued upon the security of said mortgage of 1853 to the aggregate amount of $1,711,457, and of said Tennessee substitution bonds and of coupons originally attached thereto, to the aggregate amount of $1,954,828; and your petitioners have also become and now are the owners of interest coupons, in addition to those above referred to, detached from bonds of which your petitioners have not become the owners, to the aggregate amount of $80,- 20
540, and the following is a correct statement of the mortgage liens of the said railroad company and of the proportion of the said liens of which your petitioners have become and now are the owners and holders.

(*See statement on next page.*)

STATEMENT OF THE MORTGAGE LIENS OF THE MOBILE & OHIO R. R. CO.

	OUTSTANDING ISSUE REPORTED BY MASETR.			BONDS, &C., PROVED BEFORE SPECIAL MASTER.			OWNED BY PETITIONERS.			B.
	Bonds.	Coupons thereof due and unpaid.	Total of bonds and coupons.	Bonds.	Coupons.	Total of bonds and coupons.	Bonds.	Coupons.	Total of bonds and coupons.	
First Mortgage Bonds. £.	$5,609,000 00	$1,289,941 80	$6,898,941 80	£918,225 00	£187,292 55	$4,902,457 23 Gold.	$4,828,000 00	$1,110,329 65	$5,938,329 65	86%
£. Interest bonds.....	769,920 00	152,444 16	922,364 16	£141,900 00	26,652 00	$820,858 00 Gold.	767,040 00	151,873 92	918,913 92	99%
$ Interest bonds.....	1,518,000 00	365,832 00	1,883,832 00	$1,004,100 00	280,700 00	$1,284,800 00 Currency.	1,379,100 00	332,357 00	1,711,457 00	90%
Detached coupons of 1874, owned by petitioners from bonds not owned by Comp.								80,540 00	80,540 00	
Total liens of 1853....	7,896,920 00	1,808,217 96	9,705,137 96				7,974,140 00	1,675,100 57	8,649,240 57	
Tennessee substitution bonds..........	1,668,000 00	385,308 00	2,053,808 00	120,000 00	91,805 00	211,805 00 Gold.	1,588,000 00	366,828 00	1,954,828 00	95%
Total of first liens....	9,564,920 00	2,193,525 96	11,758,445 96				8,562,140 00	2,041,928 57	10,604,068 57	90%
Other mortgage liens outstanding........	1,927,707 05	434,696 01	2,362,403 06	1,257,154 68	285,539 88	1,542,694 56	1,532,264 74	260,837 00	1,793,101 24	75%
Totals................	$11,492,627 05	$2,628,221 92	$14,120,849 02	$7,152,811 03	$1,699,204 57	$8,852,015 60	$10,094,404 24	$2,302,765 57	$12,397,170 31	87%

After the commencement and during the pendency of the said suit of the said Duncan & Elliot, and on or about the 14th day of March, 1876, the said Morris Ketchum, claiming to be still a trustee under the said mortgage of 1853, also brought an action in the said Circuit Court of the United States for the Southern District of Alabama, on the Equity side of said court, to which action he made the said railroad company, and also the said Duncan & Elliot, parties defendant; and in his said bill the said Morris Ketchum claimed that the said company had not made default in the payment of interest which accrued as aforesaid within the year 1874, but that the said interest had been paid and the claim therefor extinguished; but the said Morris Ketchum also alleged and claimed that the said company had, in the year 1875, made default in the payment of the interest which accrued under the said mortgage of 1853; and the said Morris Ketchum brought his said suit for the apparent or, at least, the avowed purpose of enforcing, by the sale of the mortgaged property, the payment of the indebtedness which he admitted had accrued and remained unpaid under the said mortgage, as well as for the purpose of excluding said coupons of 1874 from all share in the proceeds of said sale and for other purposes. 24 25

Afterwards, and on or about the fifth day of February, 1877, D'Orelli Ziegler, Bernard de Watteville, Henry Jump and Masson Chavannes, claiming to be holders of bonds issued and outstanding upon the security of the said mortgage of 1853, claiming also that the said railroad company had not defaulted in the payment of the interest which matured as aforesaid within the year 1874, and claiming that there was doubt upon the question who was the trustee, or who were the trustees, entitled to act in enforcing said mortgage of 1853, filed their bill of complaint in the said Circuit Court against the said railroad company, the mortgagor, and against the said Duncan & Elliot, and against the said Morris Ketchum, asking for a decree 26

27 to enforce the payment of the indebtedness which they admitted had accrued under the said mortgage, by a sale of the mortgaged property, excluding said coupons of 1874; but your petitioners say that, before the filing of the said bill of the said Ziegler and his co-complainants, the said Ziegler and his co-complainants had, in the name of Charles Moran or Moran Brothers, put in proof before the master appointed by the said order of March 6, 1876, in the suit in which said Duncan & Elliot were complainants, whatever bonds were held by them, the said Ziegler and his co-complainants, and so had become parties to said suit; and Rudolph Merian, Eugene Renevier, Charles Carrard
28 and Cephise Chuffard had also, in the name of said Charles Moran, or of Moran Brothers, proved certain first mortgage bonds and coupons held by them, before said master.

Your petitioners further show that the said suit in which Duncan & Elliot were complainants, was ready for final hearing at a stated term of the said Circuit Court, appointed to be held at the City of Mobile on the first Monday of June, 1877, and thereupon counsel for the said Duncan & Elliot, and for said railroad company, and for said Alexander Duncan, and for your petitioners, and for said Ziegler and his co-complainants, and for said Morris Ketchum, respectively, appeared, and certain orders were made by the
29 said court, of which the following are copies:

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF ALABAMA.

W. B. DUNCAN, A. F. ELLIOT, AS TRUSTEES, &c.,

vs

THE MOBILE & OHIO RAILROAD Company, Rodolph Merian, *et al.*

And now come Rodolph Merian, Eugene Renevier,

Charles Carrard and Cephese Chuffard and move in 30
open court that they may be admitted as parties defendant to the bill herein, with leave to file an answer thereto with all the rights of parties to said bill.

After hearing counsel, and the court being duly advised:

It is ordered that the said Rodolph Merian, Eugene Renevier, Charles Carrard and Cephese Chuffard be, and they are hereby, admitted as parties defendant to this suit, and that they have leave to file an answer to the bill herein, and they have and exercise all the rights and privileges of parties to the record herein.

Joseph P. Bradley,
C. Justice.
W. B. Woods,
Circuit Judge.

Filed June 5th, 1877. 31
N. W. Trimble,
Clerk.

At a Stated Term of the Circuit Court of the United States for the Southern District of Alabama, held at the Court House in the City of Mobile on the 5th day of June, 1877.

Present—Hon. Jos. P. Bradley,
Circuit Justice, &c.
" W. B. Woods,
Circuit Judge.

Wm. B. Duncan and Andrew F. Elliot 32
vs.
The Mobile & Ohio Railroad Company, et al.

The parties appearing in open court, by their respective solicitors and counsel, and consenting to this order, on motion of Mr. F. N. Bangs, solicitor, and of counsel for Wm. H. Hays, Wm. S. Pierson and T. Haskins Du Puy, claiming to be the assignees and owners of the claims of Alexander Duncan exhibited before the master in this cause under an order made March 6th, 1876, it is ordered:

33 That said Wm. H. Hays, Wm. S. Pierson and T. Haskins Du Puy be, and they are hereby, admitted to prosecute the claims of the said Alexander Duncan in this Court, and, if so advised, by appeal, review and otherwise as they may be advised, in the same manner, and with the like effect, and to the same end and intent, with which the said Alexander Duncan can prosecute the same, or could have prosecuted the same if he had continued to be the holder of such claims.

JOSEPH P. BRADLEY,
C. Justice.
W. B. WOODS,
Circuit Judge.

Filed June 5th, 1877.
N. W. TRIMBLE,
Clerk.

34 Your petitioners further show that at the same time orders were made by the court, by consent of the parties concerned, admitting your petitioners to be defendants in said Ketchum suit and in said Ziegler suit, of one of which orders the following is a copy:

At a Stated Term of the Circuit Court of the United States, for the Southern District of Alabama, held at the Court Room, in the City of Mobile, on the 5th day of June, A. D. 1877.

Present—Hon. Jos. P. BRADLEY, Circuit Justice, &c.
" W. B. WOODS, Circuit Judge, &c.

35 MORRIS KETCHUM
vs.
THE MOBILE AND OHIO RAILROAD AND OTHERS.

The parties appearing in court, by their respective Solicitors and counsel, and consenting to this order; it is ordered,

That Wm. H. Hays, Wm. S. Pierson and T. Haskins Du Puy, be, and they are hereby, admitted to intervene for their own interest, as defendants, in this

suit, in the same manner and with the like effect as if 36
they had been named as defendants in the bill, and had been brought into court by a subpœna, with leave to file the answer herewith submitted to the court by them, and this day filed.

Joseph P. Bradley, C. J.
W. B. Woods, C. J.

Filed June 5th, 1877.
N. W. Trimble,
Clerk.

And at the same time the following order was made in all of the said suits:

At a stated term of the Circuit Court of the United States, for the Southern District of Alabama, held at the Court House in 37
the City of Mobile, on the 5th day of June, 1877.

Present,—Hon. Jos. P. **Bradley**, Circuit Justice, &c.
" W. B. **Woods**, Circuit Judge.

Wm. B. Duncan and Andrew F. Elliot, Trustees, &c.,

vs.

The Mobile & Ohio Railroad Company et al.

Morris Ketchum 38

vs

The Mobile & Ohio Railroad Company et al.

D'Orelli Ziegler et al.

vs.

The Mobile & Ohio Railroad Company et al.

The parties in these several causes appearing in

39 open court by their respective solicitors and counsel, and consenting to this order,

And it appearing to the court that the above entitled suits are instituted for the common purpose of securing a sale of the Mobile & Ohio Railroad and other property of the Mobile & Ohio Railroad Company, under the first mortgage thereof, and disputes having arisen as to the legal title of and in said first mortgage, which might embarrass the sale of the mortgaged premises, and it appearing to the court that all the parties claiming said legal title are before the court, and likewise the *cestuis que* trust of said first mortgage, and that a full and perfect title to said railroad and other mortgage property may be obtained under decrees in all of said suits combined.

It is therefore ordered that the above causes be consolidated, 40 and proceed concurrently before this court to final decree.

And it is further ordered that all the proofs taken, orders made, and proceedings had in the cause first above entitled may be read upon the hearing of the causes so consolidated in the same manner and with the same effect as if taken, made and had in all of said causes, and that the evidence taken before the master in said first mentioned cause be read and used as evidence on the final hearing of said causes; and that said causes be set down for final hearing on the pleadings, proofs, orders and proceedings forthwith.

JOSEPH P. BRADLEY.
Circuit Justice.
W. B. WOODS,
Circuit Judge.

41 June 5th, 1877.

The above order is made without prejudice to and saving the rights of Wm. B. Duncan, Richard T. Wilson and Adrian Iselin, as trustees for the Tennessee substitution bondholders (so-called), who have not consented to this order; and the cause is to proceed to decree without them.

JOSEPH P. BRADLEY,
Circuit Justice.
W. B. WOODS,
Circuit Judge.

Filed—June 5th, 1877.

N. W. TRIMBLE,
Clerk.

Your petitioners further show that in the said suit 42
of Duncan & Elliot, Alexander Duncan had filed
proofs before the said master, which were returned to
the court by the said master with his report, whereby
the said Alexander Duncan claimed to be the holder
of coupons originally attached to the bonds issued
under the said mortgage of 1853, such coupons being
alleged by said Alexander Duncan to remain due and
unpaid, and amounting in the aggregate to the sum of
$535,000 and upwards, exclusive of interest; and said
Alexander Duncan produced said coupons before said
master; and after making such proof before the said
master the said Alexander Duncan transferred and
delivered his said coupons to your petitioners, and your 43
petitioners were at the time of the making of the said
orders the holders of the said coupons, and were heard
by counsel upon the hearing of the said cause and in
the making of the said orders. Immediately upon the
making of the said orders the said causes and
consolidated cause were and was brought on to a final
hearing, and your petitioners were heard by counsel as
aforesaid, and claimed not only that the said coupons
of 1874 still continued to constitute a part of the
indebtedness secured by the said mortgage of 1853, but
also claimed that the said coupons were entitled to
priority of payment out of the proceeds of the sale of
the said mortgaged premises, and the said Ketchum
and the said Ziegler, and his co-complainants, and also 44
Cephise Chuffard, Rodolph Merian, Eugene Renevier
and Charles Carrard, who had been admitted as
defendants in the said suit of Duncan & Elliott, contended
that said coupons were not only not entitled to
priority of payment out of the proceeds of the sale of the
mortgaged property, but had ceased to constitute part
of the mortgage indebtedness, and were not entitled to
be provided for, to any extent, out of the proceeds of
the sale of said property.

45 On the hearing of the said causes there was filed a stipulation as follows:

U. S. CIRCUIT COURT.

WM. BUTLER DUNCAN ET AL.

vs.

THE MOBILE AND OHIO RAILROAD COMPANY AND AL.

MORRIS KETCHUM

46 *vs.*

THE MOBILE & OHIO RAILROAD COMPANY ET AL.

D'ORELLI ZIEGLER ET AL.

vs.

THE MOBILE & OHIO RAILROAD COMPANY ET AL.

The undersigned parties who have proved their claims under the order made by the Circuit Court in
47 the first above entitled cause on March 6th, 1877, namely:

List of the holders of the securities of the Mobile & Ohio Railroad Company who have transferred, assigned to, and deposited with W. H. Hays, W. S. Pierson and T. Haskins Du Puy, the Committee of Re-organization under the agreement, &c., dated October 1, 1876, the several bonds and securities set opposite their names, respectively.

N. B.—Bonds of £225, £205 and £200 are estimated as $1,000 each. The principal only is included in this statement; the bonds have attached to them the coupons past due from and including the coupons which matured

May 1st, 1875, on the Sterling and Interest Arrearage Bonds.

July 1st, 1875, on the Tennessee Substitution Bonds.

March 1st, 1875, on the Second Mortgage and Convertible Bonds.

In addition thereto all past due and unpaid coupons on the total amount of the above issues. detached therefrom, and which matured May and November, 1874, and July and January, 1875, have been transferred, assigned to, and deposited with the committee.

(*Stipulation continued on next page.*)

51 50 49

Total Principal Amount Outstanding.	$5,609,000.	$769,920.	$1,518,000.	$1,668,000.	$1,451,207.	$476,000.
ASSIGNOR.	STERLING.	STERLING INTEREST.	ARREARAGE INTEREST.	TENN. SUBT.	SECOND MORTGAGE.	CONVERTIBLE.
Allen, Mrs. A. K.	$2,000		$2,000		$425	
Acker, Joel M.			3,000		1,500	$650
Billups, J. M.	32,000		11,600			
Duncan, Alexander	75,000					
Frankfurter, Bankverein	82,000		1,800	$196,000	28,800	
Hayes, Wm. H.	72,000		28,900		132,068	78,000
Plock & Co.	172,000		11,400	40,000	166,100	7,525
Plant H. B., Trustee.	155,000		110,200			
Rossiter, A., Trustee			21,200		45,800	
Sistare, Geo. K			13,600		4,200	1,175
Utley, David	33,000		79,000		20,000	21,175
Wilson & Co., R. T.	33,000		3,000		41,300	
Wilson, R. T.	24,000					
Shipman, W. D., Assignee	6,000		1,000		53,300	78,925
Mason, Alfred	5,000		5,900		6,000	
Iselin & Co., A.	51,000		17,900	52,000	50,000	30,000
Lombard, Odier & Co.	32,000			1,145,000	5,000	
Baldwin, T. B., Trustee	10,000		10,000			
Bond, Geo. W.	1,000					750
Birkner, Hy	17,000		8,800			
Birkner, J.	8,000				6,000	
Bartlett, John E.	23,000	11,040				

Chouteau, Chas. P	6,000		3,000		12,025	
Cropsey, H. E.	18,000		1,000			625
Crawshay, Robert T.	635,000	260,640				
Cartwright, Benj'n.			5,000		5,000	
City National Bank, Cairo, Ill.			5,000			25,000
Clarke, Wm. M.					7,000	24,450
Cox, E. A	1,000		8,000			
Campbell, Duncan G.	2,000				200	
Cromwell, Caroline L.	4,000		2,500			
Dorrance, D. G	2,000					1,250
Bixon, Joshua	15,000	4,800				
Dudley, J. A.	3,000		3,500			1,250
Dickerman, M. E			3,000			275
Denio, Israel			2,500			250
Deaton, Jas. C.	5,000		2,200			
Morgan, J. S.	24,000	13,920				
Drexel, Morgan & Co., for J. S. M.			200		3,650	
Crisman, Geo.					1,100	
Dow, R. K					4,841	8,000
Field, Marg't.	3,000		2,000			1,900
Frazer, Hesse	1,000		4,200			
Trabur, Geo. W	10,000		3,000		3,260	2,500
Gallatin National Bank.	31,000		40,000		42,000	
Griffith, Jno. R.	2,000		5,700			
Gannett, Alfred			11,500		1,000	
Garnett, E. S.			5,500			
Hunziker & Co.	4,000				7,000	250
Harbeck, Wm. H.	67,000		31,000			
Harbeck, Jno. H.	24,000		15,000			
Henderson, S. E.	2,000		1,000			
Hardy, H. C	11,000		8,000			

Assignor.	Sterling.	Sterling Interest.	Arrearage Interest.	Tenn. Subt.	Second Mortgage.	Convertible.
Hamilton, Thomas A.	$4,000		$1,100		$1,200	
Hamilton, Mrs. Peter	3,000		2,000			
Hamilton, Miss A. H.	1,000		1,000			
Hays, Jacob					750	$10,000
Hildreth, D. M					3,100	
Hildreth, D. M., Trustee						
Hopkins, E. W.	10,000		1,400			
Isbell, S A.	3,000		500		2,000	
Irwin, L. F.	2,000		400			
Jenkins, Mrs. S. M	4,000		1,000			
Jenkins, Mrs. S. M., Ex'rx.	92,000		4,000			
Kinney, G. W. G	2,000		200		700	500
Kettlewell, Rev. Samuel	9,000		5,500			
Krouse, T. J	3,000		1,000			
Ketchum, Wm. H.	3,000					250
Littlejohn, James.	5,000		4,000			
Lynch, George H.	7,000		3,000			
Lay, Mrs. H. C.	11,000		1,000			
Lull, Mrs. F. V. A	9,000		3,300			
Lake Bros.	2,000		4,000			
Levy, Mrs. B E.	3,000		2,000			
Levy, Mrs. Sarah.	13,000		4,600			
Lyons, Jacob C.	24,000		8,500			
Marsh, Hester	18,000 2,000		2,500			1,875
Marsh, Hester, Ex'rx						

Mather, F. E.	4,000		2,000			
Maynard, Joseph	17,000	19,200				
Mason, Jac., Betsey C. & Mary C.	2,000		1,300			
Maffit, Julia	6,000		2,500		12,100	
Moon, Edward	15,000	4,800				
Merrill, D. F.	6,000		4,200		2,000	1,375
Murray, Est. Donald	8,000		5,300			
Marié, P.			25,000		5,000	
McDearman, J. C.			500		9,950	
Murdock, A., Trustee					3,013	
Merian, A., in trust					4,100	
Morss, D. F.	11,000		18,000			
Moore, Mrs. L. D.			5,000			
Murdock, Mrs. Grace A.	7,000		4,100		800	125
Nock, Thomas G.	2,000		14,000			900
Oelrichs & Co.	11,000		6,000			
Peabody, Est. of Geo.	49,000	18,240				
Phelps, S. F.	6,000		3,000		15,000	3,875
Phelps, S. F., Jr.	1,000		1,000		2,000	
Phelps, S. F., in trust Mrs. Lyman						
Pidgeon, Miss H.	2,000	960				
Peterson, Mrs. Janet	9,000		3,900			
Prior, Mrs. Sarah	2,000		400			
Petrie, C.			1,500			
Powers, L. H.			1,500			
Phipps, P.					900	700
Phillippe, A.	9,000		2,500			
Parker, Mary A.	1,000		500			
Reid, C. C.	1,000		1,000			
Reynolds, Jno.	6,000					
Robinson, Thos.	110,000	15,840				

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ASSIGNOR.	STERLING.	STERLING INTEREST.	ARREARAGE INTEREST.	TENN. SUBT.	SECOND MORTGAGE.	CONVERTIBLE.
Richardson, L. M.			$5,000		$5,500	
Randall, F.			4,000		3,200	
Rogers, Thos					2,000	
Rosengarten, Geo. D	$12,000		6,500			
Soule, L. H.	3,000		2,000			
Shepard, S.	51,000		88,100			
Sprague, D. J	3,000		3,000			
Stutzer, F.					5,250	
Stutzer, Herman	15,000				5,000	
Stables, James	21,000		13,000			
Sims, Wm. H.	2,000				1,000	
Smith, Caroline T			3,500			
Tevrill, Geo	7,000		4,300			
Scott, Mrs. Ann G	3,000		500			
Sewall, Mrs. J. W			19,000		1,000	
Sherman, Mrs. S. M. G.					4,800	
Searles, R. R.					1,000	$1,250
Murdock, A. Trustee	2,000		3,100		200	
Tilney & Co., Jno. S.					3,425	2,500
Utley, H. G	13,000		6,300		1,250	
Van Dresar, Francis	1,000					875
Van Dresar, Steward	1,000				300	250
Van Dresar, Ezekiel	7,000		7,000			1,250
Van Vranken, M. F.	6,000		3,000			
Vedder, Estate of N. F.			5,000		7,516	
Von Hoffmann & Co., L.	10,000			2,000	3,300	12,500

	66		65		64	
Van Dresar, Ezra					2,500	
Wardwell, A. M	10,000		2,000		1,000	3,000
West, M. C	2,000				1,000	500
Westfeldt, Mary E., Executrix	2,000		700			
Westfeldt, Mary E	2,000		700			
Wardwell Chas H			2,000			625
Wardwell, Samuel			2,000			625
Wardwell, W. W			1,000			1,250
Weiler, Haas & Kraus					691	250
Walker H. H	2,000		4,000		5,000	
Wesson, S. L	1,000		1,000			
Carter, Jessie	1,000		500			
Howland, Mrs. A. W	4,000		1,000			
Samuel, John	5,000		400			
Holmes, L. W	1,000		3,000			150
Winston, A. A	6,000		400			
Martin, G. W					2,200	
Bartlett, Levi			3,000			
Judd, H			1,100		1,000	
Hayes, F. T			500		500	
Whitfield, Gaius			7,000			125
Lyall, Chas	3,000	4,800				
Citizens' Insurance Company			500		4,082	
Crawford A. G			700		1,865	
Crawford, J. L			2,400			
Crawford, Estate Jane			3,500			
Monroe, Hugh	19,000		6,500		3,100	
Morrill, D. L	4,000		1,400			
Clemens, Chas. H	4,000		1,000			
Healey, F. W., Executrix	8,000		5,500			
Railway Debenture Trust Co	24,000	48,000				

ASSIGNOR.	STERLING.	STERLING INTEREST.	ARREARAGE INTEREST.	TENN. SUBT.	SECOND MORTGAGE.	CONVERTIBLE.
Sheldon, Israel			$8,000			
Rossiter, A			900		$4,600	
Barton, J. B			14,000			
Southwick, A. B			9,500			
Hays, M. V. E	$4,000		7,000			
Tompkins, Mary C	17,000		5,000		26,000	
Brokaw, J. A. K					1,000	
Rawson, Hy	51,000					
Lampson, Sir C. M	75,000	$184,320				
Lampson, by C. H. Clark, Agent		28,800				
Lampson & Co., by C. H. Clark, Agent	5,000	62,400				
Lampson & Co		11,040				
Adrian, Mrs. Eliza	1,000					
Anderson, Miss Kate	1,000					
Allen, West & Co					1,000	
Bisschoffscheim, F. R				50,000		
Bisschoffschiem, Fred				25,000		
Bingaman Levi					500	
Brooks, Leslie E						
Bligh, Milton D	6,000					$2,500
Brainard, Mrs. M. J	20,000					
Brown, James			6,000			
Boynton, Edward C			5,000			
Birdseye, J			4,000			
Boyd, A. M					1,025	
Brown, Wm. Smith					900	

Bronson, Henry	1,000					
Bartlett, H. E			1,000			
Cropsey, James, Trustee	2,000					
Cochrane & Co	3,000					
4 Cochran Helen	1,000					
Calvert, William W. (N.)	1,000					
Campbell, Ella C	1,000					
Closson & Hays						2,500
Closson & Hays, Attorneys						2,500
Corish, Ellen					400	
Drummond, D. G	2,000					
Dwight, Mrs. C. S	3,000					
Dillaway, George W	4,000					
Duncan, W. B. D., in trust	10,000					
Day, Addison			$4,000			
Donnell, Lawson & Co			1,000			
De Rham & Co				1,000		
Davis, James M	1,000					
Cunliffe, E. G						12,500
Eads, Creswell	6,000					
Ellis, A. G						50
Gillespie, A. J						1,250
Gamble, Miss Mary	5,000					
Goodwin, Mrs. Caroline	6,000					
Gage, A. S			1,000			
Gurlick, Alexander	1,000					
Havens, E. B	5,000					
Hale, W. B., Ex-President	4,000					
Harris, Mrs. Mary	5,000					
Hunt, Jacob			1,000			
Howe, W. E			500			

Assignor.	Sterling.	Sterling Interest.	Arrearage Interest.	Tenn. Subt.	Second Mortgage.	Convertible.
Horton, T. S.						$550
Henshaw, Jane			$8,000			
Hays, Miss Ella			1,000			
Hays, E. St. John					$100	
Hays, William H. and Jacob						5,000
Huntington R. H.						875
Hildreth. D. M. Trustee	$5,000					
Judkins, Charles H. E.	8,000					
Irwin, Mary E.	1,000					
Jansen, Gersh					7,000	
Jacob, Angel H.	15,000					
Kerr, J. Hutcheson	13,000					
Keegan Peter	17,000					
Keegan, James	4,000					
King, W. D.	5,000					
Kissam, Isabella C.			2,000			
Lemon, Archibald D.	10,000					
Lee, Mrs. S. L	1,000					
Lucas, Sarah A.			600			
Lombard, Rev. J. K.					1,000	
Mitchell, C. Le Roy			1,000			
Marsh, Hester, executrix						1,875
Moulton, Stephen	5,000					
Marie, P. & Jno. Steward, trustees	11,000					
Meeker, Benjamin	5,000					
Milford, Henry	7,000					

Murray, May E.	2,000					
Maxwell, Dr. P. J.	4,000					
Merritt, James B.			200			
Waring, Moses			1,000			
Mack, Jacob W				3,000		
Mason [illegible]. W				2,000		
Marshall, Mrs. Ann.					2,000	
Murdock, William, executor					1,675	
Mobile Savings Bank					4,000	
McChesney, E. M.						775
Merrill, Elizabeth J						250
Mauran, P. B.	3,000					
Marmaduke, Leslie	22,000					
Merwin, S. J, M.						
Marshall, O. H.	17,000					
Nicholson, William			2,000			
Noble, Mrs. L. S.			500			
Ogden, Hannah M.					600	
Overall, G. Y.	1,000					
Oliver, Elijah					200	
Oothout William	10,000					
O'Conor, Charles	15,000					
Orr, James	7,000					
Powell, Alfred H., guardian	1,000					
Perry, Mary H.	2,000					
Pfizer & Co., Charles	10,000					
Ravenstedt & Co., Charles	5,000					
Parnell, Delia T. S.			3,000			
Pearl E. G.					100	
Phillipe, A., executor,						600
Russell, W. T.	1,000					

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Assignor.	Sterling.	Sterling Interest.	Arrearage Interest.	Tenn. Subt.	Second Mortgage.	Convertible.
Rowland, Alice J	$1,000					
Rogers, P. V	2,000					
Robinson, Joseph	4,000					
Raymer, Henrietta			$1,000			
Roberts, E. M			3,000			$550
Reynolds, Mary E						
Richmond, Benjamin	1,000					
Forster, J. B. & D. Benson, trustees	7,000					
Whitehead, James,	5,000					
Sotolongo, M. E. de	2,000					
Simpson, A			1,000			
Somarindyke, A			10,000			
Spencer, H. D			3,000			
Searles, Jas. H						750
Smith, Saml., S. T						1,250
Smith, Chas S						1,250
Saunders, C. A	20,000					
Sykes, A. J	1,000					
Smith, E. R	1,000					
Stein, Lewis	10,000					
Stoutz Bros						
Schunemann, Geo. F	1,000					250
Shepherd, Geo. W	7,000					
Thomas, Geo						
Torry, Mrs. Lucy			2,000			
Terry, Curtis B			1,000			250

Utley, Squire	5,000					
Utley & Wardell						
Wait, N. E.			1,000			
Williams, W. T.						625
White, Elizabeth H.			1,000			
White, H. L. & Jas. Brown			2,000			
Ware, Eliza			2,000			
Wood, Jas D.					800	
Williams, Jas. F.						2,500
Wetmore, Geo. Peabody						250
Willett, E. D.	3,000					6,250
Walker, Chas.	2,000					
Winder, J. E.	2,000					
Winthrop, Jno.						
Quilter, Wm.	5,000		2,000			
Herrick, J. H.	1,000					
Herrick, J. H., trustee	1,000					
Hall, David F.	5,000					
King's Sons, Jas. G.	10,000					
Shipman, W. D., assignee, W. W. S.						
Scears, Jno.	10,000				300	
Cookson, Joseph	8,000					
Clegg, Francis	3,000					
Coleman, Wiley	10,000					
Crawford, Andrew	2,000					
Crawford, Mrs. G. B.						
Jones, Eliza	1,000				1,012	
Hicks, Wm.						
Kellogg, Mary B.			3,000			
Bienville Lodge No. 348			500			
Garnett, Wm. A.					310	775

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Assignor.	Sterling.	Sterling Interest.	Arrearage Interest.	Tenn. Subt.	Second Mortgage.	Convertible.
McMillan, Thos.						$275
Perryman, E. S.						350
Bromberg, F.						250
Crawford, Sallie G.						
Crawford, Margaret L.			$7,600			
Goodier, John	$6,000		800			
Gates, Wm.						500
Solomonson, Ed.	3,000					
Lawson, Jno.	1,000					
Lever, Jas.	3,000					
Roberts, Everett						225
Payne, Wm. H.	1,000					
Whitaker, Robt.	2,000					
Bradshaw, Jonas J.	1,000					
Hoyle, Wm., executor	8,000					
Fry, Anna S.	1,000					
Morton, Thos. H.						300
Morrison, Chas.						
Pease, E. R.	5,000	72,000				
Bickham, Wm.	5,000					
Scott, Gertrude						
Stein, Robt.			600		1,800	
Phelps, S. F., in Trust			3,000			
Phelps, S. F., in Trust, Mrs. Lyman			5,000			
Cooper, Adele S.			5,600			
Thomas F. H.						625

Green, Lewis, Sr.						100
Bonner & Co., G. T.	24,000					39,275
Bonner & Co., Geo. T.						2,500
Bonner & Co., G. W. S.					300	
Bonner & Co., Geraldine M.					100	
Bonner & Co., G. T., Trustee, M. J. Boys					1,500	
Boyd, Mary J.			600		2,700	
Le Clerc, L., by W. B. D., in Trust			1,000			
Iselin & Co., for Banque Commerciale	3,000			4,000	20,400	3,625
" Lombard O. & Co.	90,000			7,000		
" Asso. Financiere	50,000					
" Evesque & Co.					10,000	
" P. au Thalhof				1,000	1,000	
" Victor, Jacob, Executor	12,000		500			
" A. B. Huessler	6,000					
" P. Massa	9,000					
" M. Handschein	1,000			1,000		
" E. Saladin				8,000		
" A. Rusch	3,000		12,500			
" A. Richard			33,300			
" Robt. Ernst				5,000		
" Mrs. A. Iselin				6,000		
" Rod. M.				1,000		
" Bory & Holland	10,000					
" B. La Roche	1,000			[illegible],000	5,000	
" Heirs, Sig. Marcel	2,000					
Kennedy & Co., J. S.	219,000					
Delafield, L. L., Trustee	11,000					
Cutting & Co., R. L., Jr.						12,500
Campbell, Patrick	8,000					
Darling, A. B.	6,000		1,500			
	90		89			88

Assignor.	Sterling.	Sterling Interest.	Arrearage Interest.	Tenn. Subt.	Second Mortgage.	Convertible.
Evans, Mrs. Jno. W	$1,000		$1,000			
Allen, West & Co.			1,000			
Burt, A. P.	11,000					
Berry, W. W	12,000					
Barry, Mrs. A. R.			1,000			
Baldwin, J. G.	2,000					
Bestor, Daniel P.	5,000					
Brown, John	10,000					
Belmont, August	5,000					
Brown, James M., Treasurer	1,000					
Brown, W. H.	2,000		4,200			
Bowen, John	5,000					
Billington, John					200	
Brown, N. H.	6,000					
Carrigan, James	6,000					
Chears, C. W					100	
Clarke, J. F.	1,000					
Clarke, Freeman	9,000		500		2,200	
Curtis, Judson	1,000					
Camack, James	6,000		1,100			
English, J. G.	1,000		500			
Elliott, George A.			600			
Eldridge, Oliver					800	
Gibson, Antoinette J.	17,000					
Holt, Mrs. J. A.	3,000					
Hoard, C. B.	5,000					

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Harbeck, John H., Jr.	8,000					
Hall, Joshua G., Administrator	1,000					
Hays, W. H., for J. B. C. & Co.						5,000
Heineman, Mrs. Mildred F.	20,000					
Hazard, Jas. B., Trustee	2,000		800		200	
Hopkins, E. M.						2,500
Humphries, W. D			14,500			
Jacquiemyus, G. Robin				6,000		
Knox, J. C	20,000		9,500		10,000	5,000
Lussier, Miss Appoline	4,000					
McClellan, Geo. B.	10,000					
March, P. S.	30,000					
McKay, C. F.	2,000		4,300			
Mott, W. F.	1,000					
Muldon, Miss Ellen	4,000		1,000			2,375
Muldon, Miss Rebecca A.	4,000				1,300	2,375
McNeil, Danl., Executor						25
Murdock, A., by Peoples' Savings Bank	1,000		2,200		1,500	
Myers, Rutherford & Co.						5,000
Marks, A. B.	5,000		5,000			
Marks, Henry,			12,000			
Otto, W. T., examiner	10,000					
Owen, Miss Eliza	1,000					
Pratt, W. H.						200
Quinn, Barney					2,756	550
Reese, Mrs. Margaret	4,000		1,000			
Randall, J. K.	1,000		200			
Setchwell, Jos.					3,195	
Scudder, S. O.	6,000		44,500			
Sinclair, T. M.			1,000			
Southern Mutual Ins. Co.	10,000		2,900			
Schroeder, H. A.	6,000		1,000			
Seybert, Henry, by J. C. Knox						10,000
Seguin, Mrs. Anne			6,100			

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ASSIGNOR.	STERLING.	STERLING INTEREST.	ARREARAGE INTEREST.	TENN. SUBT.	SECOND MORTGAGE.	CONVERTIBLE.
Thorn, Thomas W.			$1,000			
Webb, John	$3,000					
Whittemore & Co.	1,000					
Whitney & Sons					$24,200	
Walsh, Miss Kate						$250
Walsh, Miss Fannie M.						250
McKenzie, A.			2,500			
A. Iselin & Co., for Ed. Koechlin	4,000					
Chas. L. Young	20,000					
A. Iselsin & Co.			3,000			
W. Greer	3,000					
J. & C. Gardner	5,000					
D. & W. Carmichael	10,000				2,300	
Filsen Carmichael	1,000					
D. Carmichael	1,000		200			
A. Oakman	7,000					
D. Cunningham	6,000					
G. Porteous	2,000					
J. J. Montgomery	4,000					
J. Monroe					10,000	
E. Gibben	2,000					
F. Greer	6,000					
W. Aickin					14,000	
J. Lee					10,000	
H. Greer					6,000	
A. J. A. Lepper	20,000					5,000
Wm. Thompson	7,000					
J. S. Hazleton	2,000		8,000			
P. Anderson						
	$3,931,000	$765,120	$1,192,800	$1,553,000	$961,990	$474,925

do hereby place on file this waiver of their objection 100
to the allowance of the coupons of 1874 as a part of the first mortgage debt, and their consent that such coupons may be paid, with interest, out of the proceeds of sale prior to any other claims secured by said mortgage, and we adopt and approve the acts and doings of Duncan and Elliot as trustees.

Dated Mobile, June 5th, 1877.

F. N. BANGS,
Solicitor and of Counsel for said parties.

Filed June 5th, 1877.

N. W. TRIMBLE,
Clerk.

Thereupon, and on or about the 15th day of June,
1877, there was duly entered a decree, in the words 101
and figures following:

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF ALABAMA.

W. BUTLER DUNCAN AND A. FOSTER ELLIOT
vs.
MOBILE & OHIO RAILROAD COMPANY, ET AL.

MORRIS KETCHUM
vs. 102
MOBILE & OHIO RAILROAD COMPANY ET AL.

D'ORELLI ZIEGLER ET AL.
vs.
MOBILE & OHIO RAILROAD COMPANY AND OTHERS.

These causes having been consolidated and set down for a hearing at the same time under the order of this court, to be disposed of by the same decree, came on to be heard, upon the pleadings, exhibits, orders, re-

103 ports, exceptions, and the testimony taken in the cause
as taken before the master, and were argued by counsel;
and thereupon the court, upon consideration of
the premises, declares, orders, and decrees—

1. That the reports submitted by the master, under the orders and directions to him, are confirmed, and all the exceptions to the same are overruled.

2. The court declares and decrees the deed of trust
described in the bill, executed by the Mobile & Ohio
Railroad Company, dated the first of November, 1853,
and appointing John J. Palmer, Wm. R. Hallett, and
Morris Ketchum, the survivors and successors of them,
as trustees, is a valid conveyance of the railroad of the
said corporation, and of all the property therein mentioned,
for the security of the uniform series of first
mortgage bonds, and the interest to accrue thereon
104 therein set forth, and that the said bonds and coupons,
including the coupons which became due on the first
of May and November, 1874, represented as owned by
Alexander Duncan, are secured equally, and to be
ratably paid from the proceeds of the property without
priority or preference among them.

3. The court declares and decrees there was a default
on the part of the corporation aforesaid in the
payment of the installments of interest promised to be
paid in May, 1874, also in November, 1874, and successively
in May and November since that date, and
that a title accrued to the trustees under the said deed
therefrom to enter into possession of the property, and
to obtain a decree for the sale of the property therein
described, to be enforced unless the said corporation
shall pay the debt which has been ascertained to be
105 due on the said deed of trust by the master's report
in this cause.

4. The court orders and decrees that the defendants to this cause, to wit: The trustees in the second and the other deeds of mortgage of a date subsequent to that of the mortgage described in the bill as the first mortgage, pay into the registry of this court on or before the first day of August next, the amount of the debt ascertained to be due on the deed of trust by the Master and reported to the court, and in case of any default on their part, that their equity of redemption shall be henceforth barred and foreclosed.

5. The court orders and decrees that the Mobile & Ohio Railroad Company be authorized to pay into court the amount ascertained to be due upon the re-

ports of the Master on or before the first day of August next, together with all costs in the matter with all costs in the cause. and in case of a compliance with this order, that further proceedings on this decree shall be suspended. 106

6. In case of a failure to make the payment as provided in this decree at the time appointed therein, to wit, the first day of August next, the court orders James Gillette, the master heretofore appointed in this cause, and Thomas H. Herndon, who is hereby appointed special master for the purpose, to advertise the property described in the said deed of trust of the date of the first day of November, A. D. 1853, as aforesaid, and all property, and franchises, and rights comprehended in its terms, for sale, at public auction, in bulk and as an entirety, for cash, to the highest bidder, on some day to be designated by them in the advertisement of sale. 107 The sale will be made in front of the Custom House, in the City of Mobile, between the hours of noon and three o'clock P. M. They will advertise the sale in a daily paper published in Mobile, and in two daily papers published in the City of New York, for eight weeks prior to the day of sale. They will appoint a crier before the sale whose fee shall not exceed one hundred dollars. The masters will attend the sale in person, and take care that it be fairly and regularly conducted, and with proper regard to the rights of all persons. The master shall exact from any bidder, before making an adjudication to him, a deposit of the sum of fifty thousand dollars in money, to defray the costs, expenses, and charges incident to the trust, and a further deposit of one hundred thousand dollars in money, or of the bonds or coupons described in the 108 said deed of trust and master's report as a part of the debt secured by the said deed, and in case of his refusal, the masters may reject the bid thus made, and proceed with the sale as if the bid had not been made. In case of any failure of a bidder to comply with the terms of sale, and the masters shall find that the bidder will not or cannot comply, they may make a re-sale on the day of the sale at the same place, or they may give notice that on the day following, between the same hours of twelve noon and three P. M. they will make a sale also at the same place under the decrees according to its conditions; and they shall have power to adjourn the sale for thirty days, to be made at the same place, by adding a note to the advertisements for

109 that purpose, should they deem that course advisable, and by causing publication of said advertisements to be continued in the same papers until the day of sale.

7. The court orders and decrees that the masters may receive in payment from the highest and last bidder, bonds and coupons which form a part of the first mortgage debt ascertained to be due or owing by the master in his report, and sustained by the opinion of this court; provided, however, that a sum sufficient to pay the costs, charges, and expenses of the trust as above mentioned, whether exceeding the said cash deposit or not, and also to provide for the payment of the *pro rata* dividend which shall be due or owing to the owners of other bonds and coupons, secured under the deed of trust, must be paid in money, and provided also that if the said mortgage property shall be bid off
110 directly or indirectly by, for, or in behalf of the bondholders and creditors who have, or shall have, entered into and subscribed the agreement for the re-adjustment of the securities of said company, dated October 1, 1876, commonly called the agreement of re-organization, then and in that case all and every bondholder and creditor of said company not having already entered into and subscribed said agreement, who shall, on or before the first day of September next, enter into and subscribe the same and deposit their securities with the Farmers' Loan and Trust Company in the City of New York, or with the Bank of Mobile in the City of Mobile, as provided by said agreement, shall be, and they are hereby allowed to participate in said bid and purchase on the same terms and on an equal footing in all respects, according to the character of
111 their claims respectively, with the said bondholders and creditors who have heretofore entered into and signed said agreement.

8. The court orders and decrees that the masters shall make their report of the sale and proceedings connected with the same, and of the performance of the contract by the purchaser, and shall report a draft of a deed of sale under this decree, to be executed by themselves, and shall file the same with the report and their signature thereto, all of which shall be subject to the final order of confirmation. The masters, in addition to the deed to be executed by them, shall prepare a deed of confirmation of the sale and of the conveyance executed by them, and a release of all claim on the property as trustees, or otherwise, with certificates of acknowledgment, fitting it for registration in the

States of Alabama, Mississippi, Tennessee, and Kentucky, which deed of confirmation and release shall be executed and acknowledged by William B. Duncan, A. Foster Elliot, and Morris Ketchum, as well as by the Mobile & Ohio Railroad Company, within thirty days from the day of sale, and be reported to the court for confirmation. 112

9. The court orders and decrees, that it appearing to the court that there is a clause in the deed of trust or mortgage described in the bill, saving and reserving the rights and liens that may attach to the roadway and construction thereon, in favor of the State of Tennessee, which will exist and attach as a prior lien by statute of that State, in the event of said State aiding in the construction of the railroad of the Mobile & Ohio Railroad Company of that State, being a distance of one hundred and eighteen (118) miles; and it appearing that there was such aid, and a claim for a prior lien under the statutes in Tennessee is the subject of controversy in the Circuit Court of the United States for the Western District of Tennessee and the parties asserting such prior liens are not before this court, and this claim cannot be settled here: The court orders that the sale to be made under the orders of this decree be subject to the rights and liens which exist, if any, under the statutes of the State of Tennessee, in favor of the State of Tennessee, or its grantees or assigns, or the parties asserting such prior liens, in so far as the railroad and property affected by that lien are concerned. 113

10. The court further orders and decrees, that the sale of the Gainesville Branch Road shall be without prejudice to a prior mortgage existing on that branch railroad, as represented in the Report of the Master upon that subject, in the reference to him, in favor of William D. Dunn, John Reid, Jr., Robert C. Crawford, trustees. 114

11. The court orders and decrees, that all the equities among the parties to the suit, all questions of costs and for allowances, and all other questions not disposed of or specially reserved in the foregoing decree, but properly arising under the same, are continued and reserved until after the sale and report by the Masters after their proceedings thereupon.

June 15th, 1877.

JOSEPH P. BRADLEY,
Circuit Justice.
W. B. WOODS,
Circuit Judge.

115 On the day of the rendering of the said decree, the said Morris Ketchum, D'Orelli Ziegler, and his co-complainants, namely, Masson Chavannes, Henry Jump, Bernard de Watteville, and also the said Rudolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard, by E. L. Andrews, Esq., their Solicitor and Counsel, applied in open court for the allowance of an appeal from the said decree, and supersedeas thereon, and thereupon on June 16, 1877, an entry was made in the words and figures following in the minutes of the said court, viz:

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF ALABAMA.

116

W. B. DUNCAN ET AL.
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

MORRIS KETCHUM
vs.
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

D'ORELLI ZIEGLER ET AL.
117 *vs.*
THE MOBILE & OHIO RAILROAD COMPANY ET AL.

In the above cases consolidated, the appeal to the Supreme Court of the United States heretofore prayed is hereby granted and allowed.

The supersedeas bond is hereby fixed at one hundred thousand dollars, with sureties resident in the City of New York, who may unite in said bond in any proportionate sums. The said bond shall stay execution if approved and filed at any time within sixty days.

Filed June 16th, 1877.

N. W. TRIMBLE,
Clerk.

And the following is a copy of the opinion of the 118
court upon the said application for a superseadeas:

Bradley, J.—"An appeal being granted and allowed in these cases from the decree rendered therein on the 15th day of June, 1877, the question is raised as to the amount of the appeal bond to be given by the appellants, they being the plaintiffs in the second and third suits and defendants in the first.

"The decree appealed from sustained the claim of Alexander Duncan, as holder of certain first mortgage coupons to the amount of over $500,000 to come in *pari passu* with the first mortgage bondholders, and directs a foreclosure of the first mortgage and a sale of the mortgaged property to pay the bonds secured thereby, and also certain other bonds given for interest, amounting in the aggregate to about ten millions 119
of dollars. Purchasers are by the decree allowed to pay the purchase money in bonds and coupons to the extent of their proportionate interest as bondholders in the whole amount of first mortgage bonds. About four-fifths of the bondholders have agreed to and subscribed a scheme for reorganizing the company and purchasing the road.

"The court has allowed the remaining bondholders until the 1st of September to join in said scheme.

"A portion of the bondholders, holding less than one-tenth of the entire mortgage interest, are dissatisfied with the decree, and promote the appeal.

"The property being in the hands of a receiver, and not producing much, if any, more than the expenses and necessary repairs of the road, the bondholders to whom the property or its proceeds really belongs, will 120
be kept out of possession for two or three years by the intervention of the appeal.

"This delay in obtaining possession of the property or its proceeds we regard as calculated greatly to injure them.

"By having immediate possession they could make the necessary improvements and connections required for making the property much more remunerative, and could manage it much more to their advantage generally than a receiver can do.

"Or, if the property were immediately sold, they would be in possession of the interest of the purchase money, of which they will now be deprived for two or three years by the appeal.

121 "In our judgment, therefore, an appeal bond for one hundred thousand dollars is very moderate in amount.

"The appellants contend that on the principles of the decision of the Supreme Court in the case of Jerome *vs.* McCarter, 21 Wall, 17, and of , decided at the last term of said court, a bond for one hundred thousand dollars is greatly in excess of what should be required.

"They insist that, in contemplation of law, possession by a receiver is equally beneficial to those who are interested in the property, as possession by the parties themselves.

"While this may be the case with regard to dead property, or even real estate generally, we think it is not so where the property, like a railroad, is perishable
122 in its character, and has to be managed, worked, repaired, and taken care of, in order to preserve it.

"We think that the owner is a better manager than a trustee or receiver, who is hampered and restrained in his management, and cannot take advantage of all those means and opportunities which the owner could do for rendering the property most profitable and productive.

"On these grounds, we think that the damage sustained by the delay will be much more than the mere costs and expenses of the suit, and that the actual loss and injury to the owner, or in this case, the bondholders, may be taken into consideration by the court in fixing the amount of the bond; and that loss and damage, we think, will not be less than the amount we have required.

123 "The most forcible difficulty which presents itself to our minds is the measure of damages which would be applicable in a suit on the bond.

"Would it be admissible for the plaintiffs to show a loss to the bond-holders by reason of advantages lost for the cause above referred to? Of this there may be a question. But our opinion is, on the whole, that such a damage would be the subject of a recovery.

"If damages are really sustained, there seems no good reason why they should not be recovered."

WOODS, Circuit Judge, concurring.

And afterward, and on or about the fifteenth day of July, 1877, there was filed in the office of the Clerk of said court, at Mobile, aforesaid, a bond, which, with the endorsements thereon, is in the words and figures following: 124

Know all men by these presents, that we, Charles Moran, resident of the City and State of New York, and Henry Amy, Theodore F. Moran, and Isaac R. Cornell, residents of the same place, are severally and respectively held and firmly bound unto William B. Duncan, of the City and State of New York, and Andrew F. Elliot, of the City of New Orleans, in the State of Louisiana, in the respective sums following, to wit: the said Charles Moran, Henry Amy, Theodore F. Moran, and Isaac R. Cornell, in the sum of twenty-five thousand dollars each, to be paid to the said W. B. Duncan and A. F. Elliot, their executors, administrators and successors; for which several payments well and truly to be made, each of them doth hereby 125
bind himself, his heirs, executors, and administrators, severally and respectively, by these presents.

Sealed with our seals and dated this third day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas, lately, at a regular term of the Circuit Court of the United States in and for the Southern District of Alabama, held at the City of Mobile, three certain suits brought therein for a common purpose, were, by order of said court, consolidated into a single cause.

And, whereas, in one of said suits William B. Duncan and Andrew F. Elliot, as trustees, are complainants, and Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, are defendants, on behalf of first mortgage bondholders of the Mobile & 126
Ohio Railroad Company; and in another of said suits Morris Ketchum is complainant, as trustee, and W. B. Duncan and A. F. Elliot, above named, are defendants; and in another of said suits D'Orelli Ziegler, Bernard de Watteville, Masson Chavannes and Henry Jump, are complainants, on behalf of first mortgage bondholders of the Mobile & Ohio Railroad Company, and W. B. Duncan and A. F. Elliot are defendants.

And, whereas, a decree was rendered in the said consolidated cause,

And, whereas, an appeal from the said decree to the Supreme Court of the United States was prayed in open court on behalf of Morris Ketchum, D'Orelli Ziegler, Bernard de Watteville, Masson Chavannes, 127 Henry Jump, Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, which appeal was granted, and the order granting the same was filed with the Clerk of said Circuit Court, and a citation directed to said W. B. Duncan and A. F. Elliot, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second day of October next.

Now, the conditions of the above obligation are such that if the said Morris Ketchum, D'Orelli Ziegler, Bernard de Watteville, Masson Chavannes, Henry Jump, Rudolph Merian, Eugene Renevier, Charles Carrard, and Cephise Chuffard shall prosecute the said plea to effect and answer all damages and costs, if they fail to make the said appeal good, then the above obligation to be void, else to remain in full force and virtue.

128 CHAS. MORAN, [SEAL.]
Witness.

Taken and acknowledged before me, as to Chas. Moran, H. Amy, and Theo. F. Moran,

EDWARD L. OWEN,
U. S. Commissioner for the
Southern District, New York.

H. AMY & CO. [SEAL.]
ISAAC R. CORNELL. [SEAL.]

Witness,
L. J. MORRISON,
JOS. P. DOCKERAY.

THEO. F. MORAN. [SEAL.]

Witness,
129 CECIL A. MARKS.

I approve the foregoing bond. Washington, July 9th, 1877. Joseph P. Bradley, Associate Justice of the Supreme Court, U. S.

And thereupon there was served upon the said Duncan and Elliott a citation in the words and figures following:

The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an allowance of appeal filed in the clerk's office of the Circuit Court of the United States, in and for the Southern District of Alabama, wherein Morris Ketchum, D'Orelli Ziegler, Bernard de Watte-

vilde, Masson Chavannes, Henry Jump, Rodolph 130
Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard, are appellants, and you are respondents, to show cause, if any there be, why the said decree rendered against the said appellants as in the said order of allowance is mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley of the Supreme Court of the United States, this 9th day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

JOSEPH P. BRADLEY,
Associate Justice of the
Supreme Court, U. S.

To
W. B. DUNCAN, 131
A. F. ELLIOT.

But no citation whatever has been served upon your petitioners, and no proceedings have been taken to secure your petitioners against any costs or damages for delay or otherwise upon the said appeal.

Your petitioners show that since the making of the said decree, the said D'Orelli Ziegler has assigned and delivered to your petitioners the bonds and coupons proved by him before the said master, and in respect of which he claimed to be aggrieved by the said decree of June 15, 1877, and your petitioners are now the holders of said bonds, and of the coupons attached thereto, amounting in the aggregate to $18,000 of 132
principal.

The aggregate principal amount of bonds proved in said suits by the said Bernard de Watteville was $100,000, and of those proved by Henry Jump was $19,000, and of those proved by Masson Chavannes was $17,000, and of those proved by said Rudolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard was $40,000.

Your petitioners further show that as they have learned from said Charles Moran, and verily believe, the said Morris Ketchum has been acting in

133 the conduct of said appeal and in the prosecution thereof, so far as he has prosecuted the same, at the request and instigation of the said Charles Moran, one of the sureties on said appeal bond, and said Charles Moran acted as the attorney in fact of said Ziegler, De Watteville, Jump, Chavannes, Merrian, Renevier, Carrard and Chuffard in all the proceedings above referred to; and your petitioners have been informed by said Ketchum and verily believe that said Ketchum has been indemnified by them or by said Moran against any liability for damages or costs, or otherwise, which he, the said Morris Ketchum, may have incurred in the prosecution or defence of any of the said actions, or in the prosecution of the said appeal.

134 Your petitioners further show that of the original first mortgage bonds issued under the said mortgage of 1853 and proved before the master, your petitioners have become and now are the holders of all except the principal sum of $781,000, and of the sterling interest bonds and coupons issued under the security of said mortgage, your petitioners have become and now are the holders of all except $2,880 of principal money in amount, and of the dollar interest bonds issued under the said mortgage and coupons attached thereto, your petitioners have become and now are the holders and owners of all except $138,900 of principal money in amount, and of the Tennessee substitution bonds

135 your petitioners have become and now are the holders and owners of all except $80,000 of principal money in amount.

Your petitioners further show that the only question made on the hearing of the said causes and cause in the said Circuit Court by the said appellants was as to whether or not the said coupons of 1874 still continued to constitute a part of the mortgage indebtedness, and whether or not if they still continued to constitute such part of said indebtedness they were entitled to priority of payment out of the proceeds of said sale; that your petitioners do not anticipate that in the event of a sale of said property any amount exceeding the sum

of four and a half millions of dollars can by any pos- 136
sibility be obtained for the same,—out of which pro-
vision must be made for the payment of said Tennes-
see substitution bonds, which have, by a decree of the
Circuit Court of the United States for the Western
District of Tennessee, been adjudged to be a prior
lien on so much of the mortgaged property as lies
within the State of Tennessee; and your petitioners
say that if upon an appeal to this Court this Court
shall determine that the said coupons do not consti-
tute a part of the said mortgage indebtedness, then
upon the assumption that the said property shall sell
for the sum of four and a half millions of dollars, the
advantage gained by the said appellants in respect 137
of the bonds held by them, exclusive of those trans-
ferred to your petitioners by said D'Orelli Ziegler and
others, will not exceed the sum of sixty-five hundred
dollars.

In illustration and proof of the little injury which
the appellants would sustain in case said mortgaged
property should be sold and the proceeds distributed
under the said decree of June 15, 1877, and said de-
cree should be afterwards reversed or modified by the
rejection of said coupons of 1874, your petitioners
show that the total amount of principal and interest
reported by the master to be unpaid on said mortgage
of 1853, including said coupons of 1874 and coupons
up to November 1, 1876, was $9,705,137.56. 138

The amount reported due on said coupons of 1874, exclusive of interest thereon, was $535,106.74.

The amount of the bonds held by said appellants other than said Ziegler, adding past due coupons to November 1, 1876, was not exceeding $204,000.

If the whole property should sell for $9,705,137.56 above the Tennessee lien, it would make no difference to the appellants whether the coupons of 1874 were disallowed and the decree below reversed or not. If the property sells for $4,582,568.00 above the Tennessee lien, and the claim on the coupons of 1874 is sus-

139 tained, as established by the decree of June 15, 1877, there will be divided on said coupons not more than $267,553, which, if said coupons are wholly disallowed by a reversal of said decree, would be divided among bondholders to the amount of $9,705,137, less $535,106.74, the amount of the disallowed coupons of '74, viz., $9,170,031, and would add not quite three per cent. to the dividends on that sum; and three per cent. on the claims held by the appellants would not exceed $6,200. In other words, in case the mortgaged property should be sold for one-half of the amount now adjudged to be due, over the Tennessee lien, and the proceeds of such sale should be distributed under the
140 decree appealed from, and said decree should be afterwards reversed, the damages which would accrue to said appellants as bondholders would not exceed $6,200. The event in which the utmost damage would be sustained by the appellants would be the event of the mortgaged property selling for ninety-four (94) per cent. of the entire first mortgage indebtedness, and the proceeds of such sale being distributed under the decree below, and such decree being afterwards reversed by disallowing said coupons, in which events, the utmost damages which said appellants, as bondholders, would sustain, would not exceed $12,500; and if the claims of said appellants amounted to $1,000,000, instead of $204,000, their utmost damage, in the contingency sup-
141 posed, would not exceed $70,000. The anticipated damage would be diminished in proportion to the diminution of the price obtained on a sale, as well as also by the deduction of the claim on the Tennessee substitution bonds.

Your petitioners further show that Henry Amy, one of the sureties on said appeal bond hereinabove set forth, is a member of the firm of Henry Amy & Company of the City of New York, and that the said Henry Amy & Company proved before said master in the said Duncan & Elliott suit bonds to the principal

amount of $104,000, and that on or about the first 142
day of September 1877, the said Henry Amy & Company transferred said bonds and others, to the aggregate amount of $227,000, principal money, to your petitioners, and your petitioners became and now are the owners and holders thereof, and the said Henry Amy & Company have no further interest in the prosecution of the said appeal.

Your petitioners further show that there has been exhibited to them by Mr. Adrian Iselin, of the City of New York, an original letter written to him in the French language by said D'Orelli Ziegler, of which the following is a correct translation:

ZURICH, Sept. 4th, 1877. 143

Referring to-day to the contents of your letter of 29th May, on the subject of the Mobile & Ohio matters, I have reflected well on its contents, and on all those (letters) which you have had the kindness to write me on this subject.

First not willing to have a suit of law in my name, and still less liking to be brought into a controversy with you, I requested our friend Mr. Chas. Moran most positively to abstain in my name from a suit, and to place my bonds in the Hays Du Puy scheme, so as to terminate, so far as I was concerned, this existing litigation.

Mr. Moran replied that an amicable arrangement would be difficult, owing to dissentients who had joined his cause, and who were too numerous to accord
any facility in this direction, to which I replied that it 144
would be better to abstain from an appeal in the name of the whole against certain compensations which you will judge equitable to allow to him and other persons who had become sureties, and who had studied the matter and incurred a risk in securing such a high bond.

Even supposing your party carry the day, the opposition will always find some way which, without upsetting your plans, will always cause you embarrassment.

These observations are simply my personal ideas, without any pretension or value, and this letter is merely to inform you that my bonds will henceforth figure in your lists.

PESTALOZZI AU THALHOF.

145 And the name, Pestalozzi au Thalhoff, is the name under which the said D'Orelli Ziegler conducts his business.

Your petitioners further show that on the twentieth day of August, 1877, they delivered to the special master, appointed by said decree of June 14, 1877, a notice as follows:

U. S. CIRCUIT COURT,

SOUTHERN DISTRICT OF ALABAMA.

WILLIAM BUTTLER DUNCAN AND Andrew Foster Elliot, Trustees, &c.

146 *vs.*

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

MORRIS KETCHUM

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

D'ORELLI ZIEGLER, ET AL.

vs.

147 THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

Consolidated Causes.

To JAMES GILLETTE and THOMAS H. HERNDON, Esqurs., special masters appointed by the decree of June 15, 1877.

Gentlemen,—We are advised and instructed to inform you that, we do not regard the execution of the said decree, so far as it requires you to make a sale of the mortgaged property, as stayed or superseded by any of the proceedings heretofore taken in the nature of an appeal by Morris Ketchum, D'Orelli Ziegler and their co-appellants. No bond has been given on that appeal, except a bond to William Butler Duncan & Andrew Foster Elliot, in their individual names, and they are not, as individuals, parties to the litigation. No bond or security of any kind has been given to us, and no citation has been served upon us. As we are advised, the legal effect of the bond given is, at the utmost, to stay only the proceedings of Andrew Foster Elliot & William Butler Duncan as individuals. Under the circumstances we think it is your duty either to proceed to execute the decree, or to apply to the court for its instructions in the premises. 148

Dated New York, August 20, 1877.

Yours respectfully,
William H. Hays,
William S. Pierson, 149
And T. Haskins Dupuy,
By C. W. Bangs,
Their Solicitor.

As your petitioners are informed and believe, the said Masters thereupon applied to his Honor the Circuit Justice for instructions, and afterwards, the said Masters placed upon the files of the said court at Mobile the opinion of the Circuit Justice upon such application as follows :

"The suits were consolidated and treated as one, one decree was made therein, and an appeal taken in open court and the appellant desired to give an appeal bond 150 satisfactory to the court to stay execution. The bond presented was approved for that purpose. If it is defective for want of form I should certainly feel bound under the circumstances to allow the appellants to file another bond. At all events, until the Court orders otherwise, it seems to me that the Masters should not take it upon themselves to decide that the appeal bond is ineffective. Of course, I am willing to hear any application on the subject that can be properly decided at Chambers. But it seems to me that it is hardly necessary for the Masters to go to that trouble. If the parties are dissatisfied with the bond it is rather for them to make application to the Court or a Judge

151 at Chambers to direct the masters to proceed notwithstanding the appeal.

JOSEPH P. BRADLEY."

A true copy,
JAMES GILLETTE,
Master.

Filed Sept. 18, 1877, N. W. Trimble, Clerk.

Your petitioners further say that on or about the fifth day of September, 1877, they caused to be delivered to said Morris Ketchum a written request as follows:

OFFICE OF THE COMMITTEE OF REORGANIZATION
of the
152 MOBILE & OHIO RAILROAD COMPANY,
No. 11 Pine street,
NEW YORK, 5th Sept., 1877.

To MORRIS KETCHUM, Esq.:

Claiming to be a trustee under the first mortgage or deed of trust of the Mobile & Ohio Railroad Company.

Dear Sir.—We have to inform you that we are the holders of sterling bonds secured by said mortgage, exceeding in amount the principal sum of $4,788,000, and of interest bonds secured by said mortgage, exceeding in amount the principal sum of $2,146,200, and of detached coupons secured by said mortgage, exceeding in amount the sum of $730,000, and of coupons still attached to the bonds held by us, exceeding in amount of the sum of $985,000. 153

As such holders, we have to request, and do request of you, in whatever capacity you are, or may claim to be, acting, to desist from the further prosecution of an appeal taken by you, or in your name, to the Supreme Court of the United States. from a decree of the Circuit Court of the United States, for the Southern District of Alabama, on 15th June, 1877, in a suit to foreclose said mortgage, and to discontinue, dismiss and abandon that appeal.

Respectfully yours,
T. HASKINS DUPUY,
of Com. for

W. H. HAYS,
W. S. PIERSON,
T. HASKINS DUPUY, } Committee of Reorganization.

Your petitioners further show that the damage to 154
your petitioners as owners of said bonds and securities, and to the interests represented by your petitioners as such owners, which damage would arise from a stay in the execution of said decree for the period likely to elapse before said appeal can be regularly heard, will largely exceed one hundred thousand dollars; that besides the loss of interest and other losses referred to in the foregoing opinion of Mr. Justice Bradley, the improvement of the property is delayed and embarrassed, connections and trade contracts with other roads and with steamship companies are prevented from being made, and the necessity of acting 155
constantly under the supervision of the court, is productive of great expense and embarrassment, and your petitioners estimate the damage arising from all such causes at not less than $250,000 per annum.

Your petitioners therefore pray the court that the said appeal taken in open court as hereinabove recited, on the 16th day of June, 1877, may be vacated and dismissed as against your petitioners, for want of prosecution, and because the said appeal has not been as against your petitioners perfected by the giving of the security thereon required by law, or in any other manner; and that any supersedeas or stay of execution heretofore granted as against your petitioners may 156
be vacated and set aside, and leave given to your petitioners to prosecute and enforce the said decree, notwithstanding said appeal in open court; or that if this honorable court shall refuse to grant the relief above prayed unqualifiedly, then that such relief may be granted, unless said appellants shall file a new supersedas bond to your petitioners as obligees in a penalty of not less than five hundred thousand dollars, or upon your petitioners filing in this court a bond to be approved by the court, in a penalty of not more than $75,000, securing to the said appellants, other than said Ketchum, the difference between the amount which they would receive out of the proceeds of the

157 said sale, in case the said coupons of 1874 are, on the said appeal, disallowed as a part of the mortgage debt, and the amount which the said appellants shall receive in case the said mortgaged property shall be sold and the proceeds of said sale distributed under the said decree, which security your petitioners are able and willing to give, and hereby tender to the said appellants, if required by the court; or that your petitioners may have such further or other or different relief as the nature of their case may require, and as may be proper in the premises.

And your petitioners will ever pray, &c.

W. H. HAYS,
158 W. S. PIERSON,
T. HASKINS DU PUY,
By C. W. BANGS,
Their Solicitor.

UNITED STATES OF AMERICA, }
Southern District of New York. } ss.:

William H. Hays and T. Haskins Du Puy, being duly and severally sworn, do depose and say, and each for himself says, that he is one of the petitioners above named; that he has read the foregoing petition, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters and 159 things therein stated upon information and belief, and as to those matters he believes it to be true.

Sworn to before me this 8th } W. H. Hays
day of October 1877. } T. Haskins Du Puy

Joseph Gutman Jr
United States Commissioner
Southern District of New York

(L. S.)

IN THE SUPREME COURT, 160
OF THE UNITED STATES.

D'ORELLI ZIEGLER ET AL.,
Appellants,
vs.
WILLIAM H. HAYS ET AL.,
Appellees.

Gentlemen,—There is herewith served upon you a copy of a petition which has been filed in the office of the clerk of this court, and you are notified that at the court room of this court at the Capitol, in the City of Washington, on Monday, November 5th, 1877, at the opening of the court on that day, or as soon thereafter 161 as counsel can be heard, the court will be moved for an order in conformity with the prayer of the said petition to dismiss the appeal therein mentioned, and that on Monday, October 15, 1877, at the Capitol aforesaid, at 12 o'clock at noon, or as soon thereafter as counsel can be heard, the court will be moved for an order vacating the supersedeas unconditionally, or if not unconditionally, then upon the conditions stated in said petition, or in conformity with the prayer of the said petition. And you are also notified that the appellee Alexander Duncan adopts the said petition and joins in the prayer of the same and will join in the said motions. 162

Dated New York, Oct. 8, 1877.

Yours, &c.,
C. W. BANGS,
Solicitor for William H. Hays, William S. Pierson,
T. Haskins Dupuy and Alexander Duncan.

To E. L. ANDREWS, Esq.,
Solr. and of counsel for Morris Ketchum,
Rudolph Merian *et al.*,
E. H. GRANDIN, Esq.,
Solr. and of counsel for D'Orelli Ziegler
et al.,
P. & T. A. HAMILTON, Esqs.,
Solrs. and of counsel for Duncan & Elliott,
G. N. STEWART, Esq.,
Solr. and of Counsel for M. & O. R. R. Co.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1877.

D'ORELLI ZIEGLER et al.,
Appellants,
vs.
DUNCAN & ELLIOT, Trustees, &c.,
Appellees.

Brief on Motion to Vacate Supersedeas.

F. N. BANGS,
Of Counsel for Petitioners.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, CORNER FULTON STREET.

1877.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

U. S. Supreme Court.

D' ORELLI ZIEGLER ET AL.,
Appellants,

vs.

DUNCAN & ELLIOTT, TTUSTEES,
Appellees.

Brief for Appellees on their motion to vacate Supersedeas.

In June, 1877, there were pending in the U. S. Circuit Court for the Southern District of Alabama, three suits in equity to obtain relief for holders of bonds and coupons issued by The Mobile & Ohio Railroad Company, payment of which was secured by a mortgage made by that company in 1853.

These three suits were begun in succession, one after the other.

The first was begun in 1875, by William Butler Duncan and Andrew Foster Elliot, cliaming to be sole trustees under the mortgage of 1853.

The second was begun in 1876, by Morris Ketchum, claiming to be sole trustee under that mortgage.

The third was begun in 1877, by D' Orelli Ziegler, Masson Chavannes, Henry Jump, and Bernard De Watteville, bondholders secured by the mortgage, who had already proved their claims in the Duncan & Elliott suit.

The three suits had one purpose in common, which was, to have the mortgaged property sold, and the proceeds of the sale applied to the payment of such of the indebtedness as might be found to be unpaid.

In other respects, the objects of the suits were dissimilar and discordant.

Duncan and Elliot claimed that the indebtedness still embraced coupons for interest which matured in 1874 to the amount of upwards of $535,000, and that those coupons still remained unpaid.

Ketchum claimed that the coupons of 1874 had been paid by the railroad company, and that the holders of those coupons were not entitled to share in the proceeds of the sale which he prayed for.

Ziegler, De Watteville, Jump and Chavannes, made the same claim which Ketchum did in respect to the coupons of 1874, but insisted that they were entitled to proceed as bondholders for a decree of foreclosure, because it was a question between Duncan and Elliott, and Ketchum, who was rightful trustee under the mortgage which lay at the bottom of each of the suits.

At the commencement of the litigation, Alexander Duncan was the owner of the coupons in dispute.

He proved them before a master under an order of reference *ad computandum* made by the court in the Duncan & Elliott suit (*fols.* 6 to 17) on March 6, 1876, which was before the commencement of either of the other suits.

Ziegler, De Watteville, Jump and Chavannes had also, under the same order, and before commencing their suit, proved the bonds held by them.

Eugene Renevier, Rodolph Merian, Charles Carrard and Cephise Chuffard had also, under the same order, proved the bonds held by them.

Before the causes came to a hearing, Alexander Duncan had transferred his coupons to the present petitioners, Hays, Pierson & Dupuy; and the petitioners are holders of other claims secured by the mortgage of 1853 to the aggregate amount of $8,000,000. The aggregate of paramount and subordinate liens on the property, held by them, is $12,397, 170.31, out of a total of $14,120,849.02 (*p.* 8).

When the Circuit Court sat at Mobile in June, 1877, measures were taken to reduce the volume of the litigation and simplify its complexity. To this object the court kindly lent its aid, declaring (as is probably within the memory of the learned associate justice of this court who presided) that the contest as to who was trustee was trifling in comparison with the greater interests involved.

The measures taken were as follows:

1. The petitioners were admitted into the Duncan and Eliot suit to prosecute the claims which had been proved by Alexander Duncan.

2. They were allowed to intervene for their own interest, as defendants in the Ziegler suit, so as, among other things to resist the attack which Ziegler and his co-complainants had made on the coupons of 1874.

3. They were allowed to intervene for their own interest, as defendants in the Ketchum suit, so as, among other things to resist the attack which Ketchum had made on the coupons of 1874.

4. An order was made (*fols.* 38 to 41), consolidating the three suits, and ordering them to proceed to a hearing and decree together, adopting in the last two suits, the proofs and proceedings which had been taken in the first one.

By these various orders, and by the proceedings which had been taken under the order of reference of March 6, 1876, all parties became actors in the litigation, although not altogether concurring in the extent of their claims. Duncan and Elliot and the petitioners claimed affirmative relief in respect to the whole indebtedness, including as a part of it, the coupons of 1874. Ketchum, Ziegler, Chavannes, Jump and DeWatteville, claimed affirmative relief in respect to the whole indebtedness, but endeavored to exclude the coupons of 1874 from being considered as part of that indebtedness. Merian, Renevier, Carrard and Chuffard, by coming in as proponents under the order of March 6, 1876, claimed affirmative relief for the bonds held by them, while, by their answer in the Duncan and Elliot suit, they endeavored to deprive the coupon holders of 1874 of the remedy which the latter were seeking for in respect to those coupons; and the petitioners, by their answers in the Ketchum and Ziegler suits, resisted the attempt of the promoters of those suits, to deprive the petitioners of relief in respect to the coupons in question.

On the hearing, holders of bonds to the principal amount of $5,888,920, which had been issued under the mortgage of 1853, filed a stipulation (*fols.* 45 to 100), conceding the claims of the coupon holders of 1874.

A decree was made on June 15, 1877 (*fols.* 101 to 114), by which everybody concerned got something. The coupons of 1874 were adjudged to be a part of the indebtedness to be provided for, but only upon an equal footing with the bonds and coupons which subsequently matured. This was what Duncan & Elliot contended for, although the petitioners had contended that the coupons of 1874 were entitled to priority of payment over subsequently matured claims. So much of the indebtedness as Ketchum, Ziegler, De Watteville, Jump, Chavannes, Merian, Renevier, Carrard & Chuffard sought to have established, (and which Duncan and Elliot and the petitioners admitted to exist) was established, but only upon an equal footing with the coupons of 1874. The decree was, therefore, to a great extent, in favor of the present appellants. As a decree of sale, it was just what they asked for, and what no one disputed their right, if and so far as they were bondholders, or the representatives of bondholders, to have.

On June 16, 1877, Ketchum, Chavannes, Ziegler, De Watteville, Jump, Merian, Renevier, Carrard & Chuffard applied for the allowance of an appeal from the whole decree, and for a supersedeas. By an entry in the minutes (*fol.* 117) the appeal was allowed, *without any security being then exacted or furnished*, and an order was made fixing the supersedeas bond at $100,000, and directing that it should operate as a stay, if filed and approved at any time within sixty days. The opinion of the learned court, stating the considerations upon which the amount of the bond was fixed at $100,000, is given at *fol.* 118.

The next proceedings were taken on July 9th, and it is desired to call the attention of the court particularly to them. They consisted in the giving of a bond, and the issuing of a citation, without any petition of appeal or any further express allowance of an appeal. The bond is at *fol.* 124. There is a typographical error in the printing of this bond. It purports, as printed (*fol.* 128), to be signed " H. Amy & Co." It is in fact signed H. Amy, as we concede. The citation is at *fol.* 129.

In the bond, William B. Duncan & Andrew F. Elliot, who are named only as individuals, and not in any representative capacity, are the sole obligees. The bond (*fol.*126) recites the suits, and that in one of them Duncan & Elliot, as trustees. were complainants, and Merian, Renevier, Carrard & Chuffard were defendants; that in another Ketchum was complainant, and Duncan & Elliot defendants, and that in another Ziegler, De Watteville, Chavannes and Jump were complainants, and Duncan & Elliot defendants.

No reference is made to the fact that the petitioners were in any way parties to the litigation.

The bond then recites the prayer in open court for an appeal, and the order granting it, and the issue of a citation to Duncan and Elliot. The condition of the bond is that Ketchum, Ziegler, De Watteville, Chavannes, Jump, Merian, Renevier, Carrard and Chuffard, shall prosecute the appeal to effect, and answer all damages and costs, if they fail to make the said appeal good, &c.

The citation (*fols.* 129 to 131) bears even date with the bond. It is addressed to " W. B. Duncan, A. F. Elliot," and to them only, without any affix. It cites and admonishes them (*fol.* 129) " *pursuant to an allowance of an appeal filed in the Clerk's office,*" &c., "wherein Morris, Ketchum, D'Orelli Ziegler, Bernard De Watteville, Masson Chavannes, Jump, Rodolph Merian, Eugene Renevier, Charles Carrard and Cephise Chuffard are appellants, and *you are respondents,*" &c.

Since the making of the decree, the appellant Ziegler has assigned his bonds, the principal whereof amounts to $18,000, through the firm of Kelly & Alexder, of New York, to the petitioners, Hays, Pierson, and Dupuy (*fol.* 132), and it appears by a letter from Ziegler, which is among the moving papers (*fol.* 143), that his name was used in the suit without his authority.

The decree of June 15, 1877, appointed Thomas H. Herndon and James Gillette, Esqs., Special Masters, to execute the decree and distribute the proceeds of sale. The petitioners, upon being advised of supposed infirmities in the proceedings for an appeal and supersedeas, made a written request to the Masters (*fol.* 147), that they would either execute the decree or apply to the court for instructions. They then applied to the learned Circuit Justice for instructions ; and his opinion as filed (*fol.* 150), seems to the petitioners to imply, if it does not expressly state, that a supersedeas must be regarded as in force, until the court, upon the application of the parties, shall otherwise declare.

The petitioners, Hays, Pierson and Dupuy; therefore apply to the court to vacate the supersedeas, as against them, either unqualifiedly, or unless the appellants shall comply with such terms as the court may be asked to impose.

It appears by the petition that the interest of the appellants in the matter in controversy does not exceed $204,000; that if their entire interest amounted to $1,000,000 (which is the total amount of claims now outstanding under the mortgage of 1853, not held by the petitioners) the damage which they would sustain from the decree being executed pending the appeal, and then reversed as to the coupons of 1874, would not exceed $70,000; and the damages in the case supposed, to their actual interest, would not exceed $12,500 (*fols.* 135 to 141).

The petition also shows that the security given by the appellants is inadequate in amount, *fol.* 154.

THE ARGUMENT relied upon by the petitioners in support of their motion is, briefly, as follows:

I.—While the allowance of an appeal is necessary to get the record into the Appellate Court, a citation is equally necessary to get the appellees there; and as the taking of security is essential to the validity of the citation, and the citation is essential to the validity of the appeal, it is evident that no appeal is valid without security for costs given *at the time of taking it.*

93 *U. S. R.*, 87, *Kitchen* vs. *Randolph.*
94 *Id.*, 112, *Dayton* vs. *Lash.*

Hess Dig- 48 49 50

II.—It is true, that an appeal taken in term, in open court, is effectual to bring the opposite parties into the Appellate Court, as a substitute for a citation; but the necessity of giving simultaneous security, for costs at least, is as great in the case of an appeal in open court, as in the case of an appeal out of term. The statute is still imperative, that the justice or judge signing a citation, *shall* take security, &c.

20 How,
15 W 142

III.—It is not the effect of sec. 1007 of the Revised Statutes, to obviate the necessity of giving security for costs at the time of obtaining an actual citation out of term, or a constructive citation in term. The only effect of sec. 1007 is to extend to sixty days, the time for giving security *for damages*, in case an appeal has already been or is simultaneously perfected by the furnishing of security for costs. In other words, a justice cannot now, any more than he formerly could, allow an appeal and sign a citation without any security whatever, and then perfect the proceeding at any time within sixty days afterwards by taking security for costs and damages together.

IV.—In the case at bar, the proceedings taken in term in relation to an appeal were inoperative, because no security of any kind was given at the time.

V.—The subsequent proceedings of July 9, viz: the approval of the bond and the signing of the citation were inoperative as against the petitioners for any purpose, whether those subsequent proceeding are to be considered independently, by themselves, or in connection with the previous proceedings, because,—

(*a*.) Considered independently, there was no petition of appeal and no allowance of appeal as against the petitioners, or any one else, and no citation or security to the petitioners. Neither was the record, nor were the petioners, brought here.

(*b*.) Considered in connection with the previous proceedings, the proceedings of July 9 limited the proceeding of June 16 to, and define it as, a proceeding between the appellants and Duncan and Elliott only. The recitals of the bond describe Duncan and Elliott as the only respondents on the appeal taken in court. The citation is addressed to Duncan and Elliot only, and describes them as sole respondents on the appeal taken in court.

(*c*.) It is, therefore, evident that there was no intention either in the proceedings which took place in court, on June 16, or in those which took place afterwards, to bring the petitioners here, and give them here an opportunity to be heard, and that they are not here, although an unqualified supersedeas as against them has been declared to exist by the learned circuit justice.

VI.—The bond given on behalf of the appellants is not available to the petitioners. It is a bond to Duncan and Elliot in their individual names. The appellants deny that they are trustees. If the bond is to be considered as one of the items of the trust fund in Duncan and Elliot's hands, as trustees, they can recover upon it only by showing a damage to the *whole* trust estate. But they cannot recover for damage sustained by the appellants themselves. The bond should have been made, either directly to the petitioners, or to Duncan and Elliot in trust for the petitioners.

VII.—The petitioners occupy a relation to the property in controversy, and to the litigation, which entitles them to prosecute the decree, and to be regularly brought here, and secured against damage, whenever it is sought by the appellants to review the decree and to stay its execution.

The petitioners were admitted as parties to the litigation, among other things, for the express purpose of prosecuting the claims of Alexander Duncan.

According to the recognized course of equity practice, in all cases of suits *in rem*, service of a subpœna is not the only method of making parties defendant to a suit. They may be brought in on their own petition or by availing themselves of a decree made for their benefit, or by purchasing an interest in the *res*, and when thus brought in, they are parties as effectually, to all intents and purposes, as if brought in by subpœna. The moment they place themselves, or are, by the action of the court, placed in such a relation to the suit that the decree binds them or their claim of interest, they are parties to the litigation.

Calvert on parties in Equity, pp. 55–66,
17 *Law Library.*
9 *Peters*, 483, *Harrison* vs. *Nixon.*
7 *Paige*, 585, *Innes* vs. *Lansing.*
2 *Black.*, 539, *Ogilvie* v. *Knox Ins. Co.*
1 *Wallace*, 655, *Blossom* vs. *R. R. Co.*
6 *Id.*, 186, *Re Howard.*

11 *Id.*, 479, *Galveston R. R. Co.* v. *Cowdrey.*

VIII.—The facts that the appeal was taken in the name of D'Orelli Ziegler, without his authority, and that he has transferred his interest in the *res* and abandoned the appeal, vitiate it and all proceedings taken in support of it.

The other appellants proceeded *jointly* with Ziegler, not separately from him. But the unity of interest is now destroyed. It is not the same appeal which was, or appeared to be, originally taken. The sureties covenanted for the damages to be sustained from the joint appeal of Ziegler and his co-appellants; but there is now no such appeal, and the contract of the sureties has nothing to apply to. If it has, then the condition of the bond has already been broken; for Ziegler has elected not to prosecute the appeal to effect; and a stay should not be continued on the faith of a bond of which the condition is already broken.

IX.—The decree appealed from consists of two parts, one ordering a sale and the other decreeing a distribution of the proceeds. So far as it orders a sale, the decree is as much in favor of the appellants as of any one else. That is, all parties agree that there should be a sale. They differ only as to the extent of their respective interests in the proceeds. It is not a matter of right for the appellants to ask a supersedeas to so much of the decree as they united in asking for; they are entitled only to a stay in respect of that which they dissented from. The supersedeas is therefore too broad; it should be limited to the distribution of the proceeds on the coupons, and should not stay the sale. But as the petitioners offer to leave in court an equivalent for what may be distributed on the coupons, the stay should, in view and on the basis of that offer, be vacated unqualifiedly.

X.—The papers show that the security given is inadequate.

XI.—There are either two appeals pending, namely, one consisting of the proceedings in open court, on June 16th, and the other consisting of the proceedings out of court, on July 9th; or there is only one appeal pending, which consists of the proceedings of both those days taken together and in connection with each other.

If there are two appeals, the first was inoperative, because it was not perfected by the giving of any security, even for costs, at the time, and at all events no supersedeas was then effected. The second was inoperative as an appeal against the petitioners, because it was scrupulously limited and defined as an appeal against Duncan and Elliot only, and it was inoperative as a supersedeas against the petitioners, because no bond was given to them.

If there was only one appeal, it was inoperative as against the petitioners, because the proceedings in open court on June 16th, although in form embracing the petitioners, was subsequently, by the proceedings of July 9, defined, limited and reduced to an appeal in which Duncan and Elliot are the only respondents and the only obligees in the supersedeas bond.

And, whatever may be the number of appeals, each of them is vitiated by the want of authority to appeal in Ziegler's name, by his withdrawing from the appeals, by the insufficiency of the bond, by the fact that the appeal is from the whole of a decree obtained in part by the appellants, and by the inadequacy of the security.

XII.—The petitioners are entitled to have the supersedeas vacated either unqualifiedly or upon terms.

F. N. Bangs,
Of Counsel for Petitioners.

IN THE

Supreme Court of the United States.

W. B. DUNCAN AND A. F. ELLIOTT,
VS.
THE MOBILE AND OHIO RAILROAD COMPANY
ET AL.

MORRIS KETCHUM,
VS.
THE SAME.

D'ORELLI ZIEGLER, BERNARD DEWATTEVILLE,
ET AL.
VS.
THE SAME.

Consolidated Causes.

Answer to Petition, to Vacate Supersedeas, &c.

E. L. ANDREWS,
E. H. GRANDIN,
Solicitors for Appellants.

MORRISON & NATHAN,
Printers and Blank Book Manufacturers,
23 Dey Street, N. Y.

IN THE 1

Supreme Court of the United States.

W. BUTLER DUNCAN and A. FOSTER ELLIOTT.

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

MORRIS KETCHUM, 2

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

D'ORELLI ZIEGLER, BERNARD DE WATTEVILLE, HENRY JUMP and MASSON CHAVANNES,

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

To the Honorable the Supreme Court of the United States: 3

The answer of Morris Ketchum, Rudolph Merian, Eugene Renevier, Charles Carrard, Cephise Chuffart, Bernard de Watteville, Henry Jump and Masson Chavannes to the petition made herein by William H.

Hays, William S. Pierson and T. Haskins Dupuy, respectfully shows:

That the litigation for the enforcement of the liens of the first mortgage bonds of the Mobile and Ohio Railroad Company had proceeded for more than fifteen months when the cause was brought on for the final hearing.

That down to said time the said Hays, Dupuy and Pierson had not intervened or in any manner become parties to the said suits. At the time of the final argu-
4 ment they were admitted as nominal participants herein, but no relief was prayed or asked against them in any shape, even for costs.

That thereafter the several suits which had been pending, were by proper proceedings had duly consolidated, and a final decree was entered in the consolidated causes.

That an appeal from the said decree was prayed by the present appellants, representing six hundred thousand dollars of first mortgage bonds, in open court at
5 the same term and on the same day when the decree was entered, and the said prayer of appeal was duly entered on the minutes of the Court.

That the appeal so prayed for was granted by Mr. Justice Bradley and the Circuit Judge constituting the Court before which the proceedings for the consolidation of the above entitled suits had been had, and the said appeal was granted from the final decree in the consolidated cause, and was prayed for and allowed according to the position and arrangement of the vari-
6 ous parties to the consolidated cause to become appellants and respondents.

That, upon information and belief, the appellants herein prayed, and argued through their counsel, that the amount of the supersedeas bond should not exceed ten thousand dollars, the property being and remaining in the custody of the Court.

That, upon information and belief, the largest sum which it was sought to have named at Circuit by any
7 of the parties to the litigation as a condition of super-

seding the execution of the decree, was the amount of one hundred and fifty thousand dollars, which it was sought to have imposed by W. B. Duncan and A. F. Elliott, the present respondents in this cause.

And for further answer the above named parties respectfully show:

That in pursuance of the order of the Circuit Court these appellants had prepared a draft of the supersedeas bond and had the same submitted to the Circuit 8
Justice in the city of New York. Thereafter the bond, as corrected by the learned Justice, was executed and was by him approved, and was filed according to the order for the appeal herein.

Upon information derived from Special-Master Gillette, they further show that the Masters were served at the instance of the petitioners who are making the present application to the Supreme Court, with a notice of which the following is a true copy:

NOTICE TO SPECIAL MASTER.

U. S. CIRCUIT COURT, 9
SOUTHERN DISTRICT OF ALABAMA.

WILLIAM BUTLER DUNCAN and ANDREW FOSTER ELLIOTT, Trustees, &c.

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET ALS.

MORRIS KETCHUM,

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET ALS.

Consolidated Causes.

10

D'ORELLI ZIEGLER, ET AL.

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

To **James Gillette** and **Thomas Herndon**, Esquires, special masters appointed by the decree of June 15, 1877.

Gentlemen,—We are advised and instructed to inform you, that we do not regard the execution of the said decree, so far as it requires you to make a sale of the mortgaged property, as stayed or superseded by any of the proceedings heretofore taken in the nature
11 of an appeal by Morris Ketchum, D'Orelli Ziegler and their co-appellants. No bond has been given on that appeal, except a bond to William Butler Duncan and Andrew Foster Elliott, in their individual names, and they are not, as individuals, parties to the litigation. No bond or security of any kind has been given to us, and no citation has been served upon us. As we are advised, the legal effect of the bond given is, at the utmost, to stay only the proceedings of Andrew Foster Elliott and William Butler Duncan as individnals. Under the circumstances we think it is your duty either to proceed to execute the decree, or to apply to the court for its instructions in the premises.

12 Dated New York, August 20, 1877.

Yours respectfully,
WILLIAM H. HAYS,
WILLIAM S. PIERSON,
T. HASKINS DUPUY,
By C. W. Bangs,
Their Solicitor.

Endorsed:
Received, New York, August 22, 1877.
James Gillette,
Special Master.
Saratoga Springs, N. Y., August 23, 1877.
A true copy:
James Gillette,
13 Special Master.

That on the receipt of this notice by the appellants they caused the Masters to be served with a counter notice of which the following is a copy:

NOTICE TO SPECIAL MASTER.

U. S. CIRCUIT COURT,
SOUTHERN DISTRICT OF ALABAMA.

WILLIAM BUTLER DUNCAN and ANDREW FOSTER ELLIOTT, Trustees, &c.

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET ALS.

MORRIS KETCHUM,

vs. 14

THE MOBILE & OHIO RAILROAD COMPANY, ET ALS.

D'ORELLI ZIEGLER, ET AL.

vs.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

To JAMES GILLETTE and THOMAS H. HERNDON, Esquires, 15
special masters appointed by the decree of June
15, 1877.

Your official letter enclosing a copy of a notice in the above cause served on you is received.

The order of Mr. Justice Bradley for the appeal to Supreme Court contains the following words: "The said bond shall stay execution if approved and filed at any time within sixty days from the date of this order."

As the foregoing order of the Court has been complied with, and the bond approved by Mr. Justice Bradley, and filed within the time, it would seem un- 16
neccessary to add that you are not called upon in propriety to follow the suggestion made by counsel in the cause that you should disobey the order of the Circuit Court.

Should you, however, disregard the stay of execution ordered upon Judge Bradley's approval of the bond and not upon counsel's opinion of that approval, we should be forced to proceed as for a contempt.

In regard to applying to the Court for instructions, we may respectfully mention that the draft of the bond was submitted to Judge Bradley before execution.

The names of Hays, Dupuy and Pierson were specially objected to in the bond by Judge Bradley and under his direction and in his presence, if not by his own
17 hand stricken from the draft.

That draft with the interlineations and corrections in Judge Bradley's own handwriting is now in my possession and subject to your inspection.

If it were necessary in a document of this character, I could detail to you the remarks which Judge Bradley made in regard to the inappropriateness of inserting the names of Hays and others in the bond.

On the subject of the description of Duncan and Elliott it may be time enough to consider that when they make the objection. They are described as Trustees in the recital of the bond, though they are not named
18 as Trustees in the title of the decree.

But this suggestion is no more tenable than the one regarding the citing of parties, when the appeal is taken in open Court of the same term.

It is very apparent that the Masters should not allow themselves to be drawn into espousing matters of such a character.

If these parties are desirous to obtain the direction and have the instructions of the Court they are the proper ones to apply for them.

Yours respectfully,
E. L. ANDREWS.

19 That thereafter the following letter was received by the solicitor for the appellants from the Masters herein.

LAKE GEORGE, N. Y.
Sept. 1st, 1877.

E. L. ANDREWS, ESQ.,

Dear Sir—Referring to the notice of C. W. Bangs, solicitor of Com. on Re-organization, looking to a sale of the M. & O. R. R., and to the counter notice rec'd from you, we have agreed that it would be prudent to apply to Mr. Justice Bradley for instructions, and will forward the papers with an application.

20 Respectfully,
JAMES GILLETTE,
THOMAS H. HERNDON,
pr G. Masters.

That on or about the 15th of September the following opinion of Mr. Justice Bradley was filed in the office of the Clerk of the Circuit Court for the Southern District of Alabama:

STOWE, VT., SEPT. 11, 1877. 21

Messrs. JAMES GILLETTE and THOMAS H. HERNDON:

Gentlemen—Your letter of the 5th inst. has been received, enclosing copy of notice from solicitor of Wm. H. Hays and others, suggesting that it is your duty to proceed to execute the decree for sale of the Mobile & Ohio Railroad, made in the cases of Wm. B. Duncan and Andrew F. Elliott against the Mobile & Ohio Railroad Company & al., Morris Ketchum against said company & al., and D'Orelli Ziegler & al., against said company and others, notwithstanding the appeal taken in the cases as consolidated. 22

The suits were consolidated and treated as one, one decree was made thereon, and appeal taken in open court, and the appellants desired to give an appeal bond satisfactory to the Court to stay execution. The bond presented was approved for that purpose. If it is defective for want of form, I should certainly feel bound, under the circumstances, to allow the appellants to file another bond. At all events, until the Court orders otherwise, it seems to me that the Masters should not take it upon themselves to decide that the appeal bond is ineffective. Of course, I am willing to 23
hear any application on the subject, that can properly be decided at Chambers. But it seems to me that it is hardly necessary for the Masters to go to that trouble. If the parties are dissatisfied with the bond, it is rather for them to make application to the Court, or a judge at chambers, to direct the Masters to proceed, notwithstanding the appeal.

Yours truly,

(Signed) JOSEPH P. BRADLEY.

A true copy:

JAMES GILLETTE, Master.

That the real position of W. H. Hays, W. S. Pierson and T. H. Dupuy, in reference to this litigation, is as 24
follows:

No relief was asked against them, nor was any relief asked by them; they were admitted as merely nominal parties. After the appeal and supersedeas had been perfected for nearly thirty days they, for the first time, claimed to become parties to the appeal, and were admitted by the Circuit Justice as appellants in the consolidated cause. Their notice of appeal, seeking to reverse the decree herein, as served upon the solicitor of these appellants, is as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

25

WILLIAM BUTLER DUNCAN and ANDREW FOSTER ELLIOTT, Trustees, &c.
vs.
THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

MORRIS KETCHUM,
vs.
THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

D'ORELLI ZIEGLER, ET AL.,
vs.
26 THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

Consolidated Causes.

Please to take notice that William H. Hays, William S. Pierson, T. H skins Dupuy and Alexander Duncan, parties to the consolidated cause, claim an appeal and hereby appeal to the Supreme Court of the United States, from so much of the decree made in the above entitled cause and causes on June 15, 1877, as overruled the exceptions taken by them or either of them to the Master's report and reports; and also from as much of the said decree as ordered and adjudged that the first mortgage bonds therein mentioned are secured
27 equally with the coupons which became due on the first day of May and November, 1874, and are to be rateably paid from the proceeds of the property without priority or preference to said coupons, and the interest therein; and also from so much of said decree as omitted to order and adjudge that the holders of said coupons are up to the amount of said coupons and interest thereon, entitled to the proceeds of said prop-

erty before any of such proceeds are applied to the payment of any subsequently maturing coupons, or to the payment of any part of the principal of said bonds; and also from so much of said decree as orders, adjudges or decrees that any coupon which matured after November 1, 1874, or that any bond be received by the Masters in payment from the highest and last bidder, 28
without providing that such highest and last bidder shall first pay in to the Masters an amount sufficient to satisfy in full the said coupons which matured on May 1, 1874, and November 1, 1874, respectively, with the interest thereon, or without providing that the Masters should allow to the highest and last bidder against his bid the amount of such last mentioned coupons and the interest thereon, so far as such coupons should be held by such bidder and should be produced and delivered to the Master for cancellation in the order of their maturity, and also from so much of said decree as omitted to order and adjudge that the funds remaining in the hands of the Receivers should be applied to the 29
payment of the coupons secured by said first mortgage and the interest on such coupons according to the order of the maturity of such coupons.

Dated August 13th, 1877.

C. W. Bangs,
Solicitor for Appellants.

To N. W. Trimble, Esq.,
Clerk, &c.

To E. L. Andrews, Esq.,
Solicitor for Morris Ketchum, D'Orelli Ziegler, Masson Chavannes, Henry Jump, Berdard de Watteville, Cephise Chuffart, Ru- 30
dolph Merian, Eugene Reneirer, Alfred Reneirer, Charles Carrard, Louis J. Belloni.

George N. Stewart, Esq.,
Solicitor for the Mobile & Ohio Railroad Company.

William Jones, Esq., and E. H. Granden, Esq.,
Solicitors for second mortgage trustees and al.

P. & T. A. Hamilton, Esqs.,
Solicitors for William Butler Duncan and Andrew Foster Elliott, Trustees, &c.

31 That these appellants have been cited to appear in the Supreme Court at the said appeal of Hays, Dupuy and Piersou, who seek to overturn the decree herein as avowed by them but which decree they now seek by their present petition to have executed.

And in the claim of appeal of the said Hays, Dupuy and Pierson to this Honorable Court it is prayed "that the said Supreme Court of the United States will proceed to hear the cause, and that the said decree of the said Circuit Court may be modified, amended or re-
32 versed as justice to these appellants may require in the respects and as to the matters aforesaid, and that such further or other decree may be made as to the said Supreme Court may seem just." The matter in respect of which the said Hays, Dupuy and Pierson claim that the decree of the Circuit Court is erroneous is one of the same matters in respect of which these appellants claim that error exists.

And for further answer to this petition these respondents show, upon information and belief: That
33 the said Hays, Dupuy and Pierson are not the owners of the amount of bonds which they allege themselves to be the owners of in their petition to this Court. Their ownership of first mortgage bonds is only as follows:

T. Haskins Dupuy, 6 bonds.
W. H. Hays, 75 bonds.
W. S. Pierson, none proven.

The balance of the large amount of bonds of which they claim to be owners, are really owned by a numerous body of persons in various parts of Europe and this country, and the powers of attorney which the said
34 Hays, Dupuy and Pierson hold, relate principally to an amicable readjustment of the debts of the Mobile & Ohio Railroad Company, which reorganization has failed by its own terms, and by reason of the non-assent of the large number of first mortgage bondholders who have been represented in the record herein to the extent of six hundred thousand dollars, and also by reason of the dissent of more than three hundred thousand dollars of second mortgage bonds, who have likewise been represented on the record herein by the cor-
35 poration known as the Rogers Locomotive Works, and by others.

The remaining powers of the said Hays, Dupuy and Pierson relate to the purchase of the railroad and property when the same may be sold. The position of the owners of the first mortgage bonds who have given these powers, is expressed in the following communications from some of their number: 36

26th March, 1877.

To the Register of the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama, for the consideration of his Honor, the Judge of said Court:

Sir,—I respectfully beg to state for the information of the Court and all concerned—

1st. That I received a circular dated Mobile, Ala., June 20th, from James Gillette, Special Master, asking me to send proof of my claim, and particulars against the Mobile and Ohio Railroad Company. 37

2d. I received this circular in Ballymena, Ireland, on the 4th of July, 1876. I sent proof made before a U. S. Consul, on 6th of July, 1876, addressed to T. Haskins Dupuy, Vice-President, Mobile.

3d. I signed a form of reorganization drawn up by Mr. Dupuy.

4th. I was asked again, in November, 1876, to sign an agreement come to on 1st of October, 1876. I replied to C. M. Lampson & Co., London, on the 22d of January, as follows:

Ballymena, 22d Jan., 1877. 38

Gentlemen,—I sent my claim duly authenticated by the American Consul to Mr. Dupuy, on the 6th July, last year; and as he is one of the managers of the 1st of October, '76 agreement, I don't see the necessity of doing more until the Court shall have prescribed or approved a further step.

Yours respectfully,

JOHN LYNCH.

I hope the foregoing will place me under the protection of the Court. If not I would of course do as directed by the Court.

5th. My broker, Josias Cunningham, Belfast, writes me—Belfast, 9th March, 1877. Dear Sir,—With reference 39 to our former circular *in re* Mobile and Ohio Railroad securities, we forwarded Messrs. Lampson & Co., for a number of parties, consent forms signed and endorsed as follows: The parties signing do so on the express condition of their being free from any claim, liability, or responsibility in cash, or beyond the proportion of expense incurred in the arrangement to be deducted from the securities issued in exchange for their respective holdings.

I see an article in a Belfast newspaper this morning,
which taken in connection with a sort of threat in the
40 October agreement, to the effect that persons unable
to comply with all its requirements will be deprived of
the benefits derivable from its acceptance by the Court,
is somewhat startling. I confess I do not fully comprehend
the whole case, and, therefore, humbly ask the
protection of the Court, if I have failed in any essential
particular unwittingly.

I have the honor to be, sir,
Yours respectfully,
JOHN LYNCH.

I send the newspaper alluded to above.

Protest made by Messrs. Amy & Co.

41 The following amply describes the true position of
the bondholders before the Courts:

In that branch of the Mobile & Ohio litigation being the suits brought in the Circuit Court of the United States, for the Southern District of Alabama, Mr. Justice Bradley pronounced an opinion containing, among others, the following language:

"Looking at the difficulties which beset the subject
on every side, we think that if we allow the non-sub-
scribing bondholders to participate in the purchase of
the property, should it be made in behalf of the reor-
ganizing combination, on an equal footing with those
42 who have joined it, that *we shall have done all that we*
can do under the circumstances to protect their interests.
The parties representing the reconstruction scheme,
through their counsel, have offered to allow them to
come in, and to extend the time for doing so until the
first of August. We suggest that this time should be
extended to the day of sale of the property. We per-
ceive that the trustees have the power to do this—and
keep the agreement on foot by extending the time sixty
days at a time. We have, therefore, proposed an addi-
tional proviso to the decree to carry out this view. We
hope that it will be acceded to by the counsel for the
43 complainants and those representing the reconstruction
scheme. We do not wish to dictate these terms to the
parties who propose to purchase, but suggest that, in

our judgment, the interest of all parties would be subserved
by an arrangement of this sort."

On the suggestion of counsel for Messrs. Duncan &
Elliott, parties to said causes, who stated that it was
very desirable if the plan of reconstruction should be
generally adopted to avoid any sale at all, and who proposed
to extend the time for bondholders to come to an 44
arrangement to and including the 1st of September,
1877, a decree was subsequently made by the said
Court, containing among others, the following paragraph:

7. The court orders and decrees that the Masters
may receive in payment from the highest and last
bidder, bonds and coupons which form a part of the
first mortgage debt ascertained to be due or owing by
the Master in his report, and sustained by the opinion
of this court; provided, however, that a sum sufficient
to pay the costs, charges and expenses of the trust as
above mentioned, whether exceeding the said cash deposit 45
or not, and also to provide for the payment of the
pro rata dividend which shall be due or owing to the
owners of other bonds and coupons, secured under the
deed of trust, must be paid in money, and provided also
that if the said mortgage property shall be bid off
directly or indirectly by, for, or in behalf of the bondholders
and creditors who have, or shall have, entered
into and subscribed the agreement for the readjustment
of the securities of said Company, dated October 1,
1876, commonly called the agreement of re-organization,
then and in that case all and every bondholder
and creditor of said Company not having already 46
entered into and subscribed said agreement, who shall,
on or before the first day of September next, enter into
and subscribe the same and deposit their securities
with the Farmers' Loan and Trust Company in the
City of New York, or with the Bank of Mobile in the
City of Mobile, as provided by said agreement, shall
be and they are hereby allowed to participate in said
bid and purchase on the same terms and on an equal
footing in all respects, according to the character of
their claims respectively, with the said bondholders
and creditors who have heretofore entered into and
signed said agreement. 47

It is evident from the above, that the limitation prescribed
was upon the theory held out to the Court of an
amicable re-organization without the sale.

Subsequently an appeal was taken from that drceree,
and the whole thereof to the Supreme Court of the

United States, which appeal is still pending and undetermined,
and a bond was filed by the appellants to
prevent a sale under the decree appealed from until
the determination on such appeal. The same equitable
reasons which influenced the Court to pronounce the
above opinion in protection of the minority on the
bidding for the property at any sale to be had under
the decree, continued to operate after the appeal was
taken to the Supreme Court of the United States.

As you are aware, another branch of the litigation
was at the time of the rendition of the above-mentioned
48 decree pending in the Circuit Court of the United
States for the Western District of Tennessee, and in
the suits such proceedings were had as to present the
questions respecting the validity of the so called Tennessee
substitution bonds, and the rights of the holders
thereof to a priority of lien as against the first mortgage
sterling bondholders. At the time of the rendition
of the first mentioned decree, the causes pending in
Tennessee had not been brought to a hearing on those
questions, but it is apparent from other passages in the
said decree, notably, the ninth clause, that the Circuit
49 Court in Alabama believed that the existence or nonexistence
of a prior lien for nearly two million dollars
on one hundred and eighteen miles of road in Tennessee
would be determined prior to the 1st day of September,
1877. The cause in Tennessee has been heard, but no
decision has as yet been rendered; it is, therefore,
palpably unjust that the first mortgage sterling bondholders
should be compelled to submit to a scheme
which is not predicated upon a judicial determination
of the before mentioned questions, but is at variance
with the sterling bondholders' rights as asserted in said
suits, or, indeed, to any scheme at any time prior to
50 the day of the sale of the entire road, after the priorities
and extent of the various liens shall have been finally
determined. Acting, however, according to the measure
of our relations to our European constituents, we
surrender, under protest, the bonds enumerated in the
schedule this day left by us with you, and give, under
protest, the prescribed power of attorney, continuing,
however, to do as you are doing to maintain our interests
in the prosecution of an appeal and other litigations,
involving questions of the utmost importance to
the real parties in interest, without any reference to
these provisional arrangements, reserving unto ourselves
and those whom we represent, the right to revoke
51 the powers given, and to require the return of the

bonds aforesaid, or to otherwise act as may seem expedient in either of the following events:

First. In case the United States Supreme Court should decide against the claim of priority set up for Alexander Duncan's coupons by yourselves, or Messrs. Duncan and Elliott.

Second. In case the Circuit Court of the United States for the Western District of Tennessee, should decide against the priority of the Tennessee substitution bonds.

And lastly. In case the Circuit Court of the United States for the Western District of Tennessee should 52
decide in favor of the priority of the Tennessee substitution bonds, and on appeal from such decision, the Supreme Court of the United States should reverse the same.

Respectfully,
(Signed,) H. AMY & CO.

Dated New York, Sept. 1st, 1877.
To Messrs. HAYS, DUPUY and PIERSON,
N. Y. Cy.

That the form of power of attorney given to said Hays, Dupuy and Pierson, and which is included in 53
the record of this cause in the Supreme Court, does not authorize the stipulation contained in this petition, whereby it is sought to place the said coupons of Alexander Duncan in a position paramount to the lien of the first mortgage bondholders. It also appears from the said form of power, as well as from the foregoing protests, that the owners of the first mortgage bonds did not yield any of their rights in the Courts by joining in a prospective scheme for purchasing the road 54
when it should be offered for sale.

The said Hays, Dupuy and Pierson hold powers from a much larger proportion of the Tennessee substitution bonds, which are contested claims, and of second mortgage convertible and consolidated bonds, which are inferior claims, than they hold of the first mortgage bonds.

These respondents further show:

That the stipulation contained in the petition herein, whereby Hays, Dupuy and Pierson purport on behalf of a large amount of bonds "to adopt and approve the 55
acts and doings of Duncan and Elliott as trustees," is

wholly unwarranted by the powers given by some of the bondholders to them. Morris Ketchum in his capacity as trustee represents the entire first mortgage interest in the road, and he submits that, besides those who have not joined in the plans for purchasing the road when it is finally sold, he has been requested by holders of bonds to a very large amount, who have given powers of purchase to said Hays, Dupuy and Pierson, to enforce their legal rights before the Courts.

56 And for further answer these respondents show:

That they do not know, nor have they any means of ascertaining, what price the Mobile & Ohio Railroad and appurtenant property would bring at a foreclosure sale. They submit that the calculations in that behalf made by the petitioners are wholly uncertain, and, in fact, the price which such an estate would bring, is impossible of ascertainment.

They submit to the Court that the security upon
which they loaned their money was a land grant from
57 the United States, and a railroad property extending
nearly five hundred miles. The appeal which they have
taken is not alone from the portions of the decree in
relation to Alexander Duncan's coupons, but likewise
in respect of other grave errors therein by which they
deem that their rights are seriously affected. They
submit that they have filed their bond for stay of execution
under the statutes of the United States, and
under the orders of the Circuit Court, and in case any
58 defect in the form of said bond as approved should be
discovered, though they believe none to exist, they are
willing to file a bond in such form as may be deemed
proper by this Court. They submit that they should
not be deprived of the security of the trust estate and
be compelled to accept some personal bond which may
prove insecure or be the subject of some future litigation.
They further submit that, the amount of the
supersedeas bond as fixed by the Court that heard the
cause should not be increased. Nothing is stated in
the petition for such increase which was not fully discussed
59 before the Circuit Court at the time the amount
of the bond was determined upon.

That as matter of fact, the pendency of this appeal
with the supersedeas is not a cause of damage to
the property, nor does it delay or embarrass its
improvement. On the contrary, several hundred
thousand dollars per annum have been expended
under the orders of the Court out of the earnings
for the improvement of the railroad. It is alleged in
the bill of Duncan and Elliott that previous to the 60
placing of the road in the hands of the Court, large
amounts of its assets had been expended for the bene-
fit of subordinate claims. Since the Court has taken
the custody of the property, no efforts which have been
made to secure the appropriation of the earnings of the
property to the benefit of floating creditors have been
successful, but on the contrary, such efforts as have
been made have been in most instances defeated. By
reason of the appropriation of the net earnings to bet-
terments the road and entire property is notoriously in 61
a better condition than for some years past. It is en-
tirely incorrect to say that the prevention of a sale in-
terferes with the condition and improvement of the
property.

Respondents further show:

That Alexander Duncan who is named in the motion
papers herein, as an appellee, and Louis J. Belloni who
is named in the appeal papers of Hays, Dupuy and
Pierson as an appellee, are neither of them parties
of record in this litigation as these affiants are in- 62
formed and believed.

And these respondents further show: That they have offered to submit this appeal on printed arguments at the commencement of the present term of the Supreme Court, but the said offer has not been accepted by the petitioners.

Wherefore these appellants pray that the motions
for the vacatur of the supersedeas, the dismissal of the
the appeal and the other motions contained in the peti-
tion may be denied and overruled with costs. 63

And the respondents herein will ever pray, &c.

MORRIS KETCHUM,
BERNARD DE WATTEVILLE,
HENRY JUMP,
MASSON CHAVANNES,
RODOLPH MERIAN,
EUGENE RENEVIER,
CHARLES CARRARD,
CEPHISE CHUFFART.
By E. L. ANDREWS,
64 E. H. GRANDIN,
Their Solicitors.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK. } ss.

Charles Moran, D. Comyn Moran, Amedee D. Moran, and Morris Ketchum being duly and severally sworn, do depose and say, and each for himself says:

That he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except to the matters and things there-
65 in stated upon information and belief, and as to those matters he believes it to be true.

That Morris Ketchum is one of the appellants in the above cause before this Court; and that the firm of Moran Brothers, composed of the above named affiants except Morris Ketchum, are the attorneys in fact and agents herein of the other appellants before this Court, and this verification is made by them because said appellants are aliens and are resident in Europe.

MORRIS KETCHUM.

Sworn to before me, this 11th }
day of October, 1877, }
66 EDWARD L. OWENS,
U. S. Commissioner,
Southern District of New York.

CHS. MORAN,
D. COMYN MORAN,
A. D. MORAN.

Sworn to before me, this 12th }
day of October, 1877, }
EDWARD L. OWENS,
U. S. Commissioner,
Southern District of New York.

IN THE

Supreme Court of the United States.

W. B. DUNCAN AND A. F. ELLIOTT,
VS.
THE MOBILE AND OHIO RAILROAD COMPANY
ET AL.

MORRIS KETCHUM,
VS.
THE SAME.

D'ORELLI ZIEGLER, BERNARD DEWATTEVILLE,
ET AL.
VS.
THE SAME.

Consolidated Causes.

Brief in Opposition. On motion to Vacate Supersedeas, &c.

GEORGE HOADLY,
E. H. GRANDIN,
E. L. ANDREWS,
of Counsel.

MORRISON & NATHAN,
Printers and Blank Book Manufacturers,
23 Dey Street, N. Y.

IN THE

Supreme Court of the United States.

W. B. DUNCAN, ET AL.,

VS.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

MORRIS KETCHUM,

VS.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

D'ORELLI ZIEGLER, BERNARD DE WATTEVILLE, ET AL.,

VS.

THE MOBILE & OHIO RAILROAD COMPANY, ET AL.

BRIEF.

ON MOTION TO VACATE SUPERSEDEAS.

FACTS.

The appeal to the Supreme Court was granted at the same term at which the decree was rendered. The order of the Circuit Court provided as follows:

"The supersedeas bond is hereby fixed at one hundred thousand dollars with sureties resident in the city of New York, who may unite in said bond in any proportionate sums. The said bond shall stay execution if approved and filed at any time within sixty days.

The draft of the bond was submitted to one of the Justices of the Supreme Court, and after being corrected by him, as fully shown by the answer to the petition, was executed and duly approved and filed, whereupon execution became stayed by the order of the Circuit Court.

Thereafter the moving parties in the present application likewise obtained an allocatur of appeal from the same Justice, and served citations and gave an appeal bond, seeking to obtain a reversal of the same decree from which these appellants had appealed.

Having waited for the lapse of more than sixty days after the entry of the decree, these petitioners who had themselves become appellants, served the Masters with a request to execute the decree upon the ground that they (the petitioners), had discovered a defect in the form of the bond given by these appellants. The Masters applied to one of the Justices of this Court for instructions, and the decision upon that application is set out *in extenso* in our answering papers.

The present application, "That any supersedeas or stay of execution heretofore granted as against your petitioners may be vacated and set aside, and leave given to your petitioners to prosecute and enforce the said decree notwithstanding said appeal in open Court," is made upon the same grounds that were presented to Mr. Justice Bradley, namely: That Hays, Dupuy and Pierson are not named as obligees in the supersedeas bond.

The only pleading in the litigations which asserts any affirmative relief in favor of Alexander Duncan's coupons, is the bill filed by W. B. Duncan and A. F. Elliott. In that bill, those coupons are claimed to hold an equal rank with the first mortgage bonds. The decision and decree of the Circuit Court was in favor of the claim set up by those complainants, and accorded with their views of the position of the Duncan coupons. They were the successful parties below, and are the proper parties to resist an appeal against the decree rendered in accord with the prayers of their bill.

Hays, Dupuy and Pierson came before the Circuit Court as representatives for parties in interest in various classes of claims, and without any allegation on their part of any misconduct by the trustees, they were admitted *pro interesse suo.* No relief was asked against or by them; they were mere nominal parties.

They filed no cross bill for any decree on their behalf against any of the parties to the litigation, either complainant or co-defendant.

But thereafter all the causes pending in reference to the foreclosure of the first mortgage on the railroad were consolidated by an order which took no note of Hays, Dupuy and Pierson.

On the final hearing Hays, Dupuy and Pierson contended that the Duncan coupons were in all respects prior and paramount to the first mortgage bonds. Their claim was entirely defeated and the decree went against them, and as above stated they have since appealed from that adverse decision.

When the supersedeas bond was submitted to the learned justice, then, for the first time, there came up for practical determination the position of parties appellant and respondent under the consolidation of the causes.

The bond was properly required to be given by the obligors to the successful parties below, who were Duncan and Elliott and they alone.

POINTS.

FIRST.

Supersedeas bonds should run only to parties adverse to the appeal, whose position in relation to the subject of the appeal is in conflict with the reversal of the decree. How can this be predicated of these petitioners who opposed the decree at Circuit, and are themselves appellants therefrom in this Court? There would have been an anomaly in making them who seek a reversal obligees in a bond to be given to those who are opposed to a reversal. What an inconsistency it would have been to indemnify those against the damages arising from securing a reversal who are likewise clamoring for the same result.

This Court has clearly laid down the doctrine which should control the question at bar.

The Act of 1789 directs "the adverse party to be cited on a writ of error or appeal."

"The adverse party is the one which appeared in the suit and who prosecuted or defended it, and *in whose favor the judgment was rendered which the plaintiff in the writ of error seeks to reverse.*

Motion to dismiss appeal overruled.

Poydras v. Treasurer, 17 Howard's Supreme Court Reports, page 3.

Thompson v. Ellsworth, 1 Barbour's Ch. Rep. p. 627.

Potter v. Baker, 4 Paige, 29.

Succession of Montgomery, 2 La. Am. 469.

Barner v. Gorden, 16 La. Am. 324.

The Mabey and Cooper, 14 Wall, p. 215.

SECOND.

Nominal parties below should not be joined on the appellate proceedings. The mere attorneys of some of the bondholders to act as a purchasing agency to buy the road when sold, cannot be considered in any other light.

When parties are allowed to intervene *pro interesse suo*, no relief being demanded by or against them, they do not thereby become indispensable parties to the appeal bond.

They may themselves become appellants, as they have done in this case. But the admission of parties representing a dozen classes of *cestuis que trusts pro interesse suo*, would not entitle them all to be joined in the appeal bond. They are admitted to represent their own interests, but this is very far from implying that the position of the trustees of record as the proper parties to represent the general body of the *cestuis que trust* in the ultimate course of the proceedings is in any wise impaired. This is particularly the case when the intervenors are defeated.

McBurnett v. Breed, 6 Ala. 476.
Cooper v. Maclin, 25 Ala. 298.
Deslonda v. Carter, 28 Ala. 541.
Duncan v. Taylor, 33 Georgia, 312.
Brewster v. Wakefield, 22 Howard, 118.
Hilliard on New Trials, p. 747.
Duncan v. Holt, 21 La. An. 235.
Exparte Cutting, 4 Otto, p. 22.

The consolidation of the causes took place subsequently to all changes in the parties to the individual suits. Beyond the necessary and proper parties, the mortgagor and the various trustees, the record was to be moulded by the Court in the consolidated cause. This was done by the several allocaturs of appeal. The bond was given by the first appellants, our clients, according to the allocatur of the Judge under whose direction the causes were consolidated.

The petitioners on this motion became parties to the appellate proceedings for the first time when the Justice granted them an allowance of appeal.

Even a proper party to an appeal is not a necessary party to the bond.

Brockett v. Brockett, 2 Howard, 238.

It seems to have been the former practice to have the bond run to the Clerk of the Court.

Bank of Alexandria v. Swan, 9 Peters, p. 34.
See Moore v. Jackson, 35 Indiana, 361.
Robinson v. Bryan, 12 Iredell, L. R. 183.

These petitioners were not such adverse parties to the reversal of the decree as would have justified the appellants in making them respondents to the appeal, and recovering costs against them, when they had opposed the decree below, and are also seeking to reverse it. They could have had the appeal dismissed as against them.

THIRD.

Duncan and Elliott, Trustees, were the proper and sole parties to whom the bond should run. In case of an affirmance, they would be the only appropriate parties to recover on the penalties of the bond—they would sue for the entire body of first mortgage bondholders, and their recovery would be for the benefit of that entire constituency.

Even if Hays, Dnpuy and Pierson were first mortgage bondholders pure and simple, who had been allowed to inject themselves into the record, what propriety would there be in their assigning breaches on the bond, when their trustees, Duncan and Elliott could assign breaches for the whole body of bondholders, them included?

How could they join with Duncan and Elliott in a suit on the bond, and what would be the respective measures of damage, when they aver that they are aggrieved by the decree, and Duncan and Elliott are aggrieved by the reversal.

But the incongruity is made more apparent when it is noted that these applicants claim to represent nearly every species of incumbrance or claim on the trust estate, conceded to be inferior to the first mortgage lien of the appellants. Are subordinate lienholders to recover on account of the reversal of a decree which forecloses their equities? (Brensler v. Wakefield, 22 Howard, 118.) Can they be considered, in any sense, adverse to the reversal of the decree? Moreover, these moving parties, with such a constituency, seek to be specially secured against the reversal of a decree which they claim to be erroneous, by which they are themselves aggrieved, and which they are endeavoring to have corrected and reversed. They are in any event estopped on this motion by their own appeal.

FOURTH.

The petitioners are not entitled to enforce the decree, either with or without a supersedeas, and no leave should be granted them for that purpose. In all the proceedings below, they have not asked for any affirmative relief—they stand merely on the defensive, not having filed a cross bill or even asked for leave to do so.

What have they to do with the enforcement of a decree in favor of other parties on the record granted against their prayers, and from which they are appealing?

Duncan and Elliott obtained the relief which has been decreed. They filed the only bill that prayed for it; it is their decree. They are alone entitled to its enforcement and they are indisputably stayed.

The Court refused to interfere at the instance of the vast majority of the bondholders with the discretion of trustees holding a decree for the common benefit of various *cestuis que trust*, to order its enforcement. This is an attempt to attain that result by an indirect method.

Farmers' Loan and Trust Company vs.
The Iowa Central Railroad Company,
Central Law Journal, July 20, 1877.

The Supreme Court is moved virtually to declare that these petitioners are entitled to be relieved from a stay and to have leave given them to prosecute the decree.

They are not stayed now ; it was not intended to stay them because defendants putting in an answer *pro interesse suo*, do not thereby become entitled to execute a decree overruling their defenses.

As to giving them special leave to enforce the decree on their own account, though the complainants who procured it are stayed, the late decision (*supra*) seems to meet that application.

It is a proposal to award a precedendo in favor of defeated and appealing parties.

FIFTH.

The power to determine that the bond is good and sufficient is vested in the Circuit Court.

This Court will not interfere with that discretion in taking the bond—except where the matters have arisen after the cause became located in the Supreme Court.

Section 1000, R. S.
Jerome v. McCarter, 21 Wall.
Martin v. Hazard Powder Co., 3 Otto, p. 302.

SIXTH.

If the form of the bond be defective, it may be amended by order of the Court.

Powell on Appellat's Proceedings, 371.
Hilliard on New Trials, 740.
Robeson v. Lewis, 64 N. C. 734.
McDonald v. Bradley, 8 Iredell, 72.
Patty v. Winchester, 20 Ill. 261.
Hargis v. Praree, 7 Bush. 234.
Saterley v. Stevens, 11 Ohio, 420.
U. S. Revised Statutes, sec. 1005.

SEVENTH.

By virtue of the Statutes a new bond may be given *after* sixty days from the rendition of judgment "with permission of a justice or judge of the Appellate Court."

It may be respectfully added that the Court will always relieve from the effect of an inadvertence, if any there be, of a judicial officer.

Shiff v. Brownell, 4 Wis. 285.
Perry v. Wilson, 7 Mass. 394.
Sage v. Railroad Co. 3 Otto.

EIGHTH.

The appeal was prayed and granted in open Court at the same term and on the same day at which the decree was rendered.

No citation whatever was requisite.

Dayton v. Lash, 4 Otto, 117.

NINTH.

These petitioners claiming not to be parties to the appeal, are not competent to make this motion.

Blane v. Podgers, 47 Cal. p. 606.
Randolph v. Barbour, 6 Wheaton, 168.

TENTH.

Motion involving question of proper parties to the appeal should be adjourned to hearing. (Day v. Washburn, 23 Howard, p. 309.)

This motion to vacate the supersedeas should be denied, as there is no defect in the form of the bond.

ON MOTION TO VACATE SUPERSEDEAS BY THE APPELLEES GIVING A PERSONAL BOND.

No power exists in this Court to abrogate a supersedeas in the way proposed.

The Revised Statutes would seem to be a sufficient answer to the application.

Section 1007.

The Supreme Court has held that the power of superseding of decrees in equity in the Federal system is now derived from the statutes.

Slaughter House Cases, 10 Wallace.
Goddard v. Ordway, 4 Otto, 677.

It is such a clear legal right that this Court will grant a mandamus to compel the issuance of a supersedeas.

There can be no dispensing power to avoid the rights conferred on appellants by compliance with the law.

ON MOTION TO INCREASE SUPERSEDEAS BOND.

It appears from the opinion of the Circuit Court that the matters alleged in the petition for an increase of the amount of the bond were fully considered by that Court. The highest amount then applied for was one hundred and fifty thousand dollars. Half a million dollars is now sought to be imposed without even an allegation that the circumstances have changed since the security was fixed by the trial Court. The answering papers show that the property is benefitted instead of injured, while in the custody of the Court.

This Court has decided that it will not review the action of the Circuit Court in regard to the amount of supersedeas bond, under the above circumstances.

Martin v. Hazard Powder Co., 3 Otto, p. 302.

The prayers of the petition should be denied.

GEORGE HOADLY,
E. L. ANDREWS,
E. H. GRANDIN,
P. PHILLIPS,
of Counsel.

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